



**USFC2004-1609-04**

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# **JOINT APPENDIX**

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04-1609, 05-1141,-1202

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UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

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GOLDEN BLOUNT, INC.

Plaintiff-Appellee,

v.

ROBERT H. PETERSON CO.,

Defendant-Appellant.

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

JUDGE JERRY BUCKMEYER

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NON-CONFIDENTIAL JOINT APPENDIX

VOLUME II, PAGES JT-APP 0518 – 0933

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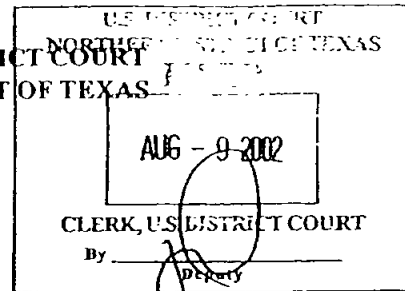
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Doc #827599

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION



GOLDEN BLOUNT, INC.,

Plaintiff,

v.

ROBERT H. PETERSON CO.,

Defendant.

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Civil Action No.

3-01-CV-0127-R

85-9782  
"S.O.C."

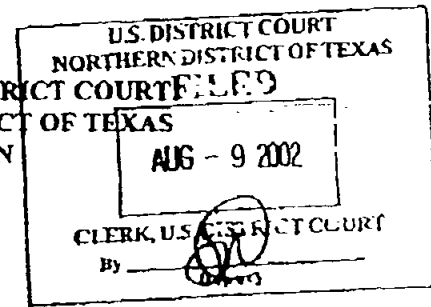
**FINAL JUDGMENT**

Pursuant to Rule 58 of the Federal Rules of Civil Procedure and the Court's Findings of Fact and Conclusions of Law, entered August 9, 2002, it is hereby **ORDERED** that judgment is entered for Plaintiffs. It is further **ORDERED** that Plaintiff recover damages and reasonable attorneys fees as set forth in the Court's Findings of Fact and Conclusions of Law.

Signed the 9th of August, 2002.

*Jerry Buchmeyer*  
JUDGE JERRY BUCHMEYER  
UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION



GOLDEN BLOUNT, INC.,

Plaintiff,

v.

ROBERT H. PETERSON CO.,

Defendant.

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Civil Action No.

3-01-CV-0127-R

MS-912  
ESDC

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Plaintiff Golden Blount, Inc. ("Plaintiff" or "the Plaintiff") brought suit against Defendant Robert H. Peterson Co. ("Defendant" or "the Defendant") for patent infringement. A bench trial was held July 29-31, 2002. Pursuant to Rule 52(a) of the Federal Rules of Civil Procedure, the Court makes its findings of fact and conclusions of law as follows:

**I. FINDINGS OF FACT**

1. The Plaintiff Golden Blount, Inc. is the owner of U.S. Patent 5,988,159, assigned it by Mr. Golden Blount, the named inventor for the patent (hereinafter "the patent," "the patent in suit," or the "Blount patent"). The Plaintiff sued Defendant for patent infringement.
2. The field of the invention is fireplace burners and associated equipment.
3. The Defendant alleges that the patent is invalid under 35 U.S.C. 102 (1994) and 35 U.S.C. 103 (1994). The Defendant also alleges that its accused structure does not infringe.
4. At the time the patent issued, the Plaintiff's commercial structure under the patent had been marketed for approximately six years, i.e., from about the time Plaintiff originally filed its patent application. Its sales grew significantly and it is a commercial success.

5. Defendant is unable to establish when it commenced design of its accused structure, but it was long after the Plaintiff placed its device on the market. There is a lack of explanation of why the first marketed accused structures were not fabricated and placed on the market until after Plaintiff's device had established a market. Also there is no showing that the Defendant's device went through any significant design or development. The Defendant's structure is very similar to Plaintiff's. The foregoing gives inference of copying.
6. There had been a need for a burner device to give the appearance of the burning of natural logs by creating an area of subdued flames out front of the artificial logs, and to create the appearance of fiery hot embers out front, as would be present with the burning of real logs. The need for such a burner device to enhance the artificial fireplace's operation had existed for long before the invention occurred. The patented device met the aforementioned need.
7. The prior art relied on by the Defendant does not show the same concepts that the Plaintiff's claims include, and proof of the actual existence and/or sales of the prior art relied upon is lacking, as noted below.
8. A recent sketch, made long after the patent was filed, was made to illustrate that which Defendant is trying to establish was prior art in the eighties. Defendant says it went off the market long ago. The sketch was made long after the fact, to illustrate a device allegedly made public or sold by a third party in the eighties. The recent sketch was made with the inputs and assistance of the Defendant's personnel.
9. The alleged prior art, shown in the sketch, was not sufficiently proved to consider it as meeting the standard of being shown "by clear and convincing evidence." Even if it did, it was for quite a different purpose than the patented device, and further, the end use has not been shown.
10. Turning to the evidence of burner configurations of Production No. 33 and Production No. 34, again their existence, their use, and their actual sale or marketing is vague. The Defendants say the alleged structures were not marketed (or not further sold) since around 1990. The only evidence offered were sketches of uncertain

origin. Also, if these devices were viable prior art, it would seem that Defendant would have used them to compete with Plaintiff, rather than market the copycat structure presently sold.

11. The main tube and the auxiliary tube of Production Nos. 33 and 34 are of the same diameter and on a vertical level. No support means is provided or suggested.
12. For the foregoing reasons, this Court finds that the evidence pertaining to the alleged prior art of Production Nos. 33 and 34 fails to establish by clear and convincing evidence their prior use or sale. Furthermore, this Court finds that there are substantial differences between the alleged devices of Production Nos. 33 and 34 and the Plaintiff's device, particularly in the level of skill in the art.
13. The other alleged art offered by Defendant is not nearly as similar as Production Nos. 33 and 34, and each fail to show significant pertinence.
14. There are 12 claims in issue. They are claims 1, 2, 5, 7-9, 11-13 and 15-17. Claims 1 and 17 are independent claims. All other claims at issue are dependent on Claim 1, that is, they refer to another claim as a beginning point of the structure they claim.
15. As a matter of law, the Court must construe the claims before literal infringement of the accused structure may be addressed. Claims construction is addressed in the Conclusions of Law section infra.
16. Applying the claim construction referred to in the Conclusions of Law, this Court finds there is: (1) literal infringement of independent Claim 1; (2) literal infringement of Claim 17; and (3) literal infringement of dependent Claims 2, 5, 7-9, 11-13, and 15-16.
17. This Court notes that an independent valve, such as each residential fireplace has, is absent from the structure sold. However, the parties previously stipulated in effect that the Defendant's structure is used in the environment of the valve already being used in the standard fireplace setup. Everything else is provided by Defendant (and by Plaintiff) to the ultimate customer, normally through a distributor. The evidence is that there is no other use for the patented structure. It is sold with knowledge that it will be used as per its intended use in a gas fireplace with artificial logs. It is not

a staple article of commerce. Certainly it is a most significant part of the patented product, in fact, essentially all of it. Hence if there is not element by element literal infringement, there is contributory infringement. 35 U.S.C. 271(d) (1994).

18. This Court further finds that the Defendant advertises and provides instructions, such that the installer or the ultimate customer following the advertising and instructions provided by Defendant will constitute infringement. It is further found that demonstrations and sales meetings are held where distributors are shown how to practice the patented invention with Defendant's equipment. The distributors pass this on to customers and to installers. By this conduct, Defendant induces infringement pursuant to 35 U.S.C. 271(c) (1994).
19. In the alternative to literal direct infringement, elements of the claims in suit are present in the accused structure. In each instance, element by element, and also considering the accused structure as a whole, there is insubstantial differences from the Defendant's accused structure and the claims at issue. Moreover, element by element, and as a whole, the accused structure does the same thing (the same function) in the same way to give the same result, constituting infringement under the doctrine of equivalent.
20. After the Defendant received a cease and desist letter, an attorney ("Mr. McLaughlin" or "attorney McLaughlin") was called by phone to seek some advice. Mr. McLaughlin was provided only the letter and some advertising brochures or papers. Mr. McLaughlin was not asked for an opinion in the real sense of the word, but was told by Mr. Bortz ("the Defendant's executive" or "Mr. Bortz") that things very similar to the patented structure had existed in the past as early as the eighties. The only advice given by the attorney was that, if that were so, some of the claims would be invalid, depending on just what the prior art devices were, and that he would not have to be concerned about those claims.
21. Attorney McLaughlin was not even provided with the Defendant's accused device at that time, nor any alleged prior art. He was never provided the accused device until long after his oral opinion was given and after suit was filed.

22. In the final analysis, the only opinion given was oral and it was based on some sketches provided that did not include information or details of when they were sold or made available to the public, nor any aspect of their authenticity, detail or history. The art provided to the attorney clearly did not render the patent claims invalid.
23. The oral opinion, rendered more than a year after the first cease and desist letter and even after suit was filed, did not inform the client that there was no estoppel during prosecution and that the doctrine of equivalents would have to be dealt with. It is uncertain how far the oral opinion went, but it was meager.
24. The Defendant's executive did get what he asked for, a statement that there was no infringement. The Defendant's apparent desire was to avoid paying attorneys fees or increased damages, and this appears to have been the sole reason for consultation with counsel, as shown both by his testimony on why he consulted Mr. McLaughlin by phone and also by Mr. McLaughlin's testimony as to the stated reason for the consultation. Note that at no time before his deposition was taken, did the Defendant's executive Mr. Bortz ever have a face-to-face meeting with Mr. McLaughlin concerning the cease and desist letter, even though he and Mr. McLaughlin were both in Chicago and had offices only a short distance apart. Never before Mr. Bortz's deposition was there an accused structure shown to Mr. McLaughlin. While some advertisements of Defendant's structure were shown, detailed drawings were not provided to attorney McLaughlin. Thus, he never had a full picture of the accused structure. For example, his testimony as to whether or not his auxiliary burner was below the main burner shows that, even then, he had not been able to understand pertinent points of the accused structure.
25. This Court finds that the Defendant merely went through the motion of obtaining an opinion to protect itself and that it did not acquire a timely, well-considered opinion. This Court also finds that the Defendant knew it was being very casual or cursory concerning the opinion and that the Defendant surely knew that its opinion was insufficient.
26. As a finding of fact, it is found that the conduct above is wilful.

27. It is found that the following factors exist in the present case: (1) demand for the patented product; (2) absence of acceptable non-infringing substitutes; (3) manufacturing and marketing capability to exploit the demand; and (4) the amount of the profit it would have made. These are the factors that are referred to in the case of *Panduit Corp. v. Stahl Bros. Fibre Works, Inc.*, 575 F.2d 1152, 1156, 197 U.S.P.Q. (BNA) 726 (6th Cir. 1978).
28. Log sets and grate support means are included in the computation of lost profits. This takes into consideration Claim 15 as well as considering the convoy of the log sets together with each auxiliary burner unit. The individual burner units are often sold alone to distributors, but the distributors ultimately sell these with a log set.

## II. CONCLUSIONS OF LAW

1. The Plaintiff owns all right, title and interest in U.S. Patent No. 5,988,159, including the right to sue and recover for past infringement.
2. Claim interpretation applied by the Court is focused on a paragraph by paragraph analysis of each claim in suit, with those paragraphs not believed to require any comment for interpretation being marked such:

### CLAIM 1:

- a) The preamble requires a gas environment as opposed to a wood burning environment;
- b) The terms used herein are self-explanatory;
- c) The word coals is meant to cover the secondary coals burner elongated tube that is designed or adapted to make the coals or embers enhanced in appearance;
- d) The elongated primary burner tube is held up by the side of the pan through which the elongated primary burner tube extends. The elongated primary burner tube is at a raised level with respect to the secondary coals burner elongated tube (e.g., with respect to the centerline).
- e) The terms used herein are self-explanatory;
- f) The terms used herein are self-explanatory;
- g) The valve is located between the connection to the elongated primary burner tube and the connection to the secondary coals burner elongated tube;
- h) The gas flow control means is the common valve in every gas fed fire place.



CLAIM 2: The terms used herein are self-explanatory.

CLAIM 5: The terms used herein are self-explanatory.

CLAIM 7: The terms used herein are self-explanatory.

CLAIM 8: The terms used herein are self-explanatory.

CLAIM 9: The terms used herein are self-explanatory.

CLAIM 11: The terms used herein are self-explanatory.

CLAIM 12: The terms used herein are self-explanatory.

CLAIM 13: The valve is located between the connection to the elongated primary burner tube and the connection to the secondary coals burner elongated tube;

CLAIM 15: The terms used herein are self-explanatory.

CLAIM 16: The terms used herein are self-explanatory.

CLAIM 17: Away from includes any direction that does not include a horizontal component pointed toward the vertical plane of the fireplace opening, with the exception that the plurality of gas discharge ports should not point substantially vertically upward because sand and embers may fall therein.


3. U.S. Patent No. 5,988,159 is infringed literally, and, in the alternative, through inducement and contributory infringement by Defendant. 35 U.S.C. 271(b)-(c) (1994). Any one of these makes Defendant liable as an infringer.
4. There is no prosecution history estoppel, per the admission of the Defendant's counsel when under oath.
5. The infringement occurs through the doctrine of equivalents if not directly and/or literally, based on the facts found relating to equivalence.
6. The alleged prior uses, sales, and other art do not render any of the claims in suit invalid as anticipated under 35 U.S.C. 102 (1994), nor make any in suit obvious under 35 U.S.C. 103 (1994).
7. The claims of the patent are valid.

8. Damages are awarded to Plaintiff from Defendant, from the time Defendant received notice under the law through its receipt of Plaintiff's notice letter on December 10, 1999.
9. The *Panduit* factors are met. Thus, compensatory damages include lost profits, which include conveyed items that interact and are essential to the operation of the patented subject matter. *Panduit Corp. v. Stahlbr Bros. Fibre Works, Inc.*, 575 F.2d 1152, 197 U.S.P.Q. (BNA) 726 (6th Cir. 1978). See also, *State Industries v. Mor-Flo Industries, Inc.*, 883 F.2d 1573, 12 U.S.P.Q.2D (BNA) 1026 (1989) or *Rite-Hite Corp. v. Kelley Co.*, 56 F.3d 1538 (Fed. Cir. 1995). The total damages are \$435,007.
10. This Court finds that the infringement of Defendant was willful. Therefore, damages are tripled under 35 U.S.C. 284 (1994).
11. This is an exceptional case under 35 U.S.C. 285 (1994), and reasonable attorneys fees are awarded Plaintiff.
12. All of the findings of fact and conclusions of law stated above are hereby incorporated together with the usual rule in patent infringement cases, that infringement causes irreparable harm and will be abated. Therefore, an injunction is granted against Defendant.

### III. CONCLUSION

Based on the foregoing Findings of Fact and Conclusions of Law, this Court finds for the Plaintiff. Plaintiff's request for injunctive relief is **GRANTED**.

**IT IS SO ORDERED.**

  
JERRY BUCHMEYER  
UNITED STATES DISTRICT COURT JUDGE  
NORTHERN DISTRICT OF TEXAS

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DALLAS DIVISION  
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CLERK OF COURT

JT-APP-0527

## UNITED STATES DISTRICT COURT

Northern District of Texas

Golden Blount, Inc.,

V.

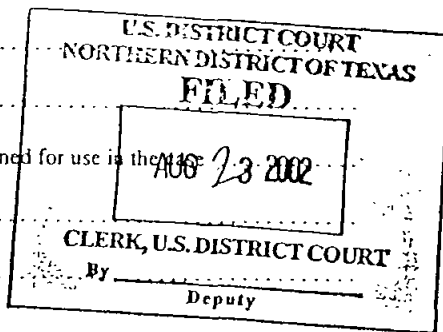
Robert H. Peterson Co.

## BILL OF COSTS

Case Number: 3-01-CV-0127-R

Judgment having been entered in the above entitled action on August 9, 2002 against Def., Robert H. Peterson Co.,  
 Date the Clerk is requested to tax the following as costs:

Fees of the Clerk .....	\$ 150.00
Fees for service of summons and subpoena .....	0.00
Fees of the court reporter for all or any part of the transcript necessarily obtained for use in the case .....	1,312.43
Fees and disbursements for printing .....	0.00
Fees for witnesses (itemize on reverse side) .....	380.00
Fees for exemplification and copies of papers necessarily obtained for use in the case .....	1,817.40
Docket fees under 28 U.S.C. 1923 .....	20.00
Costs as shown on Mandate of Court of Appeals .....	0.00
Compensation of court-appointed experts .....	0.00
Compensation of interpreters and costs of special interpretation services under 28 U.S.C. 1828 .....	0.00
Other costs (please itemize) .....	6,351.21
<b>TOTAL</b> .....	<b>\$ 10,031.04</b>



SPECIAL NOTE: Attach to your bill an itemization and documentation for requested costs in all categories.

## DECLARATION

I declare under penalty of perjury that the foregoing costs are correct and were necessarily incurred in this action and that the services for which fees have been charged were actually and necessarily performed. A copy of this bill was mailed today with postage prepaid to: all counsel of record for Defendant, Robert H. Peterson

Signature of Attorney: William D. Harris, Jr.Name of Attorney: William D. Harris, Jr.For: Golden Blount, Inc.Date: August 23, 2002

Name of Claiming Party

Costs are taxed in the amount of ten thousand thirty one dollars and four cents and included in the judgment.

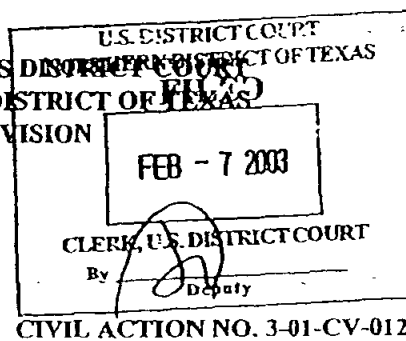
Karen Mitchell  
Clerk of Court

By: [Signature]

Deputy Clerk

Date: 8/27/02

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION



GOLDEN BLOUNT, INC.,

*Plaintiff,*

v.

ROBERT H. PETERSON CO.,

*Defendant.*

ORDER

On August 9, 2002, this Court entered its Findings of Fact and Conclusions of Law, as well as the Final Judgment, in this case. The Court now makes the following rulings with regard to Plaintiff and Defendant's Post-Trial motions:


1. Plaintiff's Motion to Disregard the Testimony of John Palaski (filed July 31, 2002) is hereby **DENIED**.
2. Defendant's First Motion to Amend Findings of Fact, Conclusions of Law and Judgment in Accordance with Rule 52(b) (received August 23, 2002)<sup>1</sup> is hereby **GRANTED**. As discussed *infra*, a subsequent Order will specify the revised amount of damages.
3. Defendant's Second Motion to Amend Findings of Fact, Conclusions of Law and Judgment under Rule 52(b) or for New Trial under Rule 59(a) (filed August 23, 2002) is hereby **DENIED**.

<sup>1</sup>It appears that this Court has not yet issued an Order regarding Defendant's Motion for Leave to File Under Seal its First Motion to Amend the Findings and Judgment. Defendant's Motion for Leave to File Under Seal is hereby **GRANTED**.

4. Plaintiff's Application for Attorney's Fees (filed August 23, 2002) is hereby **GRANTED**. Plaintiff is awarded reasonable attorney's fees in the amount of \$332,349.00.
5. Plaintiff's Motion for Updated Damages and Pre and Post Judgment Interest (filed August 23, 2002) is hereby **GRANTED** to the extent that the award of damages is updated to cover the period between May 1st and August 9, 2002. Defendant is hereby **ORDERED** to provide this Court, within 10 calendar days of the date of this Order, with sales figures for the ember flame burn unit for the period from May 1, 2002 to August 9, 2002.<sup>2</sup> The figures will not take into account any returns. After receipt of the sales figures, this Court will issue an order setting forth the amount of actual damages and awarding prejudgment and postjudgment interest. Costs shall be taxed against Defendant.

It is so ORDERED.

SIGNED: February 6, 2003.

  
JUDGE JERRY BUCHMEYER  
UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS

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<sup>2</sup>The Court notes that Defendant has previously provided sales figures for the period from May 1, 2002 to September 18, 2002; however, that period extends beyond the date of the Final Judgment. See Defendant's Objection to Plaintiff's Motion for Updated Damages (filed September 19, 2002), Exhibit 2. Of course, Defendant shall also serve a copy of the sales figures to Plaintiff, and Plaintiff will have 10 calendar days to respond to those figures.

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

GOLDEN BLOUNT, INC.,

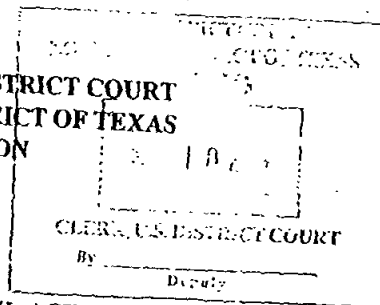
*Plaintiff,*

v.

ROBERT H. PETERSON CO.,

*Defendant.*

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CIVIL ACTION NO. 3-01-CV-0127-R

**ORDER**

Pursuant to this Court's post-trial Order (entered February 7, 2003), the Final Judgment (entered August 9, 2002) is hereby **AMENDED** as follows:

Plaintiff is awarded actual damages in the amount of \$439,016, and the actual damages are trebled, totaling \$1,317,048. Plaintiff is awarded prejudgment interest, which shall be calculated on a simple rather than compound basis, on the actual damages of \$439,016<sup>1</sup> at the rate of 5.0% for the period from December 10, 1999 to August 9, 2002.<sup>2</sup> Plaintiff is awarded reasonable attorney's fees in the amount of \$332,319. Plaintiff is awarded postjudgment interest, calculated pursuant to 28 U.S.C. §1961, on the sum of the trebled damages and attorney's fees at the rate of 1.88% from the date of the Final Judgment. Costs shall be taxed against Defendant.

It is so ORDERED.

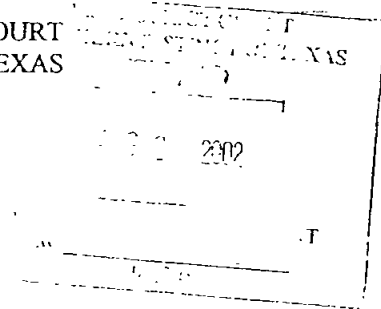
SIGNED: March 7, 2003.

*Jerry Buchmeyer*  
JUDGE JERRY BUCHMEYER  
UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS

<sup>1</sup>Paragraph 9 of this Court's Findings of Fact and Conclusions of Law (entered August 9, 2002) is hereby **AMENDED** to include this amount as the award of "total damages."

<sup>2</sup>See, e.g., *Gyromat Corporation v. Champion Spark Plug Co.*, 735 F.2d 549, 556-7 (Fed. Cir. 1984) (in patent cases, the district court has discretion to determine the interest rate and whether the interest shall be calculated on a simple or compound basis).

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION



GOLDEN BLOUNT, INC., )

Plaintiff, )

v. )

ROBERT H. PETERSON CO., )

Defendant. )

Civil Action No.: 3:01-CV-0127-R

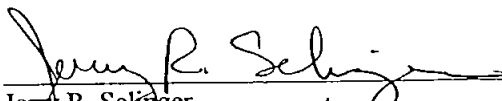
**MOTION FOR LEAVE TO FILE UNDER SEAL  
PETERSON COMPANY'S FIRST MOTION TO AMEND FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND JUDGMENT IN ACCORDANCE WITH RULE 52(b)  
FEDERAL RULES OF CIVIL PROCEDURE**

Defendant Robert H. Peterson Co ("Peterson Co.") moves for leave of the Court to file under seal Peterson Company's First Motion to Amend Findings of Fact, Conclusions of Law and Judgment in Accordance with Rule 52(b) Federal Rules of Civil Procedure and the accompanying Memorandum in support thereof. Peterson Co. seeks to file these documents under seal because they contain information designated by Plaintiff as "Confidential," "Attorney's Eyes Only."

Peterson Co. submits that filing the documents at issue under seal will not prejudice Plaintiff Golden Blount. Peterson Co. respectfully submits that this Motion is well-founded and should be granted.



Respectfully submitted,

  
Jerry R. Selinger  
JENKENS & GILCHRIST *by permission*  
1445 Ross Avenue  
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Dean A. Monco  
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Telephone: (312) 876-1800  
Facsimile: (312) 876-2020  
Attorneys for Defendant Robert H. Peterson Co.

CERTIFICATE OF CONFERENCE

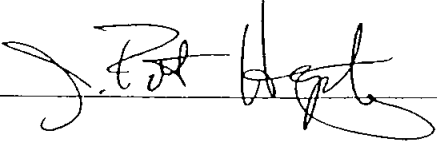
The undersigned counsel for Defendant Peterson Co. called counsel for Plaintiff, William Harris, regarding the foregoing motion. He was unable to reach Mr. Harris. Accordingly, the motion is submitted to the Court for determination.

SIGNED this 23<sup>rd</sup> day of August, 2002.

  
J. Pat Heptig

CERTIFICATE OF SERVICE

This certifies that a copy of the foregoing document was served by first-class mail, postage prepaid, to counsel for Plaintiff, William D. Harris, Jr., Hitt Gaines Boisbrun, P.C., 225 University Plaza, 275 West Campbell Road, Richardson, Texas 75080, this 23<sup>rd</sup> day of August, 2002.

A handwritten signature in black ink, appearing to read "J. F. Hitt", is written over a horizontal line.

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

GOLDEN BLOUNT, INC., )

Plaintiff, )

v. )

ROBERT H. PETERSON CO., )

Defendant. )

Civil Action No.: 3:01-CV-0127-R

**FILED UNDER SEAL**

**PETERSON COMPANY'S FIRST MOTION TO AMEND FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND JUDGEMENT IN ACCORDANCE WITH RULE 52(b)  
FEDERAL RULES OF CIVIL PROCEDURE**

Defendant Robert H. Peterson Company ("PETERSON CO.") respectfully moves this Court to amend the Findings of Fact and Conclusions of Law entered August 9, 2002, as well as the Order entered the same date, to reflect a reduction of \$101,882.88 in the amount of money assessed against the PETERSON COMPANY for infringement of Golden Blount, Inc.'s U.S. Patent No. 5,988,159.

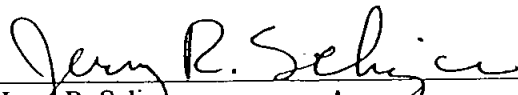
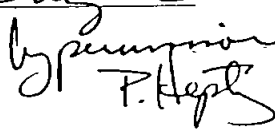
The basis for the present Motion is set forth in the accompanying Memorandum of Law.

JL-APP 0535

Respectfully submitted,

8/23/02

Date

  
Jerry R. Selinger  
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500 West Madison Street  
Suite 3800  
Chicago, Illinois 60661  
Telephone: (312) 876-1800  
Facsimile: (312) 876-2020  
Attorneys for Defendant Robert H. Peterson Co.

CERTIFICATE OF SERVICE

This certifies that a copy of the foregoing document was served by hand delivery to counsel for Plaintiff, William D. Harris, Jr., Hitt Gaines Boisbrun, P.C., 225 University Plaza, 275 West Campbell Road, Richardson, Texas 75080, this 23<sup>rd</sup> day of August, 2002.

Storin Parker

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

GOLDEN BLOUNT, INC., )

Plaintiff, )

v. )

ROBERT H. PETERSON CO., )

Defendant. )

Civil Action No.: 3:01-CV-0127-R

FILED UNDER SEAL

**MEMORANDUM IN SUPPORT OF THE PETERSON COMPANY'S FIRST MOTION  
TO AMEND FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGEMENT IN  
ACCORDANCE WITH RULE 52(b) FEDERAL RULES OF CIVIL PROCEDURE**

Defendant Robert H. Peterson Company ("PETERSON CO.") respectfully submits this Memorandum of Law in support of its Motion to Amend the Court's Findings of Fact and Conclusions of Law and Order Under Rule 52(b) Federal Rules of Civil Procedure.

**BASIS FOR MOTION**

On August 9, 2002, this Court entered Findings of Facts and Conclusions of Law in the above identified action, holding Defendant PETERSON CO. liable for willful patent infringement (Ex. A). In Conclusions of Law No. 8, the Court stated:

Damages are awarded to Plaintiff from Defendant, from the time Defendant received notice under the law through its receipt of Plaintiff's notice letter on December 10, 1999.

The Parties stipulated in the Final Pretrial Order that PETERSON CO. received Plaintiff Golden Blount, Inc.'s ("BLOUNT") notice letter dated December 10, 1999 on December 16, 1999 (Ex. B). In accordance with the Court's Conclusion of Law, damages are to run from December 16, 1999.

JT-APP 0538

**This Page Contains  
Confidential Material**

In Conclusion of Law No. 9, the Court awarded total damages of \$435,007.00 which included sales of the accused Ember Flame Booster, together with convoyed items which the Court identified as "essential to the operation of the patented subject matter". This figure was arrived at by multiplying the sale of PETERSON CO. Ember Flame Boosters totaling            units times Plaintiff's claimed profit margin of            (Ex. C). In Conclusion of Law number 10, the Court tripled damages under 35 U.S.C. §284.

However, the damage calculation included            units sold by the PETERSON COMPANY between November 23, 1999 and December 14, 1999, prior to the stipulated date of receipt of BLOUNT'S December 10, 1999 letter (Ex. C). Therefore, Defendant PETERSON COMPANY is entitled to a reduction of the calculated damages using the following formula:


The requested reduction renders the damage calculation fully consistent with the Court's Findings of Fact and Conclusions of Law. The Judgement Order of the Court should also be amended to reflect conformity with the proposed revised Findings of Fact and Conclusions of Law.

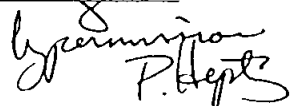
CONCLUSION

For the above stated reasons, PETERSON COMPANY respectfully moves this court to amend its Findings of Fact and Conclusions of Law, and the Judgement Order to reflect a reduction of the amount of money owed by the PETERSON COMPANY to BLOUNT in the amount of \$101,882.88

Respectfully submitted,

8/23/02  
Date

  
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Facsimile: (312) 876-2020  
Attorneys for Defendant Robert H. Peterson Co.

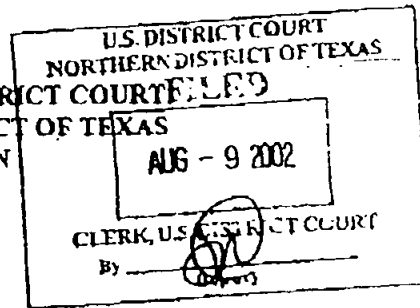


CERTIFICATE OF SERVICE

This certifies that a copy of the foregoing document was served by hand delivery to counsel for Plaintiff, William D. Harris, Jr., Hitt Gaines Boisbrun, P.C., 225 University Plaza, 275 West Campbell Road, Richardson, Texas 75080, this 23<sup>rd</sup> day of August, 2002.

Alvin Parker

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION



GOLDEN BLOUNT, INC.,

Plaintiff,

v.

ROBERT H. PETERSON CO.,

Defendant.

§  
§  
§  
§  
§  
§  
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§

Civil Action No.

3-01-CV-0127-R

85-900  
-8500

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Plaintiff Golden Blount, Inc. ("Plaintiff" or "the Plaintiff") brought suit against Defendant Robert H. Peterson Co. ("Defendant" or "the Defendant") for patent infringement. A bench trial was held July 29-31, 2002. Pursuant to Rule 52(a) of the Federal Rules of Civil Procedure, the Court makes its findings of fact and conclusions of law as follows:

**I. FINDINGS OF FACT**

1. The Plaintiff Golden Blount, Inc. is the owner of U.S. Patent 5,988,159, assigned it by Mr. Golden Blount, the named inventor for the patent (hereinafter "the patent," "the patent in suit," or the "Blount patent"). The Plaintiff sued Defendant for patent infringement.
2. The field of the invention is fireplace burners and associated equipment.
3. The Defendant alleges that the patent is invalid under 35 U.S.C. 102 (1994) and 35 U.S.C. 103 (1994). The Defendant also alleges that its accused structure does not infringe.
4. At the time the patent issued, the Plaintiff's commercial structure under the patent had been marketed for approximately six years, i.e., from about the time Plaintiff originally filed its patent application. Its sales grew significantly and it is a commercial success.

5. Defendant is unable to establish when it commenced design of its accused structure, but it was long after the Plaintiff placed its device on the market. There is a lack of explanation of why the first marketed accused structures were not fabricated and placed on the market until after Plaintiff's device had established a market. Also there is no showing that the Defendant's device went through any significant design or development. The Defendant's structure is very similar to Plaintiff's. The foregoing gives inference of copying.
6. There had been a need for a burner device to give the appearance of the burning of natural logs by creating an area of subdued flames out front of the artificial logs, and to create the appearance of fiery hot embers out front, as would be present with the burning of real logs. The need for such a burner device to enhance the artificial fireplace's operation had existed for long before the invention occurred. The patented device met the aforementioned need.
7. The prior art relied on by the Defendant does not show the same concepts that the Plaintiff's claims include, and proof of the actual existence and/or sales of the prior art relied upon is lacking, as noted below.
8. A recent sketch, made long after the patent was filed, was made to illustrate that which Defendant is trying to establish was prior art in the eighties. Defendant says it went off the market long ago. The sketch was made long after the fact, to illustrate a device allegedly made public or sold by a third party in the eighties. The recent sketch was made with the inputs and assistance of the Defendant's personnel.
9. The alleged prior art, shown in the sketch, was not sufficiently proved to consider it as meeting the standard of being shown "by clear and convincing evidence." Even if it did, it was for quite a different purpose than the patented device, and further, the end use has not been shown.
10. Turning to the evidence of burner configurations of Production No. 33 and Production No. 34, again their existence, their use, and their actual sale or marketing is vague. The Defendants say the alleged structures were not marketed (or not further sold) since around 1990. The only evidence offered were sketches of uncertain

origin. Also, if these devices were viable prior art, it would seem that Defendant would have used them to compete with Plaintiff, rather than market the copycat structure presently sold.

11. The main tube and the auxiliary tube of Production Nos. 33 and 34 are of the same diameter and on a vertical level. No support means is provided or suggested.
12. For the foregoing reasons, this Court finds that the evidence pertaining to the alleged prior art of Production Nos. 33 and 34 fails to establish by clear and convincing evidence their prior use or sale. Furthermore, this Court finds that there are substantial differences between the alleged devices of Production Nos. 33 and 34 and the Plaintiff's device, particularly in the level of skill in the art.
13. The other alleged art offered by Defendant is not nearly as similar as Production Nos. 33 and 34, and each fail to show significant pertinence.
14. There are 12 claims in issue. They are claims 1, 2, 5, 7-9, 11-13 and 15-17. Claims 1 and 17 are independent claims. All other claims at issue are dependent on Claim 1, that is, they refer to another claim as a beginning point of the structure they claim.
15. As a matter of law, the Court must construe the claims before literal infringement of the accused structure may be addressed. Claims construction is addressed in the Conclusions of Law section infra.
16. Applying the claim construction referred to in the Conclusions of Law, this Court finds there is: (1) literal infringement of independent Claim 1; (2) literal infringement of Claim 17; and (3) literal infringement of dependent Claims 2, 5, 7-9, 11-13, and 15-16.
17. This Court notes that an independent valve, such as each residential fireplace has, is absent from the structure sold. However, the parties previously stipulated in effect that the Defendant's structure is used in the environment of the valve already being used in the standard fireplace setup. Everything else is provided by Defendant (and by Plaintiff) to the ultimate customer, normally through a distributor. The evidence is that there is no other use for the patented structure. It is sold with knowledge that it will be used as per its intended use in a gas fireplace with artificial logs. It is not

a staple article of commerce. Certainly it is a most significant part of the patented product, in fact, essentially all of it. Hence if there is not element by element literal infringement, there is contributory infringement. 35 U.S.C. 271(d) (1994).

18. This Court further finds that the Defendant advertises and provides instructions, such that the installer or the ultimate customer following the advertising and instructions provided by Defendant will constitute infringement. It is further found that demonstrations and sales meetings are held where distributors are shown how to practice the patented invention with Defendant's equipment. The distributors pass this on to customers and to installers. By this conduct, Defendant induces infringement pursuant to 35 U.S.C. 271(c) (1994).
19. In the alternative to literal direct infringement, elements of the claims in suit are present in the accused structure. In each instance, element by element, and also considering the accused structure as a whole, there is insubstantial differences from the Defendant's accused structure and the claims at issue. Moreover, element by element, and as a whole, the accused structure does the same thing (the same function) in the same way to give the same result, constituting infringement under the doctrine of equivalent.
20. After the Defendant received a cease and desist letter, an attorney ("Mr. McLaughlin" or "attorney McLaughlin") was called by phone to seek some advice. Mr. McLaughlin was provided only the letter and some advertising brochures or papers. Mr. McLaughlin was not asked for an opinion in the real sense of the word, but was told by Mr. Bortz ("the Defendant's executive" or "Mr. Bortz") that things very similar to the patented structure had existed in the past as early as the eighties. The only advice given by the attorney was that, if that were so, some of the claims would be invalid, depending on just what the prior art devices were, and that he would not have to be concerned about those claims.
21. Attorney McLaughlin was not even provided with the Defendant's accused device at that time, nor any alleged prior art. He was never provided the accused device until long after his oral opinion was given and after suit was filed.

22. In the final analysis, the only opinion given was oral and it was based on some sketches provided that did not include information or details of when they were sold or made available to the public, nor any aspect of their authenticity, detail or history. The art provided to the attorney clearly did not render the patent claims invalid.
23. The oral opinion, rendered more than a year after the first cease and desist letter and even after suit was filed, did not inform the client that there was no estoppel during prosecution and that the doctrine of equivalents would have to be dealt with. It is uncertain how far the oral opinion went, but it was meager.
24. The Defendant's executive did get what he asked for, a statement that there was no infringement. The Defendant's apparent desire was to avoid paying attorneys fees or increased damages, and this appears to have been the sole reason for consultation with counsel, as shown both by his testimony on why he consulted Mr. McLaughlin by phone and also by Mr. McLaughlin's testimony as to the stated reason for the consultation. Note that at no time before his deposition was taken, did the Defendant's executive Mr. Bortz ever have a face-to-face meeting with Mr. McLaughlin concerning the cease and desist letter, even though he and Mr. McLaughlin were both in Chicago and had offices only a short distance apart. Never before Mr. Bortz's deposition was there an accused structure shown to Mr. McLaughlin. While some advertisements of Defendant's structure were shown, detailed drawings were not provided to attorney McLaughlin. Thus, he never had a full picture of the accused structure. For example, his testimony as to whether or not his auxiliary burner was below the main burner shows that, even then, he had not been able to understand pertinent points of the accused structure.
25. This Court finds that the Defendant merely went through the motion of obtaining an opinion to protect itself and that it did not acquire a timely, well-considered opinion. This Court also finds that the Defendant knew it was being very casual or cursory concerning the opinion and that the Defendant surely knew that its opinion was insufficient.
26. As a finding of fact, it is found that the conduct above is wilful.

27. It is found that the following factors exist in the present case: (1) demand for the patented product; (2) absence of acceptable non-infringing substitutes; (3) manufacturing and marketing capability to exploit the demand; and (4) the amount of the profit it would have made. These are the factors that are referred to in the case of *Panduit Corp. v. Stahl Bros. Fibre Works, Inc.*, 575 F.2d 1152, 1156, 197 U.S.P.Q. (BNA) 726 (6th Cir. 1978).
28. Log sets and grate support means are included in the computation of lost profits. This takes into consideration Claim 15 as well as considering the convoy of the log sets together with each auxiliary burner unit. The individual burner units are often sold alone to distributors, but the distributors ultimately sell these with a log set.

## II. CONCLUSIONS OF LAW

1. The Plaintiff owns all right, title and interest in U.S. Patent No. 5,988,159, including the right to sue and recover for past infringement.
2. Claim interpretation applied by the Court is focused on a paragraph by paragraph analysis of each claim in suit, with those paragraphs not believed to require any comment for interpretation being marked such:

### CLAIM 1:

- a) The preamble requires a gas environment as opposed to a wood burning environment;
- b) The terms used herein are self-explanatory;
- c) The word coals is meant to cover the secondary coals burner elongated tube that is designed or adapted to make the coals or embers enhanced in appearance;
- d) The elongated primary burner tube is held up by the side of the pan through which the elongated primary burner tube extends. The elongated primary burner tube is at a raised level with respect to the secondary coals burner elongated tube (e.g., with respect to the centerline).
- e) The terms used herein are self-explanatory;
- f) The terms used herein are self-explanatory;
- g) The valve is located between the connection to the elongated primary burner tube and the connection to the secondary coals burner elongated tube;
- h) The gas flow control means is the common valve in every gas fed fire place.

- CLAIM 2: The terms used herein are self-explanatory.
- CLAIM 5: The terms used herein are self-explanatory.
- CLAIM 7: The terms used herein are self-explanatory.
- CLAIM 8: The terms used herein are self-explanatory.
- CLAIM 9: The terms used herein are self-explanatory.
- CLAIM 11: The terms used herein are self-explanatory.
- CLAIM 12: The terms used herein are self-explanatory.
- CLAIM 13: The valve is located between the connection to the elongated primary burner tube and the connection to the secondary coals burner elongated tube;
- CLAIM 15: The terms used herein are self-explanatory.
- CLAIM 16: The terms used herein are self-explanatory.
- CLAIM 17: Away from includes any direction that does not include a horizontal component pointed toward the vertical plane of the fireplace opening, with the exception that the plurality of gas discharge ports should not point substantially vertically upward because sand and embers may fall therein.
3. U.S. Patent No. 5,988,159 is infringed literally, and, in the alternative, through inducement and contributory infringement by Defendant. 35 U.S.C. 271(b)-(c) (1994). Any one of these makes Defendant liable as an infringer.
4. There is no prosecution history estoppel, per the admission of the Defendant's counsel when under oath.
5. The infringement occurs through the doctrine of equivalents if not directly and/or literally, based on the facts found relating to equivalence.
6. The alleged prior uses, sales, and other art do not render any of the claims in suit invalid as anticipated under 35 U.S.C. 102 (1994), nor make any in suit obvious under 35 U.S.C. 103 (1994).
7. The claims of the patent are valid.




8. Damages are awarded to Plaintiff from Defendant, from the time Defendant received notice under the law through its receipt of Plaintiff's notice letter on December 10, 1999.
9. The *Panduit* factors are met. Thus, compensatory damages include lost profits, which include convoyed items that interact and are essential to the operation of the patented subject matter *Panduit Corp. v. Stahl Bros. Fibre Works, Inc.*, 575 F.2d 1152, 197 U.S.P.Q. (BNA) 726 (6th Cir. 1978). See also, *State Industries v. Mor-Flo Industries, Inc.*, 883 F.2d 1573, 12 U.S.P.Q.2D (BNA) 1026 (1989) or *Rite-Hite Corp. v. Kelley Co.*, 56 F.3d 1538 (Fed. Cir. 1995). The total damages are \$435,007
10. This Court finds that the infringement of Defendant was willful. Therefore, damages are tripled under 35 U.S.C. 284 (1994).
11. This is an exceptional case under 35 U.S.C. 285 (1994), and reasonable attorneys fees are awarded Plaintiff.
12. All of the findings of fact and conclusions of law stated above are hereby incorporated together with the usual rule in patent infringement cases, that infringement causes irreparable harm and will be abated. Therefore, an injunction is granted against Defendant.

### III. CONCLUSION

Based on the foregoing Findings of Fact and Conclusions of Law, this Court finds for the Plaintiff. Plaintiff's request for injunctive relief is **GRANTED**.

**IT IS SO ORDERED.**

  
JERRY BUCHMEYER  
UNITED STATES DISTRICT COURT JUDGE  
NORTHERN DISTRICT OF TEXAS

# LOCKE LIDDELL & SAPP LLP

ATTORNEYS & COUNSELORS

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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

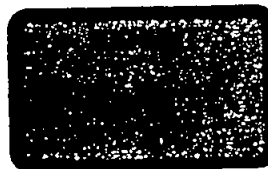


L. Dan Tucker

LDT/kl  
Enclosure


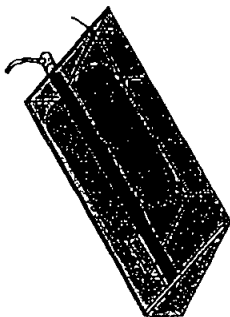
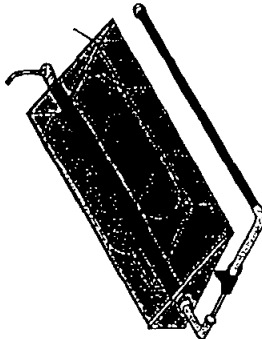
c: Golden Blount

09842:60434:DALLAS:662921.1



000121

JT-APP 0550

COMPONENT	SALES PRICE TO DISTRIBUTOR*	GOLDEN BLOUNT, INC.'S COST*	PROFIT*
 (Secondary Coals Burner Elongated Tube and Connector w/Valve Only)	\$20.23	\$6.14	\$14.09
 (Log Set including Pan and Primary Burner)	\$168.50	\$64.67	\$103.83
 (Combination Unit Including Components Sold to Distributor)	\$188.73	\$70.81	\$117.92
Number of Ember Boosters Sold by R.H. Peterson Co.			3689
<b>ACTUAL LOST PROFITS</b>			<b>\$435,007</b>

ATTORNEYS' EYES ONLY



\*Note--Costs provided are averages for 24" Burner Sets

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

U.S. DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS

AUG 22 2002

GOLDEN BLOUNT, INC., )

Plaintiff, )

v. )

ROBERT H. PETERSON CO., )

Defendant. )

Civil Action No.: 3:01-CV-0127-R

**PETERSON COMPANY'S SECOND MOTION TO AMEND FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND JUDGMENT UNDER RULE 52(b), OR, FOR NEW  
TRIAL UNDER RULE 59(a), FEDERAL RULES OF CIVIL PROCEDURE**

In accordance with Rules 52(b) and 59(a), Federal Rules of Civil Procedure, Defendant

Robert H. Peterson Company respectfully moves this Court for:

1. an amendment to the Findings of Fact, Conclusions of Law and Order, all dated August 9, 2002, to deny any damages to Plaintiff Golden Blount, Inc. because of: (a) the improper admission of opinion testimony in violation of Rules 602 and 701, Federal Rules of Evidence; and (b) the absence of any competent evidence of either lost profits or reasonable royalty damages; or
2. for a new trial on the same grounds.

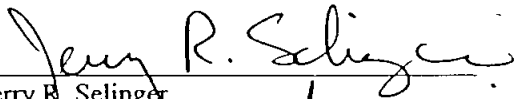
A Memorandum of Law in support of the present Motion is submitted simultaneously herewith.

UT-APP 0552

Respectfully submitted,

8/23/02

Date

  
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Attorneys for Defendant Robert H. Peterson Co.

CERTIFICATE OF SERVICE

This certifies that a copy of the foregoing document was served by hand delivery to counsel for Plaintiff, William D. Harris, Jr., Hitt Gaines Boisbrun, P.C., 225 University Plaza, 275 West Campbell Road, Richardson, Texas 75080, this 23<sup>rd</sup> day of August, 2002.

Steven Parker

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

GOLDEN BLOUNT, INC., )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
ROBERT H. PETERSON CO., )  
 )  
Defendant. )

Civil Action No.: 3:01-CV-0127-R

**MEMORANDUM OF LAW IN SUPPORT OF PETERSON COMPANY'S  
SECOND MOTION UNDER RULES 52(b) AND 59(a),  
FEDERAL RULES OF CIVIL PROCEDURE**

Defendant Robert H. Peterson Company (hereinafter "PETERSON CO.") respectfully submits this Memorandum of Law in Support of its First Motion under Rules 52(b) and 59(a), Federal Rules of Civil Procedure.

**I. BASIS OF MOTION**

On July 29, 2002, Plaintiff Golden Blount, Inc. (hereinafter "BLOUNT, INC."), elicited testimony from Golden Blount regarding what Mr. Blount knew of the way PETERSON CO. sales were conducted. No independent expert testimony was presented. Instead, Plaintiff attempted to elicit testimony from Mr. Blount that every time a PETERSON CO. accused Ember Flame Booster was sold, it was accompanied by a complete log set including logs, a grate, and a primary burner unit, using Plaintiff's Ex. 18 created by Mr. Blount himself. (Ex. 1, transcript, p.68 l.15-17). PETERSON CO. objected to this testimony, stating that Blount had not been qualified as an expert witness to render testimony regarding how the PETERSON CO. accused product is sold. Mr. Blount was not identified as an expert witness, no expert report was

prepared, and Mr. Blount was not permitted under the Federal Rules of Evidence to offer testimony in an area in which he has no expertise or knowledge of any underlying facts. The issue regarding damages from the "convoyed" sales of other fireplace burner components, succinctly stated, is dependent on how the PETERSON CO. sells its unit. (Ex. 1, trial transcript, p. 68-75).

The Court erroneously overruled PETERSON CO.'S objection. (Ex. 1, p.73). After further objection was made, the Court stated that Mr. Blount would be subject to cross examination, and permitted Mr. Blount to continue his testimony (Ex. 1, p. 75). Under the Federal Rules of Evidence, it was error to permit him to give those opinions. These problems cannot be cured by cross examination.

The issue regarding damages from the "convoyed" sales of other fireplace burner components, succinctly stated, is dependent on how the PETERSON CO. sells its unit. (Ex. 1, trial transcript, p. 68-75). On cross examination, the following questions and answers regarding Mr. Blount's knowledge of the PETERSON CO. sales were elicited:

- Q. And you have no knowledge whatsoever as to how Peterson's distributors sell their products, do you?
- A. Well, they sell them through their sales companies and their - - dealers. Beyond that I can't say very much about their operation.
- Q. Right. And you don't know how many of the Ember Flame Boosters are sold as retrofits? And by retrofit I mean sold separately to be put on fireplaces - -
- A. I have no way of knowing that.
- Q. You have no idea how many Ember Flame Boosters are sold separately and alone to people who want to retrofit their fireplaces with an Ember Flame Booster as



compared to those who are buying complete units, do you?

A. I do not have that information.

Q. So the figures you presented here in Court are nothing more than your assumption that every one of the PETERSON CO. Ember Flame Boosters is sold with a G-4 Burner and Pan and Log set, and you have no idea whether that, in fact, is true or not?

A. I do not know if it's a fact. (Ex. 1, p.138-39).

Similarly, BLOUNT, INC. elicited testimony from Charles Hanft, a distributor of BLOUNT, INC. products, that 39 out of 40 customers of the BLOUNT, INC. patented CEBB Burner would also purchase a complete log set. (Ex. 1, p. 160). However, under cross examination, Mr. Hanft testified that he has no knowledge whatsoever as to how PETERSON CO. products are marketed. (Ex. 1, p.164).

Messrs. Blount and Hanft were the only witnesses BLOUNT, INC. presented in support of its claim for damages based on the "convoyed" sales of the entire fireplace burner unit.

Moreover, Plaintiff BLOUNT, INC. failed to present any evidence at trial that the accused PETERSON CO. Ember Flame Booster is in direct competition with BLOUNT, INC.'S CEBB Burner. No testimony, expert or otherwise, was presented that the parties are in direct competition, that identified markets where direct competition takes place, or that BLOUNT, INC. would have made the sales not only of the accused Ember Flame Boosters but also of the log sets which form the basis for the overwhelming portion of Plaintiff BLOUNT, INC.'S damage claim. No evidence whatsoever was presented to the Court by anyone at trial on these topics.

In contrast, Tod Corrin, PETERSON CO.'S Senior Vice President and an employee since

Under well established case law, in order to recover lost profits as opposed to royalties, a patent owner must prove a causal relationship between the infringement and its lost profits. The patent owner must show that "but for" the infringement, it would have made the infringers sales. *Bic Leisure Products V. Windsurfing International, Inc.* 1F. 3<sup>rd</sup> 1214, 1218(Fed. Cir. 1993). An award of lost profits may not be speculative. The patent owner must show a reasonable probability, that absent the infringement, it would have made the infringers sales. *Water Technologies Corp. v. Calco Limited* 850 F. 2<sup>nd</sup> 660, 671 (Fed. Cir. 1988) cert denied 488 U.S. 968, 109 S.Ct. 498 102 L.Ed. 2<sup>nd</sup> 534 (1988).

According to the cross examination testimony of Messrs. Blount and Hanft, they knew nothing about how PETERSON CO. markets its product, or how many customers purchased the accused Ember Flame Booster as a retrofit without purchasing a log set (Ex. 1, p, 138-139). Furthermore, there is nothing in the record to establish that "but for" PETERSON CO.'S alleged infringement, customers would have purchased BLOUNT INC.'S CEBB unit. As a consequence, there is simply no evidence in the record to sustain an assessment of damages based on lost profits of either the accused Ember Flame Booster or the "convoyed" log sets which comprise the overwhelming majority of the damages assessed against the PETERSON CO.

Moreover, Plaintiff BLOUNT, INC. put no testimony whatsoever into the record regarding the alternative damages theory of reasonable royalty under 35 U.S.C. Section 284. BLOUNT, INC.'S failure to present such evidence is fatal to any alternative claim for damages. As the Court of Appeal for the Federal Circuit in *Lindemann Maschinenfabrik GmbH v. American Hoist and Derek Company* 985 F. 2<sup>nd</sup> 4102,4107 (Fed. Cir, 1990) held:

The statute [35 U.S.C. Section 284] requires the award of a reasonable royalty, but to argue that this requirement exists even in the absence of any evidence from which a court may derive a reasonable royalty goes beyond the possible meaning of the

statute.

Having failed to present any evidence on the issue of reasonable royalty, BLOUNT, INC. is precluded from presenting any evidence or soliciting any finding of what constitutes a reasonable royalty from this court.

### III. CONCLUSION

BLOUNT, INC. has failed to present any credible evidence admissible under the Federal Rules of Evidence regarding the issue of lost profits. Additionally, BLOUNT, INC. has failed any evidence on the issue of reasonable royalty under 35 U.S.C. Section 284.

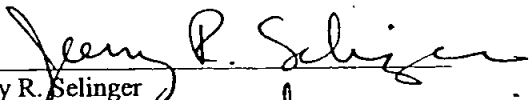
For the above stated reasons, the PETERSON CO. respectfully moves the court, pursuant to Rule 52(b), to amend the Findings of Fact and Conclusions of Law, and the accompanying Order, to delete any assessment for damages based on infringement of BLOUNT, INC.'S '159 patent-in-suit. Since no damages were proven, the Court's Findings of Fact and Conclusions of Law and accompanying Order should also be amended to reflect that no trebling of damages is possible under 35 U.S.C. § 284.

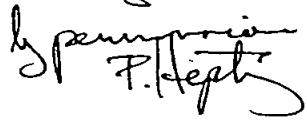
In the alternative, Defendant respectfully moves this Court for a new trial under Rule 59(a) because of the erroneous admission of Blount's opinion testimony in clear violation of Rules 602 and 701, Federal Rules of Evidence.

Respectfully submitted,

8/23/02

Date

  
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Attorneys for Defendant Robert H. Peterson Co.

CERTIFICATE OF SERVICE

This certifies that a copy of the foregoing document was served by hand delivery to counsel for Plaintiff, William D. Harris, Jr., Hitt Gaines Boisbrun, P.C., 225 University Plaza, 275 West Campbell Road, Richardson, Texas 75080, this 23<sup>rd</sup> day of August, 2002.

Stacy Parker

EXHIBIT

JT-APP 0562

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

GOLDEN BLOUNT, INC.	(	CIVIL ACTION NUMBER
Plaintiff,	(	
	(	
VERSUS	(	3:01-CV-127-R
	(	
ROBERT H. PETERSON CO.	(	
Defendant.	(	July 29, 2002

VOLUME 1 of 3  
TRANSCRIPT OF TRIAL  
BEFORE THE HONORABLE JERRY BUCKMEYER  
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

For the Plaintiff: MR. WILLIAM D. HARRIS, JR.  
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MR. GREG H. PARKER  
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FEDERAL DISTRICT COURT - DALLAS, TEXAS

JT-APP 0563

1 product, and we extend out our profit when we sell the  
2 package, which is about the only way to know it's sold.

3 Q You believe this to be correct?

4 A Absolutely.

5 Q This is Exhibit 18. Let me take up a point with you. I  
6 heard it said a while back that this was just an auxiliary  
7 item and just sold by itself. What do people do, swat flies  
8 with it when they buy it or what?

9 A I don't know what they do in the California area, but  
10 not any other area I know of. It's sold always to go with  
11 the log set.

12 Q It just doesn't have any other use?

13 A I've never known of anyone selling an ember bed burner  
14 by itself or for what reason they would buy one.

15 Q Isn't it fair to say in the final analysis every time an  
16 ember burner is sold, it goes on a log set?

17 A I would say so, yes.

18 MR. MONCO: Object to the question, Your Honor, as  
19 calling for speculation as to how Peterson's products are  
20 sold. I think this is all indicated here, and again we're  
21 getting into the expert testimony opinion being rendered on  
22 the subject this witness has no knowledge whatsoever how well  
23 the Peterson items are sold. So we would lodge an objection  
24 on that basis.

25 THE COURT: Response to the objection.



1 MR. HARRIS: Let me get this back on. Now.

2 THE COURT: Okay. Response to the objection.

3 MR. HARRIS: My response to the objection is, it  
4 is so very clear that there's no possible other use for this  
5 thing than to put on this assembly, that it's bound to go on  
6 a log set every time one is sold. At least every time it's  
7 sold by the distributor ultimately. It can go nowhere else.

8 Maybe that's an argument rather than him answering  
9 a question, but he can verify, it seems to me. That's like  
10 arguing with the law of gravity.

11 MR. MONCO: Your Honor, if I may have just a short  
12 rejoinder on that. It's not a question of whether the  
13 Peterson's accused ember plan booster is used with a pan.  
14 The question here is, how is it sold? Is it sold as retrofit  
15 unit in which case you're going to be selling approximately  
16 20 dollar unit or are you attaching it with a pan, a main  
17 burner, a log set and a grate? That is the issue here.  
18 That's where these figures are coming from as opposed to  
19 merely selling a 20 dollar item as priced here on this sheet.

20 And then what we would object to as far as Mr.  
21 Blount rendering any opinion as far as how Peterson products  
22 are sold in the marketplace. That's the underlying premise  
23 of this entire Exhibit 18.

24 There's been no foundation laid this witness has  
25 the capacity to know that. That's not the issue. The issue

1 is, how is this document sold in the marketplace? Is it sold  
2 individually or as part of the unit? That's what we object  
3 to be as far as Mr. Blount giving any testimony on that issue  
4 as far as how Peterson products are sold.

5 THE COURT: Okay.

6 MR. HARRIS: I have a little more to say.

7 THE COURT: Okay.

8 MR. HARRIS: It seems to me that what happened is  
9 that the distributors buy this item because it helps them  
10 sell the bigger item, the log item. There in the point of  
11 this story, they show people both. And what happened is that  
12 every time that one of the ember burners is sold, it gets  
13 sold along with the log set. Does it help sell log sets?  
14 Probably very much help sell the log set. That's why there's  
15 a demand for it.

16 Do you think that people buy these things, take  
17 them home and install them themselves? The usual thing that  
18 happens is, as I hope we have other testimony on, but the  
19 usual thing that happens is people make a selection and they  
20 like the combination, but they still have a choice. You  
21 understand my point.

22 THE COURT: Okay. I do.

23 MR. MONCO: Your Honor, if I may, just a short  
24 rejoinder. As Mr. Blount has testified, the pan and the main  
25 burner have been staple articles of commerce at least forty

1 years. People can buy these things as retrofits and put them  
2 on pans they've already sold in which case there would be no  
3 convoyed sales of the logs and the grate and the burner and  
4 the pan that counsel is attempting to introduce here.

5 The issue is, how is the Peterson product sold?  
6 That's what they have to establish in order for the plaintiff  
7 to get the kind of damages they're claiming down here. There  
8 is no foundation. This witness is not qualified to testify  
9 with regard to that, as to how Peterson product is sold in  
10 the market. Counsel here is telling Your Honor how it's  
11 sold. There is no qualification for that. This witness is  
12 not qualified to be rendering expert testimony insofar as how  
13 does the Peterson Company sell its accused unit.

14 That's why we object to this line of testimony.  
15 Mr. Blount can testify as to how he sells his product, but  
16 the basis of the damage claims here is they're claiming we  
17 have sold Peterson Company's 3,689 units and it would have  
18 sold accompanying with that the pan, the main burner, the  
19 logs and the grate.

20 There's no foundation for that this witness can  
21 testify about. That's our objection.

22 THE COURT: Okay.

23 MR. HARRIS: Your Honor, I would point out there's  
24 an inducement case here, there's contributory case here,  
25 there's claim 15 that includes the logs and everything else.

1 And we are in an area, of course, we're looking at what size  
2 damages would be involved.

3 But it would be a travesty in my mind for somebody  
4 to take a fairly inexpensive item and that made a big  
5 difference and get away with doing that for nothing.

6 The one other thing I would say is that an  
7 executive from Peterson has testified that that's meant to go  
8 with the log, and every time you sell one of those here,  
9 there's a log that gets used with it.

10 THE COURT: Okay.

11 MR. MONCO: Your Honor --

12 MR. HARRIS: I have that testimony in his  
13 deposition.

14 MR. MONCO: Your Honor, the Peterson Company sells  
15 this unit as an accessory. It's separately boxed, and it's  
16 separately priced and sold to distributors.

17 The G core burn, which is a pan with a main burner,  
18 that's the Peterson staple article. That's separately boxed  
19 and separately sold. The logs are separately boxed and  
20 separately sold.

21 Whether or not this is used on a burner is not the  
22 issue. The issue that sustains this claim of nearly half a  
23 million dollars of damages is how is the Peterson product  
24 sold? Is it soiled as retrofit? Is it sold individually or  
25 is it sold with all these other units?

1 And all we're saying, our objection is, that Mr.  
2 Blount is not qualified to testify. There has to be a  
3 foundation laid as to how this is sold. Mr. Blount is not  
4 in a position by actual knowledge to know how Peterson  
5 Company distributors buy and sell this product. That's what  
6 they're saying.

7 If I bought a Peterson G 4 burner 10 years ago and  
8 I've got it in my house. And I've got the grate and logs and  
9 what not. I go to the fireplace store, see the accused ember  
10 flame booster. I say, I would like to have that. I should  
11 buy that for approximately twenty dollars and bring it home  
12 and put it on.

13 Now the combination of all of that, agree on the  
14 claims if they sustain infringement? Yes. But the point  
15 we're talking about here is damages, and the damages here is  
16 a sale of the ember flame booster because Mr. Blount did not  
17 obtain a sale that I bought ten years ago.

18 That's our point, Your Honor. It's the calculation  
19 of the damages here. The figure that is used here is grossly  
20 inflated, and the focus here should be on the accused ember  
21 flame booster, which is approximately a twenty dollar item as  
22 stated in Mr. Blount's own literature.

23 THE COURT: I'm going to overrule the objection.  
24 You may proceed.

25 MR. HARRIS: Fine. I've actually forgotten where

1 I was.  
2 Where was I?  
3 THE WITNESS: Danged if I know. You lost me.  
4 MR. HARRIS: I think we already had the testimony.  
5 The question was whether the testimony was appropriate or  
6 not.  
7 THE COURT: Yeah. You were going over Plaintiff's  
8 Exhibit 18 with him.  
9 MR. HARRIS: Yeah. I would like to ask my friend  
10 back here what the G 5 unit has on it.  
11 THE COURT: Okay.  
12 MR. HARRIS: Since we're cross examining each  
13 other's lawyers. What's the G 5 unit?  
14 MR. MONCO: G 5 unit, Your Honor, is a fully  
15 assembled unit.  
16 MR. HARRIS: He didn't say anything about that,  
17 did he?  
18 MR. MONCO: Your Honor, if I may finish.  
19 THE COURT: Okay.  
20 MR. MONCO: We have a G 5 burner that includes all  
21 the logs and the grate, so on. Your Honor, we have sold  
22 about 10 of those units. That is not going to sustain this  
23 damage figure. 99 percent of the accused sales here are for  
24 the ember flame booster. 10, I mean literally 10 sales  
25 comprising probably less than \$3,000, \$3,500 comprise the

1 fully assembled unit.

2 That's behind our objection. That's behind this  
3 whole -- what is being done here is an attempt to try and  
4 state the Peterson Company sells their ember flame booster as  
5 part of a whole package. It sells separately packaged ember  
6 flame boosters. It sales separately packaged G 4 burners.  
7 It sells separately logs.

8 This is very critical about this point, Your Honor,  
9 because it has to do with the whole scope of damages. And  
10 there's no evidence this witness can present on that issue.  
11 We would strongly object that this witness testifying and  
12 speculating as far as what and how Peterson Company sells its  
13 products.

14 THE COURT: The witness will be subject to cross  
15 examination.

16 MR. MONCO: He will.

17 THE COURT: You may put on additional evidence in  
18 this regard, also.

19 MR. MONCO: Thank you, Your Honor.

20 MR. HARRIS: Exhibits 15 A and 15 B and 19 A  
21 through H all relate to the back up paper that goes to this  
22 summary that we just talked about.

23 THE COURT: Okay.

24 MR. HARRIS: And so spare us, please. However, I  
25 do want them admitted just in case somebody wants them some

1    which is the accused product, the G 34 burner goes right up  
2    to here where my hand is, and that's the G 4 burner. And you  
3    have all the attachments, which is the ember flame booster  
4    and couplings?

5    A     Yes.

6    Q     Those are sold separately, and they're priced  
7    separately, aren't they?

8    A     That's my understanding.

9    Q     Okay. And you have no knowledge whatsoever as to how  
10   Peterson's distributors sell their products, do you?

11   A     Well, they sell them through their sales companies and  
12   their -- to their dealers. Beyond that I can't tell you very  
13   much about their operation.

14   Q     Right. And you don't know how many of the ember flame  
15   boosters are sold as retrofits? And by retrofit, I mean sold  
16   separately to be put on fireplaces --

17   A     I have no way of knowing that.

18               MR. MONCO: Your Honor, may I finish my question?

19   A     I'm sorry I thought you had finished.

20   Q     You have no idea how many ember flame boosters are sold  
21   separately and alone to people who want to retrofit their  
22   fireplaces with an ember flame burner as compared to those  
23   who are buying complete units, do you?

24   A     I do not have that information.

25   Q     So the figures that you presented here in court are



1 nothing more than your assumption that every one of the  
2 Peterson Company ember flame boosters is sold with a G 4  
3 burner and pan and log set, and you have no idea whether  
4 that, in fact, is true or not?

5 A I do not know if it's a fact.

6 MR. MONCO: Your Honor, may have a moment please?

7 THE COURT: Yeah.

8 (Pause)

9 MR. MONCO: Your Honor, I just have a couple more  
10 questions.

11 THE COURT: Okay.

12 Q Turning to Plaintiff's Exhibit 18, your third column  
13 says, Golden Blount Inc.'s Cost. What comprised those costs?

14 A Materials, direct labor and indirect labor.

15 Q Materials, direct labor and?

16 A Direct labor and indirect labor.

17 Q Do you have anything on there for -- when you say  
18 labor, what's direct labor?

19 A People actually doing the hands-on work.

20 Q The manufacturing part?

21 A And the indirect is for supervisor.

22 Q Okay. Do you have anything on there with regard to  
23 costs for sales, the salesmen, saleswomen, who sell your  
24 product?

25 A We have not had really sales reps out until this year to

1 could.

2 Q Okay. We've heard a lot of testimony and dialogue from  
3 counsel regarding the way in which this burner is sold,  
4 whether it's auxiliary or whether it's sold more times than  
5 not by itself or with log sets. I would like for you to just  
6 share with us your experience when you sell or how you sell  
7 the burner.

8 A Thinking back over the years in terms of how they were  
9 sold, if I sold 40 more CEBBs from this day forward, 39 would  
10 go with a log set.

11 Q Wait, wait, wait. Hold on. 39 out of 40 would go with  
12 logs?

13 A Yes. I'm giving you two and a half percent. Yes. In  
14 other words, we will retrofit one. We can. We don't even  
15 promote that.

16 Q Now wait a minute. So you don't have -- your experience  
17 is that you don't have that many customers coming in and just  
18 asking for the CEBB burner by itself?

19 A No, they're coming in shopping for a gas log, and when  
20 they do that, they'll need a gas log as well. So that's one  
21 of the reasons why that happens. They go with the front  
22 burner.

23 Q Okay. I put the math to that, and that's about 90  
24 percent of the time, then, you sell a set of logs with a  
25 burner.

1 explaining to me what a trial like this would be like.

2 Q Now with respect to all of your testimony regarding the  
3 fact that you sell 97 percent of burners with the CEBB  
4 attachment. Do you recall that testimony?

5 A Yes.

6 Q Okay. And ALL of that testimony you're talking about is  
7 your experience in selling the Blount unit, correct?

8 A This is correct.

9 Q You have not been speaking at all about how the Peterson  
10 product is marketed, are you?

11 A I am not.

12 Q Okay. You don't have any knowledge with regard to how  
13 distributors market the Peterson product, do you?

14 A No, but I don't think it would vary.

15 Q You don't know one way or the other?

16 A It's infinity.

17 MR. MONCO: Your Honor, we have no further  
18 questions.

19 THE COURT: Thank you very much. You may step  
20 down.

21 MR. GAINES: Just a minute, Your Honor.

22 THE COURT: Okay.

23 REDIRECT EXAMINATION

24 BY MR. GAINES:

25 Q Just one quick question, maybe a couple, maybe. We did

EXHIBIT 2

JT-APP-0576

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

GOLDEN BLOUNT, INC.	(	CIVIL ACTION NUMBER
Plaintiff,	(	
	(	
VERSUS	(	3:01-CV-127-R
	(	
ROBERT H. PETERSON CO.	(	
Defendant.	(	July 30, 2002

VOLUME 2 of 3  
TRANSCRIPT OF TRIAL  
BEFORE THE HONORABLE JERRY BUCKMEYER  
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

For the Plaintiff:	MR. WILLIAM D. HARRIS, JR. MR. CHARLES W. GAINES MR. GREG H. PARKER HITT, GAINES & BOISBRUN 275 W. Campbell Road Suite 225 Richardson, Texas 7575080 972/480-8800
For the Defendant:	MR. DEAN A. MONCO MR. F. WILLIAM McLAUGHLIN Wood, Phillips, Katz, Clark and Mortimer 500 West Madison Street Suite 3800 Chicago, Illinois 60661-2511 312/876-1800  MR. JERRY SELINGER Jenkins & Gilchrist 1445 Ross Avenue Suite 3200 Dallas, Texas 75202-2799 214/855-4776

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FEDERAL DISTRICT COURT - DALLAS, TEXAS

JT-APP 0577

1 that can be retrofitted to existing G 4 burner systems or  
2 could be sold as an accessory to go with a new sale.  
3 Q Let me just ask you this question. You've been with the  
4 Peterson Company since 1979. Approximately how many G 4  
5 burners has the Peterson Company sold throughout the United  
6 States since 1979?  
7 A I'm not sure. Thousands and thousands, hundreds of  
8 thousand.  
9 Q Hundreds of thousands?  
10 A What.  
11 Q I'm sorry. You said hundreds of thousands?  
12 A Yes.  
13 Q And when you say retrofit ember flame booster, what do  
14 you mean by that?  
15 A Well, the ember flame booster is an accessory. It comes  
16 in a separate carton. Many of the dealers actually sold to  
17 it people who had previously purchased G 4 burner systems and  
18 had those installed. It was a way to get the consumer to  
19 come back into their store to buy more products.  
20 Q And can you turn to Exhibit D 34 and identify that,  
21 please?  
22 A Yes. That's the installation instructions for a  
23 Peterson Real-Fyre ember booster.  
24 Q And do the instructions -- how does the Peterson Company  
25 -- who receives these instructions?

1 A These would be packed in with each box, each ember flame  
2 booster in the carton. So the consumer would receive them  
3 ultimately after they have purchased the product.

4 Q If you would, please, I would ask if you would turn to  
5 Exhibit D 55?

6 A Yes.

7 Q And could you identify Exhibit D 55, please?

8 A D 55 is a catalog sheet that we have that shows a lot of  
9 accessories that the Peterson Company offers to basically as  
10 add-on sales for someone that was buying Peterson gas log  
11 set.

12 Q Now how are these accessories sold by the dealers to  
13 your knowledge?

14 A In general, as I say, it's an add-on sale. Once they've  
15 made the sale and had someone that wants to buy a Peterson  
16 log set, then this is an opportunity for them to sell pine  
17 cones or wood chips or lava granules or lava coals to be  
18 added to the sale just to boost the amount of the sale a  
19 little bit higher.

20 Q Are you familiar with the term, after-market?

21 A Yes.

22 Q What is after-market in the context of these?

23 A Well, after-market I think we probably refer to it as  
24 retrofit here. It's to get someone to come into the store to  
25 sell accessories to them to improve their fireplace.

1 Q To your knowledge do customers who purchased an original  
2 gas log set G 4 set come back in to purchase, let's say, new  
3 logs over a period of time?

4 A Yes, they do. Even though our logs are warranted for a  
5 lifetime, we have people that want to upgrade to the newer  
6 style logs or newer design of logs. Our dealers are  
7 constantly trying to promote to satisfy customers to come  
8 back into the store.

9 Q Would what you just said also apply to how the ember  
10 flame booster is sold?

11 A Yes, it would. I know of several dealers who actually  
12 promoted it that way when we came out with it.

13 Q In what way to your knowledge did they promote it?

14 A They promoted it to the previous customer to come back  
15 into the store to buy the ember booster. They said Peterson  
16 has come out with this new item gives you more front flame  
17 and enhances your log set. In fact, they also would sell new  
18 ember and pine cones or wood chips at the same time.

19 Q Now I think you -- I believe your testimony was you said  
20 the ember flame booster is packaged separately. The ember  
21 flame booster is intended to be used with the G 4 burner,  
22 correct?

23 A Yes, that's how it's designed.

24 Q G 4 burner stands separately itself?

25 A Yes. The G 4 burner is separate from the logs.



- 1 Q Okay. And what is a G 5 burner?
- 2 A A G 5 burner is very small. G 4 only it has all the gas
- 3 connections and valves preassembled by us at the factory.
- 4 Has ANSI standard approval by CSA on that burner.
- 5 Q That's ANSI. I think that's A-N-S-I?
- 6 A Yeah, it's American National Standards Institute. It's
- 7 a group that sets standards for different kinds of products,
- 8 all different kinds of products from child car seats to, you
- 9 know, gas log sets.
- 10 Q And I think you also touch the -- is it CSI?
- 11 A CSA is the current standard testing agency that we use
- 12 at the Peterson Company. It's Canadian Standards
- 13 Association, I think it is.
- 14 Q In a G 5 burner set, is an ember flame booster included
- 15 in that?
- 16 A Not in most of them. It can be requested by the dealer
- 17 or distributor to have us preassemble a front flame ember
- 18 booster on to a G 5 log set. But most of the G 5s do not
- 19 have them on. We've sold very few with ember boosters on
- 20 them.
- 21 Q I next ask you, if you would, please, to turn to
- 22 Exhibit D 53?
- 23 A Yes.
- 24 Q And what is Exhibit D 53?
- 25 A It's a list of the ember boosters sales that we've had

EXHIBIT 3

JT-APP\_0582

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

GOLDEN BLOUNT, INC.	(	CIVIL ACTION NUMBER
Plaintiff,	(	
VERSUS	(	3:01-CV-127-R
	(	
ROBERT H. PETERSON CO.	(	
Defendant.	(	July 31, 2002

VOLUME 3 of 3  
TRANSCRIPT OF TRIAL  
BEFORE THE HONORABLE JERRY BUCKMEYER  
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

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FEDERAL DISTRICT COURT - DALLAS, TEXAS

JT-APP 0583

1 third valves in series flow, no, it is not correct.

2 Q How long have you been putting secondary valves in  
3 series flow since becoming involved in fireplace industry?

4 A Probably the first time I did it was '83. It was fairly  
5 common practice between '83 and roughly 1990, at which time  
6 the codes changed to require safety pilot kits on both the  
7 second and any additional burners. And that kind of stopped  
8 directly, the type of application shown in A and B.

9 Q Now switching subjects for a moment, Mr. Dworkin, you  
10 said that you have retail shops and wholesale shops. Could  
11 you generally describe for the court when a buyer comes in to  
12 buy a fireplace set, what is a buyer looking for?

13 A That's usually the first thing we try and find out. In  
14 our retail shops we've trained our people, and our people are  
15 asking questions, they're trying to find out what the buyer  
16 is looking for.

17 Somebody comes into the shop and they say they want  
18 gas logs. Many times they don't really want gas logs, and we  
19 can perhaps sell them an insert, which is several times the  
20 price of gas logs. We're looking for what does the customer  
21 want.

22 So the first thing we would do is ask the customer,  
23 do you really want gas logs? What are your uses? Are you  
24 looking for primarily heat or primarily aesthetics. If  
25 they're look are for primarily heat, then we're going to look

1 for fireplace insert. It may be gas fired insert, but it's  
2 fireplace insert. If they're looking primarily for  
3 aesthetics. No, I'm having a party in three weeks, and my  
4 wife likes to have a fire every now and then. Or the wife  
5 comes and says, I'm just tired of my husband burning wood, at  
6 that time we will sell them gas logs. Gas log are primarily  
7 an aesthetic product.

8 Q Now I think you refer to a two step distribution, and  
9 could you describe what a two step distribution is and maybe  
10 contrast it with what a direct distribution system is?

11 A We are true two step distributors. Fire Side, which is  
12 now called Fire Side New Jersey or Summit Fire Side is a true  
13 two step distributor. The manufacturer makes the product,  
14 ships us boxes. We are a large warehouse. They are 33,000  
15 square foot warehouse. We warehouse that product.

16 We have two trucks run five routes delivering  
17 throughout the state of New Jersey on a weekly basis. So our  
18 dealers in the state of New Jersey know that on a given day,  
19 our truck is in their area. If they order up to noon of the  
20 day before, sometimes even two or three o'clock the day  
21 before, the merchandise they're asking for will be on the  
22 truck, and we will deliver to them.

23 So we're warehousing as an intermediate warehouse,  
24 that's two step. A direct distribution, which is not as  
25 common in our area, direct distribution is where the

1 manufacturer -- let me rephrase that. Direct distribution is  
2 where the retail store has large enough storage facilities or  
3 warehouse facilities to bring merchandise direct from the  
4 manufacturer, act as their own warehouse, and then sell it.  
5 So the merchandise is leaving from the manufacturer directly  
6 to the retailer.

7 Q When a customer comes in and if after you've determined  
8 what they want and let's move this instead of the parties  
9 that are seeking fireplace to provide heat and go to one that  
10 provides the aesthetics, which is the fireplaces we've been  
11 talking about in this case.

12 Based on your experience, what drives the sale or  
13 what drives the purchase that the customer is going to make?

14 A The look of the product. Gas logs are, as I said  
15 before, an aesthetic product. And it truly is. What does  
16 this product look like? In our store we have, I believe,  
17 five gas log fireplaces, probably six or seven gas fireplaces  
18 because we're also very large full fireplace dealers.

19 The gas fireplaces will be different styles of  
20 logs, different styles of configurations so that the consumer  
21 can select what appeals to them aesthetically.

22 Q Now when you're displaying your fireplaces to the  
23 customers, are the fireplaces on or off or both or how does  
24 that work?

25 A Generally we'll have one or two fireplaces on. We

1 generally won't be spending the gas for all of the fireplaces  
2 on. The consumer may or may not see a given gas log set  
3 burning when they first walk up to it. We will ignite them  
4 and let them look at them both burning and not burning.

5 Q In your experience how much useage or how often is a gas  
6 fireplace actually on based on your interaction with your  
7 customers?

8 A Gas fireplace or gas log?

9 Q Gas log. I'm sorry.

10 A 20 percent of the time. 80 percent of the time is  
11 pretty much off.

12 Q Okay. How would you describe the quality of the gas  
13 logs which are manufactured by Robert H. Peterson Company?

14 A I believe that the quality of the gas logs manufactured  
15 by Robert H. Peterson are of the highest quality. We've been  
16 representing them for over 20 years. They've been in  
17 business for well over 40 years.

18 The primary reason for their success, I believe --  
19 and this is just my opinion -- is the look of the log. It is  
20 a hand painted log. It is highly detailed. Some people say  
21 it's a work of art.

22 Q And getting back to when a customer is making a sale.  
23 What is it that will actually drive the sale to completion?  
24 What is the customer based on your interaction with your  
25 customers, what is the customer really looking for when they

1 come in with regard to the purchase of a gas log fire set?

2 A They want a gas log fire set that meets their aesthetic  
3 requirements. They're looking at a look. They want the look  
4 both burning and non-burning.

5 Q Why would they want to look at it when it's non-burning?

6 A As I said before, about 80 percent of the time the  
7 fireplace is just sitting there with the gas logs in it.  
8 That's where Peterson details its logs as much as they do.

9 MR. MONCO: May I have a moment, Your Honor,  
10 please?

11 THE COURT: Yeah.

12 THE COURT: Thank you.

13 (Pause)

14 MR. MONCO: Your Honor, we have no further  
15 questions.

16 THE COURT: Okay. Cross examination.

17 MR. HARRIS: We're bargaining around for a piece  
18 of paper, Your Honor.

19 THE COURT: Okay.

20 CROSS-EXAMINATION

21 BY MR. HARRIS:

22 Q In the meantime, I'm sure you know my name is Bill  
23 Harris, and I learned that I believe you're Mr. Dworkin,  
24 correct?

25 A Yes.



IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

GOLDEN BLOUNT, INC.,

Plaintiff,

v.

ROBERT H. PETERSON CO.,

Defendant.

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Civil Action No.

3-01CV0127-R

**PLAINTIFF, GOLDEN BLOUNT, INC'S MOTION AND BRIEF TO INCLUDE  
UPDATED DAMAGES AND PRE AND POST JUDGMENT INTEREST**

For good cause shown herein, Plaintiff moves the Court to include any increased damages based upon Defendant Robert H. Peterson's previously unreported sales of its infringing ember boosters and related products. The Plaintiff further moves the Court to provide Plaintiff pre and post judgment interest on this increased damage amount.

**A. Increased Damages**

Plaintiff moves this Court to increase the damage amount awarded in this Court's Judgment rendered on August 9, 2002, to include Defendant's unreported sales of the infringing device from Defendant's last reporting of April 30, 2002, to the August 9, 2002, Judgment date. The facts of the case support such an increase. The documents of record demonstrate that Defendant's sales figures fail to account for the time period between May 1, 2002, and the date of the Judgment. (See, Plaintiff's Exhibit 17, including bates numbers 00051-00053 and 000122, which are included herein as Exhibit A)

As this is a post-trial motion, this Court has already found Defendant liable for infringing United States Patent No. 5,988,159. Further, this Court has already defined the method by which damages will be calculated. Accordingly, the only issue that remains for this Court to determine is

the actual number of infringing devices Defendant sold, up and through the August 9, 2002, Judgment date.

Counsel for Plaintiff proposes two feasible methods that might be used for determining the updated number of infringing devices Defendant sold. First, the Court may allow for a specified time period to allow Defendant to supplement its sales figures for the period spanning from May 1, 2002, to August 9, 2002. This method, however, assumes that Defendant will supplement its sales figures in a reasonable amount of time. As supported by Plaintiff and Defendant's prior correspondence and discussions (attached hereto as Exhibit B), Defendants have been less than forthcoming in updating their sales figures. Accordingly, in the interest of justice, it would be proper to establish a time period upon which Defendant must update its sales figures.

Alternatively, this Court could use Defendant's recognized sales figures (see Exhibit A) to reconstruct Defendant's sales for the period spanning from May 1, 2002, to August 9, 2002. One well-known method for reconstructing one number from a series of other numbers, is linear extrapolation. Using a linear extrapolation of the dates from November 23, 1999, to April 30, 2002, (Exhibit A) results in an average number of ember booster devices sold each day of about 4.24. Applying this average number to the period spanning from May, 1, 2002, to August 9, 2002, results in additional ember booster sales of 428. Adding this number to Defendant's ember booster sales numbers for the period spanning from October 23, 1999, to April 30, 2002, results in total ember booster sales by Defendant of 4,117. (Exhibit C includes a detailed explanation of the extrapolation process).

Plaintiff is indifferent on which method be used to obtain Defendant's updated sales figures, however, Plaintiff believes that justice requires such numbers to be added to the numbers set forth in the Judgment rendered on August 9, 2002. Justice further requires that the damage award be adjusted to reflect the changes made to the number of infringing devices sold. (See Exhibit D)

#### **B. Prejudgment Interest**

Plaintiff also requests, pursuant to 35 U.S.C. § 284, prejudgment interest on the compensatory damages awarded by the Court. As the Federal Circuit has recognized, an award of prejudgment interest "serves to make the patentee whole," because, in addition to the loss caused by a Defendant's

infringement, "the patentee also lost the use of its money" during the period over which the infringement took place. *Crystal Semiconductor Corp. v. Tritech Microelectronics Int., Inc.*, 246 F.3d 1336, 1361 (Fed. Cir. 2001). Thus, a prejudgment interest award is fundamentally necessary "to ensure that the patent owner is placed in as good a position as he would have been had the infringer entered into a reasonable royalty agreement." *Electro Scientific Indus., Inc. v. General Scanning Inc.*, 247 F.3d 1341, 1354 (Fed. Cir. 2001)(citing *Bio-Rad Labs., Inc. v. Nicolet Instrument Corp.*, 807 F.2d 964, 969 (Fed. Cir. 1986), *appeal after remand*, 847 F.2d 842 (Fed. Cir. 1988)).

With that premise in mind, the Supreme Court and the Federal Circuit have made it clear "that prejudgment interest is the rule, not the exception." *Sensonic, Inc. v. Aerosonic Corp.*, 81 F.3d 1566, 1574 (Fed. Cir. 1996)(citing *General Motors Corp. v. Devex Corp.*, 461 U.S. 648, 655-56 (U.S. 1983)). The Supreme Court explained that the denial of prejudgment interest simply creates an incentive to prolong litigation, and that prejudgment interest in patent cases should be withheld only under exceptional circumstances. *Id.* Plaintiff can find no such exceptional circumstances here. Accordingly, Plaintiff is entitled to pre judgment interest on all damages awarded by the Court, specifically including actual damages, as well as enhanced damages.

### C. Post-Judgment Interest

Plaintiff also moves the Court for post-judgment interest pursuant to 28 U.S.C. § 1961. As both the Federal Circuit and the Fifth Circuit have observed, post-judgment interest is necessary to "compensate a winning plaintiff from the time of a judgment until payment is made." *Transmatic, Inc. v. Gulton Industries Inc.*, 180 F.3d 1343, 1348 (Fed. Cir. 1999); *Brown v. Petrolite Corp.*, 965 F.2d 38 (5<sup>th</sup> Cir. 1992). Thus, such interest "shall be allowed on any money judgment in a civil case recovered in a district court," and accrues "at a rate equal to the weekly average 1-year constant maturity Treasury yield... for the calendar week preceding the date of the judgment," computed daily, and compounded annually. See 28 U.S.C. § 1961. Indeed, there is no dispute that the Plaintiff would be entitled to post-judgment interest on any compensatory damages awarded by the Court. Rather, the only issue raised with respect to Plaintiff's request for post-judgment interest is whether the mandate of Section 1961 applies also to any "enhanced damages" and/or "attorneys" fees awarded. *Id.* The law is clear that it does.

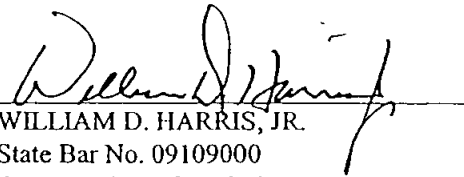
As noted above, Section 1961 requires post-judgment interest to be applied to "any money judgment in a civil case." *Brown*, 965 F.3d at 51 (emphasis in original)(quoting 28 U.S.C. § 1961). "Thus, the plain language of the statute authorized post-judgment interest on punitive damages, which are a part of 'money judgment'". *Id.* ("While few courts have addressed this issue, the courts that have addressed it have held that the statute contemplates post-judgment interest on exemplary damages.") (citing *Bank South Leasing, Inc. v. Williams*, 778 F. 2d 704, 706 (11<sup>th</sup> Cir. 1985); *Dorsey v. Honda Motor Co.*, 673 F.2d 911, 912 (5<sup>th</sup> Cir. 1982) *cert denied*, 459 U.S. 880 (1982); *Mill Pond Assocs. v. E&B Giftware, Inc.*, 751 F. Supp. 299, 303 (D Mass. 1990)). "Moreover, awarding post-judgment interest on exemplary damages is consistent with the purpose of post judgment interest - compensation to a successful plaintiff for the intervening time between entitlement to an actual payment of an award of damages." *Brown*, 965 F.2d at 51. Plaintiff therefore requests post-judgment interest pursuant to Section 1961 on all monetary amounts granted by the Court, specifically including enhanced damages, without regard to their basis in law or in fact.

Such amounts would necessarily also include post-judgment interest on any award of attorneys' fees. The law is well settled in this Circuit and elsewhere that any award of attorneys' fees bears post-judgment interest, as well. See e.g. *Louisiana Power & Light v. Kellstrom*, 50 F.3d, 319, 331-32 (5<sup>th</sup> Cir. 1995), *cert. denied*, 516 U.S. 862 (1995); *Mathis v. Spears*, 857 F.2d 749, 760 (Fed. Cir. 1988); *Tenax Corp. v. Tensar Corp.*, 1992 WL 516089 at \*9 (D. Md. Oct. 22, 1992) (citing *Mathis, supra*). Moreover, the accrual of interest on such an award of fees commences immediately upon the court's determination that the plaintiff is entitled to *some* award (i.e., August 9, 2002), even before the *amount* to be awarded is determined. *Transmatic*, 180 F.3d at 1348 (date of judgment for purposes of accrual of post-judgment interest determined under regional circuit law); *Louisiana Power & Light*, 50 F.3d at 332 (citations omitted); *Mathis*, 857 F. 2d at 760 ("Interest on an attorney fee award thus runs from the date of the judgment establishing the right to the award, not the date of the judgment establishing its quantum.") (citations omitted). The Plaintiff therefore requests that post-judgment interest also be granted on any attorneys' fees awarded, with the accrual of such

interest commencing on August 9, 2002, which is the date that the Court determined the entitlement to such fees.

Respectfully submitted,

For Plaintiff Golden Blount, Inc.



WILLIAM D. HARRIS, JR.

State Bar No. 09109000

CHARLES W. GAINES

State Bar No. 07570580

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275 West Campbell Road

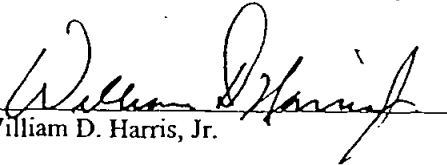
Richardson, Texas 75080

972/480-8800 (Telephone)

972/480-8865 (Facsimile)

CERTIFICATE OF CONFERENCE

The undersigned hereby certifies that counsel for Plaintiff, Golden Blount, Inc., has in good faith conferred with Dean Monco, counsel for Defendant, in an effort to resolve the subject of this motion. The parties were unable to come to an acceptable agreement. This motion is therefore submitted to the Court for its determination.

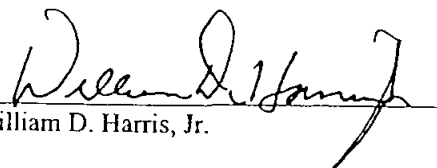
  
William D. Harris, Jr.

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the enclosed Plaintiff, Golden Blount, Inc.'s Motion to Include Updated Damages and Pre and Post Judgment Interest was served on the following counsel of record on August 23, 2002, by hand delivery and Express Mail as indicated below:

Jerry R. Selinger (Hand delivery)  
Jenkins & Gilchrist  
1445 Ross Avenue, Suite 3200  
Dallas, Texas 75202  
214/855-4500 (Telephone)  
214/855-4300 (Facsimile)

Dean A. Monco (Express Mail)  
F. William McLaughlin  
Wood, Phillips, VanSanten,  
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500 W. Madison Street, Suite 3800  
Chicago, IL 60611-2511  
312/876-1800 (Telephone)  
312/876-2020 (Facsimile)

  
\_\_\_\_\_  
William D. Harris, Jr.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

GOLDEN BLOUNT, INC.

Plaintiff,

v.

ROBERT H. PETERSON CO.,

Defendant.

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CIVIL ACTION NO.  
3-01-CV-0127-R

GOLDEN BLOUNT, INC.'S APPLICATION FOR ATTORNEYS' FEES

TO THE HONORABLE UNITED STATES JUDGE JERRY BUCHMEYER:

NOW COMES Plaintiff Golden Blount, Inc. (hereinafter "Golden Blount") and file this its Application for Attorneys' Fees (hereinafter "the Application") against Robert H. Peterson Co. (hereinafter "Robert H. Peterson"), and would show the Court as follows:

1. On August 9, 2002, the Court in the above-styled action issued its Final Judgment and Findings of Fact and Conclusions of Law, finding for Golden Blount on all issues. Among other things, the Court determined that Robert H. Peterson willfully infringed the Blount Patent. The Court further found that this was an "exceptional case," warranting an award of attorneys' fees to Golden Blount.

2. Pursuant to 35 U.S.C. § 285, the Court found an exceptional case at issue and granted an award of reasonable attorneys' fees to Golden Blount as the prevailing party. Golden Blount is entitled to attorneys' fees for hours spent litigating the infringement action.

3. Golden Blount seeks to recover attorneys' fees in the amount of \$332,349.00. The Affidavits of Bill Harris and Roy W. Hardin (which are a part of the Appendix being filed



simultaneously herewith) support this figure. These Affidavits address the reasonableness and necessity of attorneys' fees sought by Golden Blount in this case, the prevailing hourly rates in the Dallas legal community for such services, and certain costs of this litigation. For the Court's convenience, summary charts, by law firm, detailing the lawyers and paralegals, their rates, hours, and totals, are attached to this Application. Furthermore, the 2001 American Intellectual Property Law Association (AIPLA) Report of Economic Survey, providing average billing rates by location of practice and years of experience, is further evidence of the reasonableness of attorneys' fees in this case.

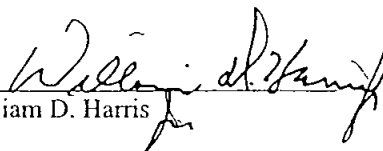
4. Golden Blount has not included in this Application and is not currently seeking recovery of the fees incurred in preparing and submitting this request for an award of attorneys' fees and costs. However, Golden Blount respectfully reserves the right to seek leave of court to amend this Application in order to claim such fees in the event this proceeding becomes unnecessarily adversarial. Furthermore, Golden Blount specifically reserves the right to request attorneys' fees for motions on which the Court has yet to issue a ruling, as well as any motions filed in the future, including any motion for alteration of judgment and motion for new trial.

5. Additionally, Golden Blount requests that this Court award Golden Blount post judgment interest on such attorneys' fees and costs in an amount allowed by law, beginning on August 9, 2002.

6. Golden Blount's Memorandum in Support of Golden Blount, Inc.'s Application for Attorneys' Fees in being filed simultaneously with this Application, and is incorporated herein for all purposes. Golden Blount simultaneously with the filing of this Application is also submitting its Bill of Costs seeking the recovery of taxable costs in this matter.

CERTIFICATE OF CONFERENCE

I hereby certify that on or about 8/23/02 a conference was held with counsel for Defendant, to determine whether agreement could be reached with regard to the relief sought herein. As a result of such conference, agreement could not be reached; accordingly, the matter is presented to the Court for determination.

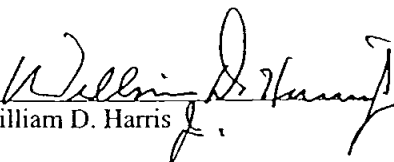
  
William D. Harris

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of Golden Blount, Inc.'s Application for Attorneys' Fees were each served upon the following counsel of record, via the delivery methods indicated below, on August 23, 2002.

Jerry R. Selinger (via hand delivery)  
Jenkins & Gilchrist  
1445 Ross Avenue, Suite 3200  
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(214) 855-4500  
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Mortimer  
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Chicago, IL 60611-2511  
(312) 876-1800  
(312) 876-2020 (Facsimile)

  
William D. Harris

**SUMMARY OF LOCKE, LIDDELL, & SAPP, LLP BILLING**  
(From January, 2000 to July, 2001)

FEE EARNER	TOTAL HOURS	BILLING RATE
L. Dan Tucker	1.90	\$325.00
Monty L. Ross	1.50	\$335.00
Roy W. Hardin	22.75	\$350.00 - \$375.00
Michael W. Dubner	20.00	\$135.00
Charles Phipps	34.00	\$130.00
<b>Total:</b>	<b>80.15 hours</b>	<b>\$18,967.50</b>

**SUMMARY OF HITT, GAINES, & BOISBURN, P.C. BILLING**  
(From August, 2001 to August, 2002)

FEE EARNER	TOTAL HOURS	BILLING RATE
William D. Harris	437.00	\$350.00
Charles W. Gaines	202.80	\$290.00
Greg H. Parker	492.30	\$175.00
James Ortega	67.50	\$175.00
Carol Garland (Paralegal)	21.60	\$75.00
Trudy McGruder (Paralegal)	31.30	\$65.00
<b>Total:</b>	<b>1252.50 hours</b>	<b>\$313,381.50</b>

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

GOLDEN BLOUNT, INC.

Plaintiff,

v.

ROBERT H. PETERSON,

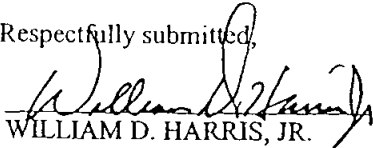
Defendant.

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CIVIL ACTION NO. 3-01-CV-0127-R

MEMORANDUM IN SUPPORT OF GOLDEN BLOUNT, INC.'S  
APPLICATION FOR ATTORNEY'S FEES

Respectfully submitted,

  
WILLIAM D. HARRIS, JR.

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ATTORNEYS FOR PLAINTIFF  
GOLDEN BLOUNT, INC.

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7 F.3d 453 (5<sup>th</sup> Cir. 1993), *on remand*, 852 F.Supp. 542 (S.D. Miss 1994),  
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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

GOLDEN BLOUNT, INC.

Plaintiff,

v.

ROBERT H. PETERSON,

Defendant.

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CIVIL ACTION NO. 3-01-CV-0127-R

MEMORANDUM IN SUPPORT OF GOLDEN BLOUNT, INC.'S  
APPLICATION FOR ATTORNEY'S FEES

I. BACKGROUND

1. On August 9, 2002, the Court in the above-styled action issued its Final Judgment and Findings of Fact and Conclusions of Law, finding for Golden Blount, Inc. ("Golden Blount") on all issues. Among other things, the Court determined that Robert H. Peterson Co. ("Robert H. Peterson") willfully infringed the Blount Patent. As such the court awarded Golden Blount treble damages based on Robert H. Peterson's conduct under the authority of 35 U.S.C. 284.

2. The Court further found that this was an "exceptional case" warranting an award of attorneys' fees to Golden Blount pursuant to 35 U.S.C. § 285. Accordingly, Golden Blount is entitled to attorneys' fees for hours spent litigating the infringement action consistent with the appropriate lodestar. *See Pennsylvania v. Delaware Valley*

MEMORANDUM IN SUPPORT OF GOLDEN BLOUNT, INC.'S APPLICATION FOR  
ATTORNEY'S FEES-



*Citizens Counsel for Clean Air*, 478 U.S. 546, 564 (1986), *on remand*, 826 F.2d 238 (3<sup>rd</sup> Cir. 1987). *See also Johnson v. Mississippi*, 606 F.2d 635, 638-39 (5<sup>th</sup> Cir. 1979).<sup>1</sup>

3. Additionally, Golden Blount requests that this Court award Golden Blount post judgment interest on such attorneys' fees and costs in an amount allowed by law, beginning on August 9, 2002. A district court has authority to award post judgment interest on the unliquidated sum of an award made pursuant 35 U.S.C. § 285. *See* 28 U.S.C. § 1961.

## II. CALCULATION OF ATTORNEYS' FEES

4. When a party to an infringement action prevails in an "exceptional case" and has obtained excellent results, its attorneys' fees recovery should be fully compensatory. *See generally Mathis v. Spears*, 857 F.2d 749, 756 (Fed. Cir. 1988) (quoting *Hensley v. Eckerhart*, 461 U.S. 424, 435 (1983)). *See also Norris v. Hartmarx Specialty Stores, Inc.* 913 F.2d 253, 257 (5<sup>th</sup> Cir. 1990) (observing that the trial court did not abuse its discretion when it awarded fees for issues not tried). The party awarded fees bears the burden of establishing entitlement to an award of attorneys' fees, and also providing appropriate documentation of the hours expended and hourly rates. *Louisiana Power & Light Co. v. Kellstrom*, 50 F.3d 319, 324 (5<sup>th</sup> Cir. 1995), *cert. denied*, 516 U.S. 862 (1995). The prevailing party must also show that billing judgment was exercised to

---

<sup>1</sup> Golden Blount has not included in this Application, and is not currently seeking recovery of the fees incurred in preparing and submitting this request for an award of attorneys' fees and costs. However, Golden Blount respectfully reserves the right to seek leave of court to amend this Application in order to claim such fees in the event this Application becomes unnecessarily adversarial. Furthermore, Golden Blount specifically reserves the right to request attorneys' fees for Motions on which the Court has yet to issue a ruling, as well as any motions filed in the future, including any motion for alteration of judgment and motion for new trial.

assess the reasonable number of hours expended on a case. *Green v. Administrators of the Tulane Educational Fund*, 284 F.3d 642, 662 (5<sup>th</sup> Cir. 2002).

5. The calculation of attorneys' fees under 35 U.S.C. § 285 is governed by the precedent of the Federal Circuit. *Pharmacia & Upjohn Co. v. Mylan Pharm., Inc.*, 182 F.3d 1356, 1359 (Fed. Cir. 1999). The Federal Circuit has approved use of a lodestar analysis in the calculation of reasonable attorneys' fees. See *Lam, Inc. v. Johns-Manville Corp.*, 718 F.2d 1056, 1068 (Fed. Cir. 1983).<sup>2</sup> The lodestar is the number of hours reasonably expended multiplied by a reasonable hourly rate, and usually supplies an objective basis on which to make an initial estimate of the value of the lawyer's service. *Hensley*, 461 U.S. at 433. "In determining the reasonableness of the award, there must be some evidence to support the reasonableness of, inter alia, the billing rate charged and the number of hours expended." *Lam*, 718 F.2d at 1068.

6. Once determined, depending on the particular circumstances in the case and the factors set forth in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717-19 (5<sup>th</sup> Cir. 1974), the lodestar may be adjusted upward or downward. *Delaware Valley*, 478 U.S. at 564. Because the lodestar is presumptively reasonable, it should be modified only in exceptional cases. *Watkins v. Fordice*, 7 F.3d 453, 457 (5<sup>th</sup> Cir. 1993), *on remand*, 852 F.Supp. 542 (S.D. Miss 1994), *aff'd*, 49 F.3d 728 (5<sup>th</sup> Cir. 1995) (citing *City of Burlington v. Dague*, 505 U.S. 557 (1992), *on remand*, 976 F.2d 801 (2<sup>nd</sup> Cir. 1991)).

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<sup>2</sup> The Fifth Circuit also utilizes the lodestar method in calculating reasonable attorneys' fees. *Louisiana Power & Light Co.*, 50 F.3d at 324.

MEMORANDUM IN SUPPORT OF GOLDEN BLOUNT, INC.'S APPLICATION FOR ATTORNEY'S FEES-

7. The *Johnson* factors to be considered in reviewing the reasonableness of the fee award are as follows:

- (1) the time and labor required;
- (2) the novelty and difficulty of the questions;
- (3) the skill required to perform the legal service properly;
- (4) the preclusion of other employment by the attorney due to acceptance of the case;
- (5) the customary fee;
- (6) whether the fee is fixed or contingent;
- (7) time limitations imposed by the client or the circumstances;
- (8) the amount involved and the results obtained;
- (9) the experience, reputation and ability of the attorneys;
- (10) the undesirability of the case;
- (11) the nature and length of the professional relationship with the client; and
- (12) awards in similar cases.

*Johnson*, 488 F.2d at 717-19. To the extent that any *Johnson* factors are subsumed in the lodestar, they should not be reconsidered in determining whether an adjustment to the lodestar is required. *Delaware Valley*, 478 U.S. at 564; *Green*, 284 F.3d 661.

8. Here, based on the lodestar approach set forth in *Hensley* and *Delaware Valley*, Golden Blount is entitled to its reasonable and necessary attorneys' fees in the amount of \$332,349.00. Appendix ("App.") at p. 3-4; 78. Based on the time records of Locke, Liddell & Sapp, LLP and Hitt, Gaines, & Boisbrun, P.C., as well as the Affidavits of William D. Harris and Roy W. Hardin, approximately 1300 hours is reasonable for the man power expended in protecting and litigating Golden Blount's patent rights. App. 3; 53, 78. Furthermore, attorneys' fees and paralegal hourly rates, ranging from \$65.00 to \$375.00 are fair and reasonable in Texas. App. 3; 7-11; 53. Based on the Affidavits of William Harris and Roy Hardin, and the American Intellectual Property Law Association

MEMORANDUM IN SUPPORT OF GOLDEN BLOUNT, INC.'S APPLICATION FOR ATTORNEY'S FEES-

(AIPLA) 2001 Report of Economic Survey, these rates are reasonable in Texas. *Mathis*, 857 F.2d at 755. App. 3; 7-11; 53. Accordingly, the loadstar approach yields Golden Blount's reasonable attorneys' fees in the amount of \$332,349.00.

### III. JOHNSON FACTORS AS APPLIED TO THIS CASE

#### (A) Time and Labor Required

9. "Although hours claimed or spent on a case should not be the sole basis for determining a fee, they are a necessary ingredient to be considered." *Johnson*, 488 F.2d at 717 (citation omitted.) "If more than one attorney is involved, the possibility of duplication of effort along with the proper utilization of time should be scrutinized." *Id.* "The trial judge should weigh the hours claimed against his own knowledge, experience, and expertise of the time required to complete similar activities." *Id.*

10. Golden Blount's counsel has, on a daily basis, maintained specific and thorough time entries detailing the work performed, the particular attorney or paralegal involved, and the hours devoted to a specific project. App. 12-51. Since the filing of the Original Complaint on January 17, 2001, approximately 1300 hours have been expended by attorneys and paralegals to protect and enforce Golden Blount's patent rights. App. 78. Not only did counsel thoroughly brief the claim construction of the Blount Patent for the Markman hearing, there was discovery exchanged and the taking of three depositions due to the vast array of patent law issues involved in the case. App. 2. Two thoroughly briefed hearings were held before the Magistrate Judge. App. 2. Case preparation for Golden Blount included extensive work on demonstrative exhibits, as well as substantial study and marshalling of the evidence. App. 2. As indicated in the Affidavit of William Harris, these hours were scrutinized and are not excessive or duplicative hours. App. 3-4.

MEMORANDUM IN SUPPORT OF GOLDEN BLOUNT, INC.'S APPLICATION FOR  
ATTORNEY'S FEES-

As established through such documentation and the exercise of billing judgment, the hours submitted by Golden Blount are reasonable and were necessarily incurred to effectively handle this matter on behalf of Golden Blount. App. 4; 53.

(B) Novelty and Difficulty of the Questions

11. Attorneys' fees should be large enough to compensate for accepting a challenging case because it requires more time and effort. *See Johnson*, 488 F.2d at 718. As in most patent cases, the legal issues and facts in this case were complex, and required extensive and sophisticated legal services in investigating, prosecuting, and defending the various claims and affirmative defenses. First and foremost, this case involved intricate patent issues. These included questions regarding claims interpretation, invalidity of the invention, anticipation of the invention by prior art, obviousness of the invention, and infringement analysis of the claims vis-à-vis the accused Robert H. Peterson device, including inducing infringement and contributory infringement, as well as questions regarding willful infringement. The court also required Markman briefs. Moreover, in this case, the issue of the nefarious conduct of the defendant had to be farreted out and then clearly presented to the court.

12. Likewise, there were numerous unusual evidentiary issues, such as the application of the attorney-client privilege. As this Court is well aware, Robert H. Peterson, on numerous occasions, and on the eve of trial, offered and recanted its decision to offer its alleged oral opinion of counsel. Only after the last change of its

position, did Robert H. Peterson produce its counsel for deposition pursuant to the order of the Magistrate Judge.

13. The issues in this case were hard fought, further supporting the time and reasonable hourly rate charged in this matter.

(C) Skill Requisite to Perform the Legal Service Properly

14. The trial judge's responsibility is to closely observe the attorneys' work product, his preparation, and general ability before the court. *Johnson*, 488 F.2d at 718. "The trial judge's expertise gained from past experience as a lawyer and his observance from the bench of lawyers at work becomes highly important to this consideration." *Id.* Counsel in this case were required to be broadly experienced in patent law. App. 1-2.

15. In this case, counsel demonstrated adequate skill level to perform the work. William Harris is an attorney licensed to practice law in the State of Texas for over 40 years. App. 1. Moreover, Mr. Harris is extremely well versed in complex litigation, with his primary emphasis in patent law issues. App. 1-2. Mr. Harris has participated in numerous trials with many of these before the Northern District of Texas. App. 1-2.

(D) Preclusion of Other Employment by the Attorney Due to Acceptance of the Case

16. "This guideline involves the dual consideration of otherwise available business which is foreclosed because of conflicts of interest which occur from the representation, and the fact that once the employment is undertaken the attorney is not free to use the time spent on the client's behalf for other purposes." *Johnson*, 488 F.2d at 718. This case involved a substantial expenditure of manpower and effort. During the

MEMORANDUM IN SUPPORT OF GOLDEN BLOUNT, INC.'S APPLICATION FOR  
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trial of the case, in addition to working during the business day, it was necessary for counsel to work after hours and on weekends, especially during the weeks before trial. App. 4. As a result, counsel's ability to take on new work and service existing clients was impaired. App. 4.

(E) Customary Fees

17. "The customary fee for similar work in the community should be considered" when determining the reasonableness of the requested attorney's fees. *Johnson*, 488 F.2d at 718. Reasonable hourly rates are determined by looking to the prevailing market rates in the relevant legal community. See *Watkins*, 7 F.3d at 458-59. Rather than focusing on what amount the prevailing counsel is able to charge his clients, the court should consider the prevailing rate in the relevant community. *Blum v. Stenson*, 465 U.S. 886, 896 (1984).

18. Here, the reasonable hourly rates for legal work performed by attorneys and paralegals in all stages of this litigation ranges from \$65.00 to \$375.00 an hour. App. 3; 7-11; 53.

19. Furthermore, the fee rates of Golden Blount's counsel are reasonable in relation to similar professional services performed at comparable levels of competence by attorneys in Texas. App. 3-4; 53. Pursuant to *Mathis*, 857 F.2d at 755, the Affidavit of William Harris and Roy Hardin as well as and the AIPLA Survey constitute ample evidence to support the reasonableness of the fee award.

(F) Whether the Fee is Fixed or Contingent

20. "The fee quoted to the client or the percentage of the recovery agreed to is helpful in demonstrating the attorneys' fee expectations when he accepted the case." *Johnson*, 488 F.2d at 718. Locke, Liddell & Sapp, LLP, the first counsel of record for Golden Blount submitted monthly invoices on their usual time/rate basis. App. at 54-77. Hitt, Gaines & Boisbrun, PC, the second counsel of record for Golden Blount, agreed to a contingency fee agreement. As a *Johnson* factor, this is either a positive or neutral. Although counsel handled this case on a contingent basis, Hitt, Gaines & Boisbrun, P.C. kept careful track of its time with daily time entries. App. 2-4; 12-51. Hitt, Gaines & Boisbrun, P.C. for Golden Blount, operating in a firm with less than 11 attorneys, incurred significant risk by electing to represent Golden Blount on a contingent fee basis. App. 1-2. However, adequate records were kept to properly apply the lodestar method and the *Johnson* factors. App. 12-51.

(G) Time Limitations Imposed by the Client or the Circumstances

21. "Priority work that delays the lawyer's other legal work is entitled to some premium." *Johnson*, 488 F.2d at 718. "This factor is particularly important when a new counsel is called in to prosecute the appeal or handle other matters at a late stage in the proceedings." *Id.* Here, William Harris and the law firm of Hitt, Gaines & Boisbrun were hired to represent Golden Blount only three weeks before the close of discovery. App. 2. Such a limited investigation period clearly demonstrates strict time limitations as required by *Johnson*.



22. Furthermore, Golden Blount's counsel was also forced to prepare for this litigation on two separate occasions. Specifically, when counsel for Defendant appeared at the first pretrial hearing, they announced to the Court, lacking adequate justification, that they were not adequately prepared to proceed to trial. App. 2. However, counsel for Golden Blount, in accordance with this Court's Order had expended numerous hours and resources preparing for this initial trial setting trial. App. 2. While the Court granted the Defendant a continuance, counsel for Golden Blount was forced to incur additional expenses preparing for the second trial setting. App. 2.

(H) Amount Involved and Result Obtained

23. Furthermore, the degree of the plaintiff's overall success goes to the reasonableness of a fee award. *Johnson*, 488 F.2d at 718; *Farrar v. Hobby*, 506 U.S. 103, 114 (1992). The amount of damages a plaintiff recovers is one of the many factors that a court must consider when calculating an award of attorneys' fees. *See Green*, 284 F.3d at 663.

24. In the case at hand, Golden Blount obtained favorable results. The Court not only found for Golden Blount on all issues, it also found that Robert H. Peterson's conduct amounted to willful infringement and that this was an exceptional case. *See Findings of Fact and Conclusions of Law*. In fact, the Court assessed damages in the amount of \$435,007.00.<sup>3</sup> The Court further found that damages should be trebled under 35 U.S.C. § 284. Finally, the Court's "exceptional case" finding in and of itself demonstrates the overwhelming positive results which were obtained.

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<sup>3</sup> Golden Blount will submit contemporaneously with the filing of this Motion, an updated analysis of the actual damages sustained by Golden Blount to date.

25. It was important to Golden Blount that a permanent injunction be entered against Robert H. Peterson and, as the prevailing party, plaintiff was afforded the protection of injunction. Such an injunction has been entered. *See In re Dahlgren Int'l, Inc.*, 811 F.Supp. 1182, 1185 (N.D. Tex. 1992).

(I) Experience, Reputation, and Ability of the Attorneys

26. Attorneys specializing in complex litigation "may enjoy a higher rate for his expertise than others...." *Johnson*, 488 F.2d at 719. Counsel for Golden Blount has handled this rather complex patent case. As demonstrated above, counsel have practiced for numerous years and have extensive experience in federal court. App. 1-2. The supporting Affidavit of William Harris details the degree of experience and length of career. App. 1-2.

(J) Undesirability of the Case

27. This case was undesirable because of the difficulty in, and burden inherent in, protecting patent rights and establishing infringement against a larger well established company with greater resources and doing so within a substantially reduced time frame.

(K) Nature and Length of the Professional Relationship with the Client

28. "A lawyer in private practice may vary his fee for similar work in light of the professional relationship of the client with his office." *Johnson*, 488 F.2d at 719. However, this case is the first matter that Golden Blount's counsel have handled for such entities and so no standing relationship existed. App. 2.

(L) Awards in Similar Cases

29. "The reasonableness of a fee may also be considered in light of awards made in similar litigation within and without the court's circuit." *Johnson*, 488 F.2d at

MEMORANDUM IN SUPPORT OF GOLDEN BLOUNT, INC.'S APPLICATION FOR  
ATTORNEY'S FEES-

719. The fee rates of Golden Blount's counsel are reasonable in relation to similar professional services performed at comparable levels of competence by attorneys and paralegals in the Northern District of Texas. App. 1-3; 53. As demonstrated by the 2001 AILPA Report of Economic Survey, where over one million is at stake, fee awards ranging from \$498,000.00 to \$2,004,000.00 are appropriate in the State of Texas. App. 7-11.

#### IV. POST JUDGMENT INTEREST

30. A district court has authority to award post judgment interest on the unliquidated sum (ie., the award of attorneys' fees), of an award made under 35 U.S.C. § 285. 28 U.S.C. § 1961. Interest starts to run on the date establishing the right to an award. *Id.* See also *Louisiana Power & Light*, 50 F.3d at 331-32. The Court's Final Judgment and Findings of Fact and Conclusions of Law were issued on August 9, 2002, awarding Golden Blount reasonable attorneys' fees and costs. Therefore, Golden Blount requests an award of post judgment interest, beginning on August 9, 2002, on the amount of reasonable attorneys' fees at the highest rate allowed by the law.

#### V. CONCLUSION

31. In this case, the Court made a determination that Golden Blount was entitled to attorneys' fees based on the "exceptional case" ruling under 35 U.S.C. § 285. Moreover, Golden Blount has provided to the Court copies of daily time entries as adequate documentation to support its award of attorneys' fees. As demonstrated by the Affidavits of William Harris and Roy Hardin, and the 2001 AILPA Report on Economic Survey, Golden Blount has also shown that these entries are reasonable and necessary for this patent infringement action in the Northern District of Texas. Golden Blount has

MEMORANDUM IN SUPPORT OF GOLDEN BLOUNT, INC.'S APPLICATION FOR  
ATTORNEY'S FEES-

considered and factored in all twelve *Johnson* criteria in developing the Application for Attorneys' Fees. Golden Blount does not seek enhancement of the lodestar amount, as the award of \$332,349.00 in attorneys' fees is reasonable.

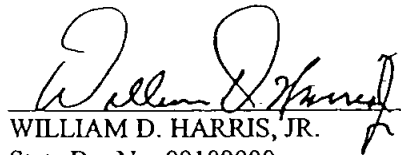
WHEREFORE, PREMISES CONSIDERED, Plaintiff Golden Blount, Inc. requests that this Court grant its Application for Attorneys' Fees, and award it, as against Robert H. Peterson Co., reasonable attorneys' fees in the amount of \$332,349.00, plus post judgment interest on such fees at the highest lawful rate from August 9, 2002, and such other relief as the Court deems just and proper.

DATE: August 23, 2002

MEMORANDUM IN SUPPORT OF GOLDEN BLOUNT, INC.'S APPLICATION FOR ATTORNEY'S FEES-

Respectfully submitted,

For Plaintiff Golden Blount, Inc.



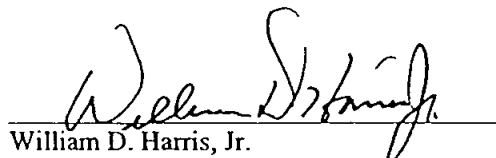
WILLIAM D. HARRIS, JR.  
State Bar No. 09109000  
CHARLES W. GAINES  
State Bar No. 07570580  
Hitt Gaines & Boisbrun, P.C.  
225 University Plaza  
275 West Campbell Road  
Richardson, Texas 75080  
(972) 480-8800  
(972) 480-8865 (Facsimile)

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of Golden Blount, Inc.'s Application for Attorneys' Fees were each served upon the following counsel of record, via the delivery methods indicated below, on August 23, 2002.

Jerry R. Selinger (via hand delivery)  
Jenkins & Gilchrist  
1445 Ross Avenue, Suite 3200  
Dallas, Texas 75202  
(214) 855-4500  
(214) 855-4300 (Facsimile)

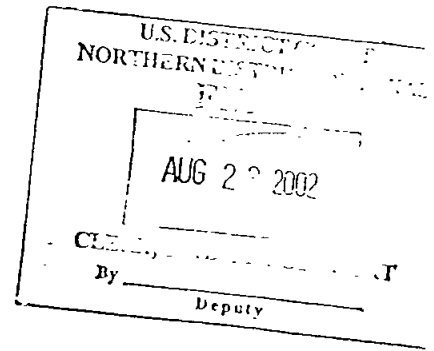
F. William McLaughlin (via fax)  
Dean A. Monco  
Wood, Phillips, VanSanten, Clark &  
Mortimer  
500 W. Madison Street, Suite 3800  
Chicago, IL 60611-2511  
(312) 876-1800  
(312) 876-2020 (Facsimile)



William D. Harris, Jr.

MEMORANDUM IN SUPPORT OF GOLDEN BLOUNT, INC.'S APPLICATION FOR  
ATTORNEY'S FEES-

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION



GOLDEN BLOUNT, INC.

Plaintiff,

v.

ROBERT H. PETERSON,

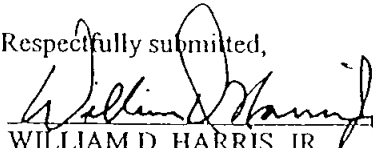
Defendant.

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CIVIL ACTION NO. 3-01-CV-0127-R

APPENDIX IN SUPPORT OF GOLDEN BLOUNT, INC.'S  
APPLICATION FOR ATTORNEY'S FEES

Respectfully submitted,



WILLIAM D. HARRIS, JR.

State Bar No. 09109000

CHARLES W. GAINES

State Bar No. 07570580

Hitt Gaines & Boisbrun, P.C.

225 University Plaza

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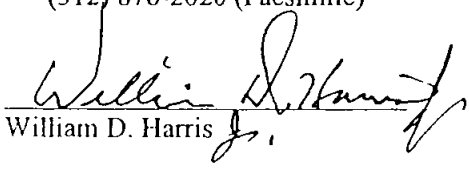
ATTORNEYS FOR PLAINTIFF  
GOLDEN BLOUNT, INC.

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of Golden Blount, Inc.'s Application for Attorneys' Fees were each served upon the following counsel of record, via the delivery methods indicated below, on August 23, 2002.

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Mortimer  
500 W. Madison Street, Suite 3800  
Chicago, IL 60611-2511  
(312) 876-1800  
(312) 876-2020 (Facsimile)

  
William D. Harris

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

GOLDEN BLOUNT, INC.,

Plaintiff,

v.

ROBERT H. PETERSON CO.,

Defendant.

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Civil Action No.

3-01CV0127-R

AFFIDAVIT OF WILLIAM D. HARRIS, JR. ON ATTORNEYS' FEES

STATE OF TEXAS §

§

COUNTY OF DALLAS §

1. I, William D. Harris, Jr., am in excess of twenty-one (21) years of age and legally competent to take this affidavit, which I believe to be true and correct of my personal knowledge.
2. I have legally been licensed to practice law in the State of Texas since 1958 and for District Court of the Northern District of Texas continuously since 1963. During the period from June 1997 until June 15, 2001, I was an attorney and partner in the firm now known as Locke Liddell & Sapp LLP. On June 15, 2001, I became Of counsel to the firm of Hitt Gaines & Boisbrun, P.C., 275 West Campbell Road, Richardson, Texas 75080. The firm of Hitt Gaines & Boisbrun presently includes 11 attorneys. My practice has been predominately in intellectual property matters, including patents, trademarks, copyrights, unfair competition, trade secrets and related matters particularly contested and litigated. I have participated in numerous trials with the

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many of these appearances being made before the Northern District of Texas. A resume is attached as Exhibit 1.

3. I was not involved in the present case until a few weeks after leaving Locke Liddell Sapp, LLP, at which time Locke Liddell released its role as counsel for Golden Blount Inc. and I became substituted in this role. Since then I have been lead counsel for Plaintiff in this case. I became lead counsel only 3 weeks before the close of discovery. This is the first matter that I have handled for Golden Blount.
4. The case is a patent infringement case that presented numerous substantial issues, i.e. claim interpretation, infringement (both literal and by equivalence), wilfulness, questions of propriety of attorney's fees, validity, and file wrapper analysis and study.
5. The case involved a deposition in Chicago and two here in Dallas. Two contested matters were thoroughly briefed and argued before the Magistrate. The parties exchanged interrogatories and document request and document inspection followed.
6. The parties each submitted to the Court extensive Markman briefs.
7. This case was just set for trial in March, 2002 on a four week docket. Despite allowing Golden Blount to spend time preparing for trial, counsel for Defendant announced to this Court that they were not adequately prepared to proceed to trial. The Court was kind enough to grant a continuance, but the result on Golden Blount is it was forced to refresh to prepare for trial a second time in July.
8. The trial took 2 ½ days, but of course preparation was extensive. The Plaintiff submitted several demonstrative exhibits and the Defendant submitted some. Preparation on Plaintiff's part was extensive for preparing the demonstrative evidence as well as marshaling the evidence, facts and subject matter and researching the pertinent law.
9. Attached hereto as Exhibit 2 is a genuine, true and correct copy of the time records of the law firm of Hitt Gaines & Boisbrun with regard to the case at hand. As can be seen on the attached records, I spent 437 hours representing my client in its prosecution of the case. My billing rates during the time of this representation was

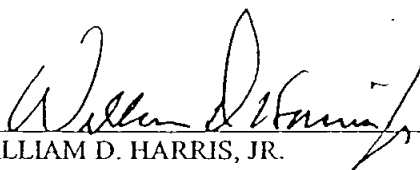
\$350.00 per hour. Additionally, members of the firm billed necessary hours to the case. These individuals include attorneys who encompass a number of years of experience in patent litigation involving matters before both State and Federal Courts, as well as, the International Trade Commission. All of these individual's combined experience in patent matters was utilized in performing the various tasks associated with this case. The number of hours billed and their hourly rates are listed below:

<u>Name</u>	<u>Hours</u>	<u>Hourly Rate</u>
William D. Harris, Jr.	437.00	\$350.00
Charles Gaines	202.8	\$290.00
Greg Parker	492.30	\$175.00
James Ortega	67.50	\$175.00
Carol Garland (Paralegal)	21.60	\$ 75.00
Trudy Magruder (Paralegal)	31.30	\$ 65.00

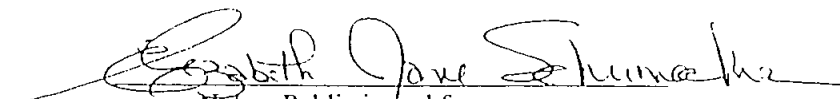
10. I am familiar with the customary fees of this type in Dallas County, Texas. In my opinion, the hours billed by myself and the other members of this firm listed above were reasonable and necessary for proper prosecution of the case. I further believe that the hourly rates for the members of the firm are reasonable in relation to similar services performed at comparable levels of competence by attorneys and paralegals in the Northern District of Texas. Attached hereto as Exhibit 3 is a true and correct copy of the AIPLA Report of Economic Survey, which shows the cost of litigation of this type is customarily more than charged in this case.
11. I have further reviewed the bills and do not believe that there was significant duplication of effort among the members of the firm. In fact, the members of the firm who worked on the case worked as a team who supported each other. Effort was

made to place the most appropriate attorney and/or paralegal on each project so as to maximize the result at minimum cost.

12. During the trial preparation, it was often necessary for counsel to work on the case after hours and on weekends. Due to my representation of Golden Blount, especially during the month of trial, my ability to take on new work or do work for existing clients was impaired, as was the ability of other members of my firm.
13. The results obtained were favorable for my client. The Court assessed damages in the amount of \$435,007.00. The Court also found that the damages should be trebled under 35 U.S.C. § 284. The Court also found that this is an exceptional case under 35 U.S.C. § 285.
14. Therefore, in my opinion, the total value of time and effort expended by the law firm of Hitt, Gaines & Boisbrun of \$313,381.50 was reasonable and necessary for proper prosecution of this case.

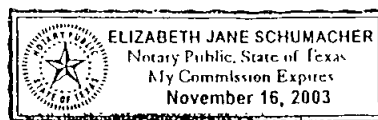
  
WILLIAM D. HARRIS, JR.

BEFORE ME, the undersigned authority, on this 23rd day of August, 2002, personally appeared WILLIAM D. HARRIS, JR., who is personally known to me and who upon his sworn oath, did depose and state the above and subscribed his signature hereto.

  
Notary Public in and for  
The State of Texas

Commission expiration and name:

November 16, 2003



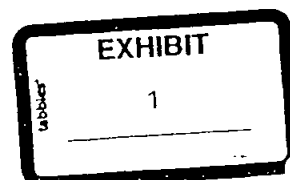
William D. Harris, Jr. ("Bill") (Dallas), quite recently a partner with the firm of Locke Liddell & Sapp LLP, is now of Counsel to the firm of Hitt Gaines & Boisbrun PC. He has been a practicing intellectual property litigator and counsel for almost his entire career. He is a member of the state bars of Texas and Oklahoma. He has represented clients in state and federal courts including the Court of Appeals for the Federal Circuit, as well as the International Trade Commission. Harris is admitted to practice before many district courts, 4 circuit courts, and the U.S. Supreme Court. He started practice in Houston, Texas in 1957 and has been continuously active since then. (The prior year Harris had served briefly as a Patent Examiner.) He received his LL.B in 1957 from the University of Oklahoma, where he was Order of the Coif and Tau Beta Pi. He was Editor-in-Chief of the Oklahoma Law Review, 1956-57. His undergraduate degree is in Chemical Engineering

Recently the Dallas Fort Worth Intellectual Property Law Association presented the Lifetime Achievement Award to Harris. This is the first of these awards the Association has ever given.

He counsels clients in the fields of patent and other intellectual property matters, has advised extensively on questions of infringement, validity and enforceability of patents. He has served as trial counsel in numerous intellectual property lawsuits, mainly involving patents, trademarks, unfair competition and trade secrets. Bill has lectured at various Intellectual Property Institutes and on various occasions as a visiting lecturer for SMU's intellectual property courses. For 4 years he was a member of the Grievance Committee for Dallas, and for 2 years just preceding that he was a member of the first Fee Dispute Committee in Dallas. On the Grievance Committee and the Fee Dispute Committee many questions of ethics and the reasonableness of fees and fee structures were at issue.

In addition, Bill has served as mediator in numerous intellectual property disputes. Also, he has been a court appointed Arbitrator. Additionally, Bill has been an expert witness on several occasions.

Bill is a member of the Litigation and Intellectual Property Law Sections of the American Bar Association and a member of the American Intellectual Property Law Association. He has served as Chairman of the Intellectual Property Law Section of the State Bar of Texas. Bill has lectured at various patent seminars and authored and co-authored several publications, including, *Contracting With Corporate Inventors and Key Personnel*, Proceedings of Southwestern Legal Foundation (November 1997); *Patentee Trial Strategy*, Advanced Intellectual Property Law, State Bar of Texas Professional Development Manual (July 1995); *The ITC As Patent Infringement Forum*, Proceedings of Southwestern Legal Foundation, December 6-7, 1990; *The New Reissue: Reexamination of Patent Claims in Light of New Art*, Patent Law Annual, Southwestern Legal Foundation (1978); and *Justice For Patents*, Patent Law Annual, Southwestern Legal Foundation, (1972).



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JT-APP 0625

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HITT GAINES & BOISBRUN, P.C.  
Slip Listing

Page 1

Selection Criteria

Client (hand select) Include: BLNT-0001LT  
Slip Classification Open  
Slip Date Earliest - Latest  
Slip Transaction Ty 1 - 1

Rate Info - identifies rate source and level

Slip ID	Dates and Time	Attorney Activity	Units DNB Time	Rate Rate Info	Slip Value
	Posting Status	Client	Est. Time	Bill Status	
	Description	File	Variance		
77992	TIME	WDH	2.50	350.00	875.00
8/6/01		Misc	0.00	T@1	
WIP		BLNT-0001LT	0.00		
	Meeting with Mr. Golden Blount. Telecons with Roy Hardin. Interoffice meeting. Follow-up. Not to Elizabeth. Hold this time.		0.00		
77993	TIME	WDH	2.00	350.00	700.00
8/7/01		Draft	0.00	T@1	
WIP		BLNT-0001LT	0.00		
	Draft contingency fee agreement.		0.00		
77994	TIME	WDH	0.00	350.00	0.00
8/9/01		Draft	0.00	T@1	
WIP		BLNT-0001LT	0.00		
	Draft cover letter and further work on contingency agreement.		0.00		
77995	TIME	WDH	1.00	350.00	350.00
8/13/01		Misc	0.00	T@1	
WIP		BLNT-0001LT	0.00		
	Initial prepatory time by WDH.		0.00		
77996	TIME	WDH	1.75	350.00	612.50
8/14/01		Misc	0.00	T@1	
WIP		BLNT-0001LT	0.00		
	Initial survey of invention potential. Negotiations with opposing counsel and reviewing understanding for 30 day extension on discovery issues.		0.00		
77997	TIME	WDH	0.50	350.00	175.00
8/15/01		Misc	0.00	T@1	
WIP		BLNT-0001LT	0.00		
	Further review on faxing the Golden matter.		0.00		
78505	TIME	CWG	12.30	290.00	3567.00
8/15/01	8/31/01	Review	0.00	T@1	
WIP		BLNT-0001LT	0.00		
	Review files and pleadings; office conference with client.		0.00		

EXHIBIT

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Slip ID	Dates and Time Posting Status Description	Attorney Activity Client File	Units DNB Time Est. Time Variance	Rate Rate Info Bill Status	Slip Value
77998	TIME	WDH	0.75	350.00	262.50
	8/17/01	Misc	0.00	T@1	
	WIP	BLNT-0001LT	0.00		
	Finalize motion to extend time and forwarding same to opposing counsel for execution.		0.00		
77999	TIME	WDH	1.00	350.00	350.00
	8/21/01	Review	0.00	T@1	
	WIP	BLNT-0001LT	0.00		
	Review of papers and pleadings. Interoffice conference.		0.00		
78000	TIME	WDH	2.50	350.00	875.00
	8/23/01	Misc	0.00	T@1	
	WIP	BLNT-0001LT	0.00		
	Working on formulating Golden Blount case. Entry of appearance.		0.00		
78001	TIME	WDH	3.50	350.00	1225.00
	8/29/01	Misc	0.00	T@1	
	WIP	BLNT-0001LT	0.00		
	Planning and work on documents.		0.00		
78002	TIME	WDH	1.00	350.00	350.00
	8/30/01	Misc	0.00	T@1	
	WIP	BLNT-0001LT	0.00		
	Planning discovery and document responses.		0.00		
77655	TIME	CAG	1.00	75.00	75.00
	8/30/01	Prepare	0.00	T	
	WIP	BLNT-0001LT	0.00		
	Prepare correspondence to and telephone conference with Optipat requesting certified file wrapper histories on three patent applications; office conference with Liz regarding same.		0.00		
78003	TIME	WDH	0.50	350.00	175.00
	8/31/01	Misc	0.00	T@1	
	WIP	BLNT-0001LT	0.00		
	Study of documents.		0.00		
79834	TIME	JHO	7.70	175.00	1347.50
	9/4/01	Misc	0.00	T@1	
	WIP	BLNT-0001LT	0.00		
	Determine prosecution history and claim interpretation.		0.00		
79473	TIME	WDH	4.00	350.00	1400.00
	9/4/01	Misc	0.00	T@1	
	WIP	BLNT-0001LT	0.00		
	Study of case and preparation for meeting. Meeting with client on		0.00		

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Slip ID	Dates and Time	Attorney Activity	Units	Rate	Slip Value
	Posting Status	Client	DNB Time	Rate Info	
	Description	File	Est. Time	Bill Status	
			Variance		
	Westgrove Lane.				
79835	TIME	JHO	8.80	175.00	1540.00
9/5/01		Misc	0.00	T@1	
WIP		BLNT-0001LT	0.00		
	Determine prosecution history and claim interpretation.		0.00		
79474	TIME	WDH	0.75	350.00	262.50
9/5/01		Misc	0.00	T@1	
WIP		BLNT-0001LT	0.00		
	Follow-up work on damages question, [REDACTED]		0.00		
79836	TIME	JHO	8.90	175.00	1557.50
9/6/01		Misc	0.00	T@1	
WIP		BLNT-0001LT	0.00		
	Determine prosecution history and claim interpretation.		0.00		
79475	TIME	WDH	2.00	350.00	700.00
9/6/01		Misc	0.00	T@1	
WIP		BLNT-0001LT	0.00		
	Work on document production.		0.00		
79615	TIME	CAG	2.00	75.00	150.00
9/7/01		Prepare	0.00	T@1	
WIP		BLNT-0001LT	0.00		
	Prepare documents for production.		0.00		
79838	TIME	JHO	6.90	175.00	1207.50
9/7/01		Misc	0.00	T@1	
WIP		BLNT-0001LT	0.00		
	Determine prosecution history and claim interpretation.		0.00		
79476	TIME	WDH	3.50	350.00	1225.00
9/7/01		Misc	0.00	T@1	
WIP		BLNT-0001LT	0.00		
	Work on document review and classification and [REDACTED]		0.00		
79477	TIME	WDH	5.50	350.00	1925.00
9/8/01		Misc	0.00	T@1	
WIP		BLNT-0001LT	0.00		
	Work on classifying documents and make ready for delivery to opponents.		0.00		
79840	TIME	JHO	9.00	175.00	1575.00
9/10/01		Misc	0.00	T@1	
WIP		BLNT-0001LT	0.00		
	Determine prosecution history and claim interpretation.		0.00		

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Slip ID	Dates and Time Posting Status Description	Attorney Activity Client File	Units DNB Time Est. Time Variance	Rate Rate Info Bill Status	Slip Value
79478	TIME	WDH	3.00	350.00	1050.00
9/10/01		Misc	0.00	T@1	
WIP		BLNT-0001LT	0.00		
	Document production.		0.00		
79841	TIME	JHO	6.60	175.00	1155.00
9/11/01		Misc	0.00	T@1	
WIP		BLNT-0001LT	0.00		
	Determine prosecution history and claim interpretation.		0.00		
79479	TIME	WDH	1.00	350.00	350.00
9/11/01		Misc	0.00	T@1	
WIP		BLNT-0001LT	0.00		
	Document exchange arrangements and telecon with Jerry Selinger.		0.00		
79480	TIME	WDH	0.50	350.00	175.00
9/12/01		Misc	0.00	T@1	
WIP		BLNT-0001LT	0.00		
	Arrangements for discovery scheduling and further document analysis.		0.00		
79842	TIME	JHO	9.70	175.00	1697.50
9/12/01		Misc	0.00	T@1	
WIP		BLNT-0001LT	0.00		
	Determine prosecution history and claim interpretation.		0.00		
79622	TIME	CAG	2.00	75.00	150.00
9/12/01		Prepare	0.00	T@1	
WIP		BLNT-0001LT	0.00		
	Prepare index of and organize documents produced by BLNT.		0.00		
79481	TIME	WDH	3.00	350.00	1050.00
9/13/01		Misc	0.00	T@1	
WIP		BLNT-0001LT	0.00		
	Study of patent claims and infringement problems.		0.00		
79843	TIME	JHO	9.90	175.00	1732.50
9/13/01		Misc	0.00	T@1	
WIP		BLNT-0001LT	0.00		
	Determine prosecution history and claim interpretation.		0.00		
79482	TIME	WDH	0.30	350.00	105.00
9/14/01		Review	0.00	T@1	
WIP		BLNT-0001LT	0.00		
	Review of copy of 'as filed' motion to extend discovery date.		0.00		

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Slip ID	Dates and Time Posting Status Description	Attorney Activity Client File	Units DNB Time Est. Time Variance	Rate Rate Info Bill Status	Slip Value
79483	TIME	WDH	1.00	350.00	350.00
9/19/01		Misc	0.00	T@1	
WIP		BLNT-0001LT	0.00		
	Study of record of prosecution and [REDACTED]		0.00		
79484	TIME	WDH	0.75	350.00	262.50
9/20/01		Misc	0.00	T@1	
WIP		BLNT-0001LT	0.00		
	Telecon with opposing counsel from Chicago in an effort to produce logistic concerning document production and delivery. Follow-up call to defendant's local counsel.		0.00		
79643	TIME	CAG	0.40	75.00	30.00
9/24/01		Revise	0.00	T@1	
WIP		BLNT-0001LT	0.00		
	Revise pleadings index.		0.00		
79485	TIME	WDH	2.00	350.00	700.00
9/24/01		Misc	0.00	T@1	
WIP		BLNT-0001LT	0.00		
	Preliminary review of Peterson documents for [REDACTED]. Formalizing court appearances.		0.00		
79645	TIME	CAG	0.50	75.00	37.50
9/25/01		Draft	0.00	T@1	
WIP		BLNT-0001LT	0.00		
	Draft letter to court filing Notice of Appearances for Messrs. Harris and Gaines.		0.00		
79486	TIME	WDH	2.00	350.00	700.00
9/25/01		Review	0.00	T@1	
WIP		BLNT-0001LT	0.00		
	Review of certain of Peterson documents and planning discovery.		0.00		
79653	TIME	CAG	0.20	75.00	15.00
9/26/01		Revise	0.00	T@1	
WIP		BLNT-0001LT	0.00		
	Revised pleadings index.		0.00		
79487	TIME	WDH	2.50	350.00	875.00
9/26/01		Misc	0.00	T@1	
WIP		BLNT-0001LT	0.00		
	Conference with Charles and preparation for depositions.		0.00		
79658	TIME	CAG	1.10	75.00	82.50
9/27/01		Misc	0.00	T@1	
WIP		BLNT-0001LT	0.00		
	Office conference with Charles W. Gaines		0.00		

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Slip ID Dates and Time Posting Status Description	Attorney Activity Client File	Units DNB Time Est. Time Variance	Rate Rate Info Bill Status	Slip Value
81792 TIME 10/12/01 WIP Execution of Motion in Limine and filing and serving of same.	WDH Misc BLNT-0001LT	2.50 0.00 0.00 0.00	350.00 T@1	875.00
81793 TIME 10/15/01 WIP Review of certain drawings and documents and preparing for meeting with Golden Blount.	WDH Review BLNT-0001LT	2.00 0.00 0.00 0.00	350.00 T@1	700.00
81794 TIME 10/16/01 WIP Preparation for and conference with Golden Blount at his offices and certain follow-up thereafter.	WDH Misc BLNT-0001LT	5.00 0.00 0.00 0.00	350.00 T@1	1750.00
81865 TIME 10/16/01 WIP Meeting at Golden Blount's office.	CWG Meeting BLNT-0001LT	4.50 0.00 0.00 0.00	290.00 T@1	1305.00
81795 TIME 10/19/01 WIP [REDACTED]	WDH Misc BLNT-0001LT	1.00 0.00 0.00 0.00	350.00 T@1	350.00
81759 TIME 10/23/01 WIP Revise pleadings index.	CAG Revise BLNT-0001LT	0.50 0.00 0.00 0.00	75.00 T@1	37.50
81771 TIME 10/26/01 WIP Revise pleadings index.	CAG Revise BLNT-0001LT	0.50 0.00 0.00 0.00	75.00 T@1	37.50
83972 TIME 11/1/01 WIP [REDACTED] [REDACTED] [REDACTED]	WDH Misc BLNT-0001LT	1.20 0.00 0.00 0.00	350.00 T@1	420.00
83735 TIME 11/5/01 WIP Review documents; office conference with Bill Harris regarding [REDACTED].	CWG Review BLNT-0001LT	0.75 0.00 0.00 0.00	290.00 T@1	217.50

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83974	TIME	WDH	3.00	350.00	1050.00
	11/5/01	Misc	0.00	T@1	
	WIP	BLNT-0001LT	0.00		
	Further work and planning strategy.		0.00		
83740	TIME	CWG	0.75	290.00	217.50
	11/6/01	Misc	0.00	T@1	
	WIP	BLNT-0001LT	0.00		
	Conference with Bill Harris regarding [REDACTED]		0.00		
83973	TIME	WDH	5.00	350.00	1750.00
	11/6/01	Misc	0.00	T@1	
	WIP	BLNT-0001LT	0.00		
	Work on [REDACTED] [REDACTED]. Study of claims. Meeting with Charles Gaines [REDACTED] [REDACTED]. Telecons with opposing counsel and with Golden Blount.		0.00		
83975	TIME	WDH	3.00	350.00	1050.00
	11/7/01	Misc	0.00	T@1	
	WIP	BLNT-0001LT	0.00		
	Attention to response to the opposition to our motion in limine.		0.00		
83594	TIME	GHP	2.80	175.00	490.00
	11/9/01	Draft	0.00	T@1	
	WIP	BLNT-0001LT	0.00		
	Draft reply to defendants Response to Motion in Limine.		0.00		
83977	TIME	WDH	2.00	350.00	700.00
	11/9/01	Misc	0.00	T@1	
	WIP	BLNT-0001LT	0.00		
	Further work on Reply.		0.00		
83595	TIME	GHP	1.60	175.00	280.00
	11/11/01	Draft	0.00	T@1	
	WIP	BLNT-0001LT	0.00		
	Draft reply to defendants Response to Motion in Limine.		0.00		
83976	TIME	WDH	2.00	350.00	700.00
	11/12/01	Misc	0.00	T@1	
	WIP	BLNT-0001LT	0.00		
	Work on reply to our opposition to motion in limine.		0.00		
83978	TIME	WDH	2.00	350.00	700.00
	11/13/01	Misc	0.00	T@1	
	WIP	BLNT-0001LT	0.00		
	Telecons with Judge's law coordinator. [REDACTED]		0.00		

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Slip ID	Dates and Time	Attorney Activity Client File	Units DNB Time Est. Time Variance	Rate Rate Info Bill Status	Slip Value
	receiving continuance notice for Judge Stickney's hearing.				
83979	TIME	WDH	1.00	350.00	350.00
	11/15/01	Misc	0.00	T@1	
	WIP	BLNT-0001LT	0.00		
	Attention to revised order for hearing by Magistrate. Conference with Charles Gaines.		0.00		
83512	TIME	CAG	0.50	75.00	37.50
	11/16/01	Revise	0.00	T	
	WIP	BLNT-0001LT	0.00		
	Revise pleadings index.		0.00		
83980	TIME	WDH	1.50	350.00	525.00
	11/19/01	Misc	0.00	T@1	
	WIP	BLNT-0001LT	0.00		
	Preparation for trial		0.00		
83981	TIME	WDH	4.50	350.00	1575.00
	11/26/01	Misc	0.00	T@1	
	WIP	BLNT-0001LT	0.00		
	Preparation for an argument before Magistrate Judge regarding		0.00		
83982	TIME	WDH	1.00	350.00	350.00
	11/27/01	Misc	0.00	T@1	
	WIP	BLNT-0001LT	0.00		
	Follow-up on hearing of November 26 and review of Magistrate Judge's Order.		0.00		
83555	TIME	TAM	0.50	65.00	32.50
	11/28/01	Misc	0.00	T@1	
	WIP	BLNT-0001LT	0.00		
	Update pleadings index.		0.00		
101323	TIME	WDH	0.50	350.00	175.00
	12/3/01	Misc	0.00	T@1	
	WIP	BLNT-0001LT	0.00		
	Preparations for further depositions per Judge's Order.		0.00		
101324	TIME	WDH	1.00	350.00	350.00
	12/4/01	Misc	0.00	T@1	
	WIP	BLNT-0001LT	0.00		
	Preparing for further depositions.		0.00		
101325	TIME	WDH	0.60	350.00	210.00
	12/5/01	Misc	0.00	T@1	
	WIP	BLNT-0001LT	0.00		
	Telecon with Bill McLaughlin in efforts to		0.00		

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Slip ID	Dates and Time	Attorney Activity	Units	Rate	Slip Value
	Posting Status	Client	DNB Time	Rate Info	
	Description	File	Est. Time	Bill Status	
			Variance		
	work out discovery issues and deposition timing.				
101326	TIME	WDH	0.50	350.00	175.00
12/6/01		Misc	0.00	T@1	
WIP		BLNT-0001LT	0.00		
	Telecons with opposing counsel (Bill McLaughlin) concerning timing, and particularly as relates to the McLaughlin deposition and completion of Mr. Bortz's deposition to be held in Dallas.		0.00		
101327	TIME	WDH	0.60	350.00	210.00
12/13/01		Misc	0.00	T@1	
WIP		BLNT-0001LT	0.00		
	Telecon with opposing attorney (McLaughlin) regarding deposition setting and follow-up.		0.00		
101328	TIME	WDH	1.00	350.00	350.00
12/14/01		Misc	0.00	T@1	
WIP		BLNT-0001LT	0.00		
	Telecons with Bill McLaughlin in an effort to finalize 30(b)(6) deposition.		0.00		
101329	TIME	WDH	0.60	350.00	210.00
12/17/01		Misc	0.00	T@1	
WIP		BLNT-0001LT	0.00		
	Notice letter faxed to Bill McLaughlin concerning deposition notice and request for documents. Telecon with Bill McLaughlin.		0.00		
101331	TIME	CWG	1.00	290.00	290.00
12/18/01		Prepare	0.00	T@1	
WIP		BLNT-0001LT	0.00		
	Prepare materials for McLaughlin's deposition.		0.00		
101330	TIME	WDH	2.00	350.00	700.00
12/18/01		Misc	0.00	T@1	
WIP		BLNT-0001LT	0.00		
	Preparations for deposition of Bill McLaughlin and Mr. Bortz.		0.00		
101333	TIME	WDH	6.00	350.00	2100.00
12/19/01		Misc	0.00	T@1	
WIP		BLNT-0001LT	0.00		
	Further preparation for and taking depositions of Mr. McLaughlin and Mr. Bortz.		0.00		
101332	TIME	CWG	6.50	290.00	1885.00
12/19/01		Attend	0.00	T@1	
WIP		BLNT-0001LT	0.00		

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Slip ID Dates and Time Posting Status Description	Attorney Activity Client File	Units DNB Time Est. Time Variance	Rate Rate Info Bill Status	Slip Value
Attend depositions of McLaughlin and Bortz.		0.00		
101334 TIME 12/20/01 WIP Conference with Charles Gaines regarding [REDACTED]	WDH Misc BLNT-0001LT	0.50 0.00 0.00 0.00	350.00 T@1	175.00
101336 TIME 12/21/01 WIP Consideration of presentation of evidence. Telecon with Golden Blount.	WDH Misc BLNT-0001LT	0.80 0.00 0.00 0.00	350.00 T@1	280.00
101335 TIME 12/21/01 WIP Prepare Exhibits.	GHP Prepare BLNT-0001LT	2.40 0.00 0.00 0.00	175.00 T@1	420.00
101337 TIME 12/27/01 WIP Plaintiff's Reply to Defendant's Counterclaim.	GHP Misc BLNT-0001LT	3.10 0.00 0.00 0.00	175.00 T@1	542.50
101338 TIME 12/27/01 WIP Prepare Exhibits.	GHP Prepare BLNT-0001LT	1.10 0.00 0.00 0.00	175.00 T@1	192.50
101339 TIME 12/28/01 WIP Plaintiff's Reply to Defendant's Counterclaim.	GHP Misc BLNT-0001LT	1.10 0.00 0.00 0.00	175.00 T@1	192.50
101340 TIME 12/31/01 WIP Response to Counterclaims.	WDH Misc BLNT-0001LT	1.00 0.00 0.00 0.00	350.00 T@1	350.00
87666 TIME 1/2/02 WIP Research for WDH.	GHP Research BLNT-0001LT	2.10 0.00 0.00 0.00	175.00 T@1	367.50
88076 TIME 1/7/02 WIP Preliminary review of depositions.	WDH Misc BLNT-0001LT	1.00 0.00 0.00 0.00	350.00 T@1	350.00

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87671	TIME			GHP	2.30	175.00	402.50
	1/7/02			Research	0.00	T@1	
	WIP			BLNT-0001LT	0.00		
			Research Disclaimer.		0.00		
87673	TIME			GHP	2.40	175.00	420.00
	1/8/02			Research	0.00	T@1	
	WIP			BLNT-0001LT	0.00		
			Research Disclaimer.		0.00		
88077	TIME			WDH	0.60	350.00	210.00
	1/9/02			Misc	0.00	T@1	
	WIP			BLNT-0001LT	0.00		
			Preparation for trial.		0.00		
87674	TIME			GHP	4.80	175.00	840.00
	1/9/02			Prepare	0.00	T@1	
	WIP			BLNT-0001LT	0.00		
			Prepare Claim Chart Exhibit.		0.00		
88078	TIME			WDH	3.50	350.00	1225.00
	1/10/02			Misc	0.00	T@1	
	WIP			BLNT-0001LT	0.00		
			Preparation and meeting.		0.00		
87678	TIME			GHP	2.10	175.00	367.50
	1/10/02			Misc	0.00	T@1	
	WIP			BLNT-0001LT	0.00		
			Meetings with Golden & Family [REDACTED].		0.00		
88025	TIME			CWG	8.00	290.00	2320.00
	1/10/02			Meeting	0.00	T@1	
	WIP			BLNT-0001LT	0.00		
			Meeting with Golden Blount regarding [REDACTED]; preparation for meeting.		0.00		
88028	TIME			CWG	4.00	290.00	1160.00
	1/13/02			Review	0.00	T@1	
	WIP			BLNT-0001LT	0.00		
			Review deposition.		0.00		
88029	TIME			CWG	3.00	290.00	870.00
	1/14/02			Conference	0.00	T@1	
	WIP			BLNT-0001LT	0.00		
			Conference with Bill Harris regarding [REDACTED]		0.00		
			[REDACTED]				
			[REDACTED]				
87682	TIME			GHP	9.30	175.00	1627.50
	1/14/02			Misc	0.00	T@1	
	WIP			BLNT-0001LT	0.00		
			Discussions with Charles and Bill regarding [REDACTED]		0.00		
			[REDACTED]				
			[REDACTED]				

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88079	TIME	WDH	5.50	350.00	1925.00
	1/14/02	Misc	0.00	T@1	
	WIP	BLNT-0001LT	0.00		
	Work on case. Preparation primarily on [REDACTED] t. Telecon with opposing counsel.				
88041	TIME	CWG	2.00	290.00	580.00
	1/15/02	Teleconference	0.00	T@1	
	WIP	BLNT-0001LT	0.00		
	Telephone conference with John Palaski and follow up office conference with Bill Harris regarding [REDACTED].				
88080	TIME	WDH	5.00	350.00	1750.00
	1/15/02	Misc	0.00	T@1	
	WIP	BLNT-0001LT	0.00		
	Telecon from [REDACTED] Mark-up of the Chicago segment of the Bortz deposition. Conference with co-counsel regarding [REDACTED].				
87689	TIME	GHP	1.70	175.00	297.50
	1/16/02	Review	0.00	T@1	
	WIP	BLNT-0001LT	0.00		
	Review Financial Documents and Other exhibits.				
88081	TIME	WDH	4.00	350.00	1400.00
	1/16/02	Misc	0.00	T@1	
	WIP	BLNT-0001LT	0.00		
	Work on preparation of required Pretrial Disclosures.				
88082	TIME	WDH	5.00	350.00	1750.00
	1/17/02	Review	0.00	T@1	
	WIP	BLNT-0001LT	0.00		
	Review of documents; [REDACTED] exchange of faxes with Bill McLaughlin (opposing counsel) regarding pretrial disclosure schedule and regarding preparation of pretrial order. Initiation of efforts to obtain stipulations from Bill McLaughlin. Consideration of [REDACTED].				
88044	TIME	CWG	5.50	290.00	1595.00
	1/17/02	Review	0.00	T@1	
	WIP	BLNT-0001LT	0.00		
	Review and discuss documents and exhibits for pretrial disclosure.				

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Slip ID	Dates and Time	Attorney Activity	Units	Rate	Slip Value
Posting Status		Client	DNB Time	Rate Info	
Description		File	Est. Time	Bill Status	
			Variance		
87690	TIME	GHP	8.70	175.00	1522.50
1/17/02		Review	0.00	T@1	
WIP		BLNT-0001LT	0.00		
Review Financial Documents and Other exhibits.			0.00		
87691	TIME	GHP	2.20	175.00	385.00
1/18/02		Draft	0.00	T@1	
WIP		BLNT-0001LT	0.00		
Draft Pretrial Disclosure.			0.00		
88083	TIME	WDH	3.00	350.00	1050.00
1/18/02		Review	0.00	T@1	
WIP		BLNT-0001LT	0.00		
Further preparation for pretrial disclosures and pretrial order.			0.00		
88084	TIME	WDH	3.00	350.00	1050.00
1/21/02		Review	0.00	T@1	
WIP		BLNT-0001LT	0.00		
Preparation for trial including further preparation for pretrial disclosures.			0.00		
88049	TIME	CWG	3.00	290.00	870.00
1/21/02		Misc	0.00	T@1	
WIP		BLNT-0001LT	0.00		
Mark depositions for pretrial materials.			0.00		
87692	TIME	GHP	2.90	175.00	507.50
1/21/02		Draft	0.00	T@1	
WIP		BLNT-0001LT	0.00		
Draft Pretrial Disclosure.			0.00		
87901	TIME	TAM	1.00	65.00	65.00
1/22/02		Prepare	0.00	T@1	
WIP		BLNT-0001LT	0.00		
Prepare log of privileged documents.			0.00		
87693	TIME	GHP	3.10	175.00	542.50
1/22/02		Draft	0.00	T@1	
WIP		BLNT-0001LT	0.00		
Draft Pretrial Disclosure/Review Interrogatories.			0.00		
88085	TIME	WDH	4.00	350.00	1400.00
1/23/02		Misc	0.00	T@1	
WIP		BLNT-0001LT	0.00		
Preparation and study relating to pretrial materials and pretrial order. Conference with Greg Parker and brief conference with Charles Gaines.			0.00		

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Slip ID	Dates and Time Posting Status Description	Attorney Activity Client File	Units DNB Time Est. Time Variance	Rate Rate Info Bill Status	Slip Value
87694	TIME	GHP	1.50	175.00	262.50
	1/23/02	Misc	0.00	T@1	
	WIP	BLNT-0001LT	0.00		
	Jury Instructions.		0.00		
88086	TIME	WDH	2.30	350.00	805.00
	1/24/02	Misc	0.00	T@1	
	WIP	BLNT-0001LT	0.00		
	Trial instructions for jury. Preparation time with Greg Parker. Telecons seeking to find status of pretrial disclosures.		0.00		
87698	TIME	GHP	3.40	175.00	595.00
	1/25/02	Misc	0.00	T@1	
	WIP	BLNT-0001LT	0.00		
	Pretrial Order (including Jury Instructions & Voir Dire).		0.00		
88087	TIME	WDH	2.00	350.00	700.00
	1/25/02	Misc	0.00	T@1	
	WIP	BLNT-0001LT	0.00		
	Conferences with Charles Gaines and Greg Parker regarding [REDACTED] [REDACTED]. Telecon with Bill McLaughlin in Chicago. [REDACTED] [REDACTED].		0.00		
88088	TIME	WDH	4.00	350.00	1400.00
	1/28/02	Misc	0.00	T@1	
	WIP	BLNT-0001LT	0.00		
	Preparation for trial.		0.00		
87700	TIME	GHP	4.10	175.00	717.50
	1/28/02	Misc	0.00	T@1	
	WIP	BLNT-0001LT	0.00		
	Pretrial Order & Exhibit List.		0.00		
87902	TIME	TAM	0.50	65.00	32.50
	1/29/02	Misc	0.00	T@1	
	WIP	BLNT-0001LT	0.00		
	Update pleadings index.		0.00		
88089	TIME	WDH	4.00	350.00	1400.00
	1/29/02	Misc	0.00	T@1	
	WIP	BLNT-0001LT	0.00		
	Preparation for trial.		0.00		
88065	TIME	CWG	2.00	290.00	580.00
	1/30/02	Conference	0.00	T@1	
	WIP	BLNT-0001LT	0.00		
	Conferences with Bill Harris and Greg Parker regarding [REDACTED].		0.00		

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	Posting Status	Client	DNB Time	Rate Info	
	Description	File	Est. Time	Bill Status	
			Variance		
88090	TIME	WDH	5.50	350.00	1925.00
	1/30/02	Misc	0.00	T@1	
	WIP	BLNT-0001LT	0.00		
	Trial preparation; Meeting with Mr. Blount.		0.00		
87705	TIME	GHP	4.70	175.00	822.50
	1/31/02	Review	0.00	T@1	
	WIP	BLNT-0001LT	0.00		
	Review/Mark Deposition Designations & Review 30)b)(6) motion.		0.00		
88066	TIME	CWG	3.00	290.00	870.00
	1/31/02	Misc	0.00	T@1	
	WIP	BLNT-0001LT	0.00		
	Begin mark depositions for pretrial designations; conferences with Bill Harris and Greg Parker regarding [REDACTED].		0.00		
88091	TIME	WDH	5.00	350.00	1750.00
	1/31/02	Misc	0.00	T@1	
	WIP	BLNT-0001LT	0.00		
	Preparation for trial.		0.00		
89910	TIME	GHP	6.50	175.00	1137.50
	2/1/02	Prepare	0.00	T@1	
	WIP	BLNT-0001LT	0.00		
	Prepare/Review Portions of Pretrial Order.		0.00		
89703	TIME	TAM	2.50	65.00	162.50
	2/1/02	Prepare	0.00	T@1	
	WIP	BLNT-0001LT	0.00		
	Prepare pre-trial exhibits.		0.00		
90409	TIME	WDH	5.00	350.00	1750.00
	2/1/02	Work on	0.00	T@1	
	WIP	BLNT-0001LT	0.00		
	Work on various parts and subparts of pretrial order and other pretrial materials required by Judge Buchmeyer. Sending initial drafts of foregoing to opposing counsel, as per requirements by Court.		0.00		
89579	TIME	CWG	7.00	290.00	2030.00
	2/2/02	Prepare	0.00	T@1	
	WIP	BLNT-0001LT	0.00		
	Prepare pretrial order; interoffice conference with Bill Harris and Greg Parker regarding [REDACTED].		0.00		
89591	TIME	CWG	3.00	290.00	870.00
	2/4/02	Prepare	0.00	T@1	
	WIP	BLNT-0001LT	0.00		
	Prepare pretrial order and pretrial disclosure materials.		0.00		

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Posting Status		Client	DNB Time	Rate Info	
Description		File	Est. Time	Bill Status	
			Variance		
90410	TIME	WDH	5.00	350.00	1750.00
2/4/02		Work on	0.00	T@1	
WIP		BLNT-0001LT	0.00		
Work on jury charges and special questions for jury. Further work on pretrial order.					
89914	TIME	GHP	3.40	175.00	595.00
2/4/02		Review	0.00	T@1	
WIP		BLNT-0001LT	0.00		
Review Documentation for Preliminary Jury Instructions with William D. Harris, Jr. and Research and Drafting of Jury Instructions.					
89913	TIME	GHP	2.60	175.00	455.00
2/4/02		Prepare	0.00	T@1	
WIP		BLNT-0001LT	0.00		
Prepare/Review Remaining Portions of Pretrial Order.					
89580	TIME	CWG	3.00	290.00	870.00
2/4/02		Prepare	0.00	T@1	
WIP		BLNT-0001LT	0.00		
Prepare pretrial order; interoffice conference with Greg Parker regarding [REDACTED]					
90411	TIME	WDH	4.00	350.00	1400.00
2/5/02		Misc	0.00	T@1	
WIP		BLNT-0001LT	0.00		
[REDACTED] es. Review of McLaughlin's letter pressing for pretrial material drafts and redrafting of response.					
89918	TIME	GHP	2.30	175.00	402.50
2/5/02		Prepare	0.00	T@1	
WIP		BLNT-0001LT	0.00		
Preparation of Objections to Defendants Pretrial Disclosure.					
89592	TIME	CWG	5.00	290.00	1450.00
2/5/02		Prepare	0.00	T@1	
WIP		BLNT-0001LT	0.00		
Prepare pretrial materials.					
89706	TIME	TAM	0.20	65.00	13.00
2/6/02		Misc	0.00	T@1	
WIP		BLNT-0001LT	0.00		
Update pleadings index.					

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89593	TIME	CWG	2.00	290.00	580.00
2/6/02		Prepare	0.00	T@1	
WIP		BLNT-0001LT	0.00		
Prepare pretrial materials.					
90412	TIME	WDH	8.00	350.00	2800.00
2/6/02		Misc	0.00	T@1	
WIP		BLNT-0001LT	0.00		
Numerous letters and pretrial materials to and from opposing counsel, related primary to scheduling order and Judge Buchmeyer's pretrial requirement. Preparation for trial. [REDACTED] with Charles Gaines and Greg Parker.					
89922	TIME	GHP	1.70	175.00	297.50
2/6/02		Draft	0.00	T@1	
WIP		BLNT-0001LT	0.00		
Draft/Review Stipulations of Fact and Explanation of Witnesses.					
89921	TIME	GHP	1.10	175.00	192.50
2/6/02		Review	0.00	T@1	
WIP		BLNT-0001LT	0.00		
Review Defendant's Interrogatories for Completeness.					
89920	TIME	GHP	1.70	175.00	297.50
2/6/02		Misc	0.00	T@1	
WIP		BLNT-0001LT	0.00		
Discussions with William D. Harris, Jr. regarding exhibits, pretrial order, Golden Blount, etc.					
89602	TIME	CWG	6.00	290.00	1740.00
2/7/02		Misc	0.00	T@1	
WIP		BLNT-0001LT	0.00		
Interoffice discussion with Bill Harris regarding [REDACTED]; Telephone conference with Golden Blount; [REDACTED]					
90413	TIME	WDH	5.00	350.00	1750.00
2/7/02		Prepare	0.00	T@1	
WIP		BLNT-0001LT	0.00		
Preparation for pretrial papers, pretrial conference and for trial.					
89925	TIME	GHP	5.20	175.00	910.00
2/7/02		Prepare	0.00	T@1	
WIP		BLNT-0001LT	0.00		
Preparation of Jury Instructions.					

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	Posting Status	Client	DNB Time	Rate Info	
	Description	File	Est. Time	Bill Status	
			Variance		
89927	TIME	GHP	1.90	175.00	332.50
2/8/02		Draft	0.00	T@1	
WIP		BLNT-0001LT	0.00		
	Draft/Review Letters to B. McLaughlin.		0.00		
89606	TIME	CWG	4.00	290.00	1160.00
2/8/02		Prepare	0.00	T@1	
WIP		BLNT-0001LT	0.00		
	Prepare letter to opposing counsel; telephone conference with Mr. Blount regarding [REDACTED]; prepare letter to Mr. Blount regarding [REDACTED]; interoffice conference with Bill Harris.		0.00		
89931	TIME	GHP	2.80	175.00	490.00
2/8/02		Prepare	0.00	T@1	
WIP		BLNT-0001LT	0.00		
	Preparation of Equivalence Chart.		0.00		
89930	TIME	GHP	1.30	175.00	227.50
2/8/02		Prepare	0.00	T@1	
WIP		BLNT-0001LT	0.00		
	Preparation of Jury Instructions.		0.00		
89928	TIME	GHP	3.50	175.00	612.50
2/8/02		Prepare	0.00	T@1	
WIP		BLNT-0001LT	0.00		
	Preparation of Jury Instructions.		0.00		
90414	TIME	WDH	4.00	350.00	1400.00
2/8/02		Prepare	0.00	T@1	
WIP		BLNT-0001LT	0.00		
	Preparation for trial.		0.00		
90415	TIME	WDH	3.00	350.00	1050.00
2/11/02		Work on	0.00	T@1	
WIP		BLNT-0001LT	0.00		
	Work on pretrial order and work on voir dire questions. Conferences with Charles Gaines and Greg Parker. Letter to Bill McLaughlin regarding follow-up request for privilege log. Review of correspondence from Bill McLaughlin.		0.00		
89932	TIME	GHP	6.90	175.00	1207.50
2/11/02		Prepare	0.00	T@1	
WIP		BLNT-0001LT	0.00		
	Preparation of Jury Instructions.		0.00		
89937	TIME	GHP	0.80	175.00	140.00
2/12/02		Misc	0.00	T@1	
WIP		BLNT-0001LT	0.00		
	Strategy discussion with William D. Harris, Jr. regarding [REDACTED]		0.00		

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89621	TIME	CWG	2.00	290.00	580.00
	2/14/02	Revise	0.00	T@1	
	WIP	BLNT-0001LT	0.00		
	Revise Doctrine of Equivalents chart.		0.00		
90417	TIME	WDH	4.00	350.00	1400.00
	2/14/02	Misc	0.00	T@1	
	WIP	BLNT-0001LT	0.00		
	Further preparation for trial. Preparation conference with Charles Gaines.		0.00		
90418	TIME	WDH	5.50	350.00	1925.00
	2/15/02	Prepare	0.00	T@1	
	WIP	BLNT-0001LT	0.00		
	Preparation for trial and numerous telecons.		0.00		
89619	TIME	CWG	1.00	290.00	290.00
	2/15/02	Misc	0.00	T@1	
	WIP	BLNT-0001LT	0.00		
	Interoffice discussion with Bill Harris regarding [REDACTED]		0.00		
89635	TIME	CWG	1.00	290.00	290.00
	2/15/02	Misc	0.00	T@1	
	WIP	BLNT-0001LT	0.00		
	Interoffice conference with Bill Harris regarding [REDACTED]		0.00		
89642	TIME	CWG	1.00	290.00	290.00
	2/18/02	Misc	0.00	T@1	
	WIP	BLNT-0001LT	0.00		
	Interoffice conference regarding [REDACTED]		0.00		
90419	TIME	WDH	5.00	350.00	1750.00
	2/18/02	Continue	0.00	T@1	
	WIP	BLNT-0001LT	0.00		
	Continued preparation for trial.		0.00		
89648	TIME	CWG	1.50	290.00	435.00
	2/19/02	Review	0.00	T@1	
	WIP	BLNT-0001LT	0.00		
	Review draft of Pre-trial Order; telephone conference with opposing counsel; interoffice conference with Greg Parker regarding [REDACTED]		0.00		
89644	TIME	CWG	1.00	290.00	290.00
	2/19/02	Review	0.00	T@1	
	WIP	BLNT-0001LT	0.00		
	Review draft of Jury instructions.		0.00		

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	Posting Status	Client	DNB Time	Rate Info	
	Description	File	Est. Time	Bill Status	
			Variance		
89961	TIME	GHP	1.70	175.00	297.50
2/19/02		Misc	0.00	T@1	
WIP		BLNT-0001LT	0.00		
Incorporate Charles W. Gaines changes into Jury Instructions.					
89962	TIME	GHP	4.20	175.00	735.00
2/19/02		Misc	0.00	T@1	
WIP		BLNT-0001LT	0.00		
Draft/Review Final Pretrial Order.					
90420	TIME	WDH	3.00	350.00	1050.00
2/20/02		Work on	0.00	T@1	
WIP		BLNT-0001LT	0.00		
[REDACTED]					
89965	TIME	GHP	8.30	175.00	1452.50
2/20/02		Misc	0.00	T@1	
WIP		BLNT-0001LT	0.00		
Completion/Filing of Pretrial Order and Pretrial Materials.					
90421	TIME	WDH	2.00	350.00	700.00
2/21/02		Work on	0.00	T@1	
WIP		BLNT-0001LT	0.00		
[REDACTED] Conferences with Charles Gaines and Greg Parker.					
89667	TIME	CWG	1.00	290.00	290.00
2/21/02		Review	0.00	T@1	
WIP		BLNT-0001LT	0.00		
Review draft of Peterson's Jury Charge.					
89970	TIME	GHP	2.10	175.00	367.50
2/22/02		Prepare	0.00	T@1	
WIP		BLNT-0001LT	0.00		
Preparation of Joint Agreed to Motion for Trial by the Court Sitting Without a Jury.					
89973	TIME	GHP	3.40	175.00	595.00
2/25/02		Prepare	0.00	T@1	
WIP		BLNT-0001LT	0.00		
Preparation of Charts for Blnt Trial.					
89847	TIME	GWB	1.00	275.00	275.00
2/25/02		Misc	1.00	T@1	
WIP		BLNT-0001LT	0.00	Do Not Bill	
Interoffice conference regarding claims interpretation [REDACTED]					
89971	TIME	GHP	1.20	175.00	210.00
2/25/02		Misc	0.00	T@1	
WIP		BLNT-0001LT	0.00		

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		Strategy discussion [REDACTED]	0.00		
90422	TIME	WDH	5.00	350.00	1750.00
2/25/02		Misc	0.00	T@1	
WIP		BLNT-0001LT	0.00		
		Further preparation for trial including numerous telecons with Bill McLaughlin and Dean Monco. Follow-up question posed by opposing counsel [REDACTED]	0.00		
89976	TIME	GHP	2.10	175.00	367.50
2/26/02		Misc	0.00	T@1	
WIP		BLNT-0001LT	0.00		
		Strategy discussion with Charles W. Gaines about [REDACTED]	0.00		
90423	TIME	WDH	4.70	350.00	1645.00
2/26/02		Misc	0.00	T@1	
WIP		BLNT-0001LT	0.00		
		Further preparation for trial. [REDACTED]	0.00		
		[REDACTED], including numerous re-wording transmission to opposing counsel. [REDACTED]			
		Planning for pretrial conference.			
89848	TIME	GWB	1.00	275.00	275.00
2/26/02		Misc	1.00	T@1	
WIP		BLNT-0001LT	0.00	Do Not Bill	
		Interoffice conference regarding [REDACTED]	0.00		
89974	TIME	GHP	5.30	175.00	927.50
2/26/02		Prepare	0.00	T@1	
WIP		BLNT-0001LT	0.00		
		Preparing Charts for Blnt Trial.	0.00		
89975	TIME	GHP	1.50	175.00	262.50
2/26/02		Draft	0.00	T@1	
WIP		BLNT-0001LT	0.00		
		Draft Motion/Brief for 60-Day Continuance--Send to opposing counsel.	0.00		
89677	TIME	CWG	2.50	290.00	725.00
2/26/02		Review	0.00	T@1	
WIP		BLNT-0001LT	0.00		
		Review exhibit charts and interoffice	0.00		

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	Posting Status	Client	DNB Time	Rate Info	
	Description	File	Est. Time	Bill Status	
			Variance		
	conference with Greg Parker regarding				
89682	TIME	CWG	7.50	290.00	2175.00
2/27/02		Prepare	0.00	T@1	
WIP		BLNT-0001LT	0.00		
	Prepare claim construction chart.		0.00		
89714	TIME	TAM	0.50	65.00	32.50
2/27/02		Misc	0.00	T@1	
WIP		BLNT-0001LT	0.00		
	Transmittal of documents to co-counsel; service of pleading on opposing counsel.		0.00		
89715	TIME	TAM	0.50	65.00	32.50
2/27/02		Misc	0.00	T@1	
WIP		BLNT-0001LT	0.00		
	Prepare documents for production.		0.00		
89978	TIME	GHP	3.40	175.00	595.00
2/27/02		Prepare	0.00	T@1	
WIP		BLNT-0001LT	0.00		
	Preparing Claims Interp. Chart.		0.00		
89977	TIME	GHP	3.10	175.00	542.50
2/27/02		Prepare	0.00	T@1	
WIP		BLNT-0001LT	0.00		
	Preparing Charts for Blnt Trial.		0.00		
90424	TIME	WDH	2.00	350.00	700.00
2/27/02		Work on	0.00	T@1	
WIP		BLNT-0001LT	0.00		
	Work on 3 motions and numerous calls to council to court and to client.		0.00		
89980	TIME	GHP	1.70	175.00	297.50
2/28/02		Misc	0.00	T@1	
WIP		BLNT-0001LT	0.00		
	Strategy Discussions with William D. Harris, Jr. regarding		0.00		
90425	TIME	WDH	2.00	350.00	700.00
2/28/02		Misc	0.00	T@1	
WIP		BLNT-0001LT	0.00		
	Further work on 3 motions.		0.00		
92050	TIME	CAG	1.00	75.00	75.00
3/1/02		Revise	0.00	T	
WIP		BLNT-0001LT	0.00		
	Revise pleadings index.		0.00		

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Slip ID	Dates and Time	Attorney Activity	Units	Rate	Slip Value
Posting Status		Client	DNB Time	Rate Info	
Description		File	Est. Time	Bill Status	
			Variance		
92492	TIME	WDH	0.50	350.00	175.00
3/4/02		Misc	0.00	T@1	
WIP		BLNT-0001LT	0.00		
Follow-up on motion in limine made by opposing counsel.			0.00		
92493	TIME	WDH	0.30	350.00	105.00
3/5/02		Work on	0.00	T@1	
WIP		BLNT-0001LT	0.00		
Work on pleadings.			0.00		
92169	TIME	TAM	0.20	65.00	13.00
3/5/02		Misc	0.00	T@1	
WIP		BLNT-0001LT	0.00		
Update pleadings index.			0.00		
92494	TIME	WDH	3.50	350.00	1225.00
3/6/02		Review	0.00	T@1	
WIP		BLNT-0001LT	0.00		
Review of depositions to look for [REDACTED]			0.00		
[REDACTED] Further work on our responsive memo.					
92495	TIME	WDH	0.50	350.00	175.00
3/11/02		Misc	0.00	T@1	
WIP		BLNT-0001LT	0.00		
Attention to Motion To Strike.			0.00		
92013	TIME	GHP	0.70	175.00	122.50
3/13/02		Misc	0.00	T@1	
WIP		BLNT-0001LT	0.00		
Strategy discussions with WDH regarding reply to Protective Order.			0.00		
92496	TIME	WDH	3.00	350.00	1050.00
3/13/02		Draft	0.00	T@1	
WIP		BLNT-0001LT	0.00		
Draft and revisions to draft to responsive memo.			0.00		
92016	TIME	GHP	4.80	175.00	840.00
3/14/02		Misc	0.00	T@1	
WIP		BLNT-0001LT	0.00		
Legal Research Regarding Opinion of Counsel Issue.			0.00		
92018	TIME	GHP	5.70	175.00	997.50
3/15/02		Draft	0.00	T@1	
WIP		BLNT-0001LT	0.00		
Draft/Review/File Response to Def. Motion in Limine.			0.00		

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Slip ID	Dates and Time Posting Status Description	Attorney Activity Client File	Units DNB Time Est. Time Variance	Rate Rate Info Bill Status	Slip Value
92497	TIME 3/15/02 WIP Completion of response to motion for protective order.	WDH Misc BLNT-0001LT	5.00 0.00 0.00 0.00	350.00 T@1	1750.00
92172	TIME 3/25/02 WIP Update pleadings index.	TAM Misc BLNT-0001LT	0.20 0.00 0.00 0.00	65.00 T@1	13.00
92498	TIME 3/27/02 WIP Determining the changes needed for meeting the new disclosure of pretrial material (April 19, 2002) and pretrial conference. [REDACTED] [REDACTED] [REDACTED]	WDH Misc BLNT-0001LT	1.00 0.00 0.00 0.00	350.00 T@1	350.00
92499	TIME 3/28/02 WIP [REDACTED] [REDACTED]	WDH Misc BLNT-0001LT	0.40 0.00 0.00 0.00	350.00 T@1	140.00
94597	TIME 4/1/02 WIP Working on findings of fact and review or requirements by Court in the new scheduling order.	WDH Work on BLNT-0001LT	4.00 0.00 0.00 0.00	350.00 T@1	1400.00
94598	TIME 4/2/02 WIP Work on Findings of fact.	WDH Work on BLNT-0001LT	4.00 0.00 0.00 0.00	350.00 T@1	1400.00
94599	TIME 4/15/02 WIP [REDACTED] [REDACTED] [REDACTED]	WDH Misc BLNT-0001LT	2.50 0.00 0.00 0.00	350.00 T@1	875.00
94600	TIME 4/16/02 WIP Work on additional findings of fact and first draft of set of conclusions of law.	WDH Work on BLNT-0001LT	3.00 0.00 0.00 0.00	350.00 T@1	1050.00

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94273 TIME 4/16/02 WIP Research damages issues for William D. Harris.	GHP Research BLNT-0001LT	2.80 0.00 0.00 0.00	175.00 T@1	490.00
94601 TIME 4/17/02 WIP Preparation for trial and preparation of submission to court. Further work on findings of fact and conclusions of law. Study of Markman type for claim interpretation.	WDH Prepare BLNT-0001LT	5.00 0.00 0.00 0.00	350.00 T@1	1750.00
94275 TIME 4/17/02 WIP Formulate claim construction/findings of fact and conclusions of law/research damages convey issue.	GHP Misc BLNT-0001LT	5.10 0.00 0.00 0.00	175.00 T@1	892.50
94280 TIME 4/18/02 WIP Trial brief.	GHP Misc BLNT-0001LT	4.30 0.00 0.00 0.00	175.00 T@1	752.50
94602 TIME 4/18/02 WIP Work on trial brief.	WDH Work on BLNT-0001LT	4.00 0.00 0.00 0.00	350.00 T@1	1400.00
94281 TIME 4/19/02 WIP Complete/Review/File findings of fact and conclusions of law, pretrial order, contested issues of fact and stipulated facts.	GHP Misc BLNT-0001LT	10.30 0.00 0.00 0.00	175.00 T@1	1802.50
94603 TIME 4/19/02 WIP Brief and preparation time on trial brief and on submission of pretrial material including pretrial order.	WDH Misc BLNT-0001LT	7.00 0.00 0.00 0.00	350.00 T@1	2450.00
94604 TIME 4/22/02 WIP Follow-up to pretrial filings and further preparation. Telecon with Golden Blount.	WDH Misc BLNT-0001LT	2.00 0.00 0.00 0.00	350.00 T@1	700.00

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Slip ID	Dates and Time	Posting Status	Description	Attorney Activity Client File	Units DNB Time Est. Time Variance	Rate Rate Info Bill Status	Slip Value
94605	TIME		4/23/02 WIP Preparation for trial.	WDH Prepare BLNT-0001LT	3.00 0.00 0.00	350.00 T@1	1050.00
94420	TIME		4/24/02 WIP Interoffice conference with Bill Harris and Greg Parker regarding [REDACTED]	CWG Misc BLNT-0001LT	2.00 0.00 0.00	290.00 T@1	580.00
94606	TIME		4/24/02 WIP Preparation for trial.	WDH Prepare BLNT-0001LT	3.00 0.00 0.00	350.00 T@1	1050.00
94290	TIME		4/25/02 WIP Preparation of demonstrative evidence.	GHP Prepare BLNT-0001LT	4.10 0.00 0.00	175.00 T@1	717.50
94020	TIME		4/25/02 WIP Obtain copies of cases cited in pre-trial pleadings.	CAG Misc BLNT-0001LT	1.40 0.00 0.00	75.00 T	105.00
94291	TIME		4/25/02 WIP Trial preparation with Charles Gaines and Bill Harris.	GHP Misc BLNT-0001LT	4.30 0.00 0.00	175.00 T@1	752.50
94292	TIME		4/25/02 WIP Read/Review cases in defendant's findings of fact and conclusions of law.	GHP Misc BLNT-0001LT	1.30 0.00 0.00	175.00 T@1	227.50
94423	TIME		4/25/02 WIP Interoffice conference with Bill Harris and Greg Parker regarding [REDACTED] [REDACTED] [REDACTED]	CWG Misc BLNT-0001LT	8.50 0.00 0.00	290.00 T@1	2465.00
94607	TIME		4/25/02 WIP Preparation for trial.	WDH Prepare BLNT-0001LT	4.00 0.00 0.00	350.00 T@1	1400.00

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94608 TIME 4/26/02 WIP Further preparations for trial.	WDH Misc BLNT-0001LT	6.00 0.00 0.00 0.00	350.00 T@1	2100.00
94295 TIME 4/26/02 WIP Continued preparation of demonstrative evidence.	GHP Misc BLNT-0001LT	7.70 0.00 0.00 0.00	175.00 T@1	1347.50
94426 TIME 4/29/02 WIP Interoffice conference with Bill Harris and Greg Parker regarding [REDACTED]y.	CWG Misc BLNT-0001LT	3.00 0.00 0.00 0.00	290.00 T@1	870.00
94609 TIME 4/29/02 WIP Preparation for trial.	WDH Prepare BLNT-0001LT	1.00 0.00 0.00 0.00	350.00 T@1	350.00
94300 TIME 4/29/02 WIP Trial preparation with Charles Gaines and Bill Harris.	GHP Misc BLNT-0001LT	6.20 0.00 0.00 0.00	175.00 T@1	1085.00
94431 TIME 4/30/02 WIP Meeting with Golden Blount regarding [REDACTED]; interoffice conference with Bill Harris regarding [REDACTED] review other pretrial materials.	CWG Misc BLNT-0001LT	4.50 0.00 0.00 0.00	290.00 T@1	1305.00
94301 TIME 4/30/02 WIP Trial preparation with Charles Gaines and Bill Harris.	GHP Misc BLNT-0001LT	9.30 0.00 0.00 0.00	175.00 T@1	1627.50
94610 TIME 4/30/02 WIP Preparation for trial.	WDH Prepare BLNT-0001LT	6.00 0.00 0.00 0.00	350.00 T@1	2100.00
96168 TIME 5/1/02 WIP Prepare trial exhibits and other materials.	CWG Prepare BLNT-0001LT	4.50 0.00 0.00 0.00	290.00 T@1	1305.00

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95647	TIME	GHP	10.70	175.00	1872.50
5/1/02		Misc	0.00	T@1	
WIP		BLNT-0001LT	0.00		
	Trial preparation.		0.00		
98917	TIME	WDH	6.00	350.00	2100.00
5/1/02		Prepare	0.00	T@1	
WIP		BLNT-0001LT	0.00		
	Preparation for trial.		0.00		
95991	TIME	CAG	3.00	75.00	225.00
5/2/02		Misc	0.00	T	
WIP		BLNT-0001LT	0.00		
	Assist with preparation of trial notebooks.		0.00		
96174	TIME	CWG	6.00	290.00	1740.00
5/2/02		Prepare	0.00	T@1	
WIP		BLNT-0001LT	0.00		
	Prepare Golden Blount for trial.		0.00		
96230	TIME	TAM	5.50	65.00	357.50
5/2/02		Prepare	0.00	T@1	
WIP		BLNT-0001LT	0.00		
	Preparation of exhibit notebooks for trial.		0.00		
95649	TIME	GHP	12.40	175.00	2170.00
5/2/02		Misc	0.00	T@1	
WIP		BLNT-0001LT	0.00		
	Trial preparation.		0.00		
98918	TIME	WDH	8.00	350.00	2800.00
5/2/02		Prepare	0.00	T@1	
WIP		BLNT-0001LT	0.00		
	Preparation for trial. Extended meeting with Golden Blount and intense trial preparation.		0.00		
95992	TIME	CAG	3.50	75.00	262.50
5/3/02		Misc	0.00	T	
WIP		BLNT-0001LT	0.00		
	Assist with preparation of trial materials.		0.00		
96175	TIME	CWG	2.00	290.00	580.00
5/3/02		Misc	0.00	T@1	
WIP		BLNT-0001LT	0.00		
	Attend pre-trial conference.		0.00		
95650	TIME	GHP	2.20	175.00	385.00
5/3/02		Misc	0.00	T@1	
WIP		BLNT-0001LT	0.00		
	Preparation for Pretrial Conference.		0.00		

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96231 TIME 5/3/02 WIP Preparation of exhibit notebooks.	TAM Prepare BLNT-0001LT	3.00 0.00 0.00 0.00	65.00 T@1	195.00
95652 TIME 5/3/02 WIP Begin preparation of Markman Brief.	GHP Misc BLNT-0001LT	3.10 0.00 0.00 0.00	175.00 T@1	542.50
95651 TIME 5/3/02 WIP Pretrial conference.	GHP Misc BLNT-0001LT	2.10 0.00 0.00 0.00	175.00 T@1	367.50
98919 TIME 5/3/02 WIP Preparation and attendance at Pretrial Conference. Preliminary considerations on Markman brief.	WDH Prepare BLNT-0001LT	2.00 0.00 0.00 0.00	350.00 T@1	700.00
95653 TIME 5/6/02 WIP Discussions with William D. Harris, Jr. and Charles W. Gaines regarding [REDACTED]	GHP Misc BLNT-0001LT	2.70 0.00 0.00 0.00	175.00 T@1	472.50
96179 TIME 5/6/02 WIP Interoffice conference regarding [REDACTED]	CWG Misc BLNT-0001LT	1.50 0.00 0.00 0.00	290.00 T@1	435.00
95654 TIME 5/7/02 WIP Begin preparation of Markman Brief.	GHP Misc BLNT-0001LT	4.10 0.00 0.00 0.00	175.00 T@1	717.50
98920 TIME 5/8/02 WIP Checking status of Markman brief and inputs.	WDH Misc BLNT-0001LT	0.80 0.00 0.00 0.00	350.00 T@1	280.00
95655 TIME 5/8/02 WIP Preparation of Markman Brief.	GHP Misc BLNT-0001LT	9.70 0.00 0.00 0.00	175.00 T@1	1697.50

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95657	TIME 5/9/02 WIP Preparation of Markman Brief.	GHP Misc BLNT-0001LT	4.30 0.00 0.00 0.00	175.00 T@1	752.50
95659	TIME 5/9/02 WIP Discussions with William D. Harris, Jr. regarding [REDACTED]	GHP Misc BLNT-0001LT	1.30 0.00 0.00 0.00	175.00 T@1	227.50
98921	TIME 5/9/02 WIP Work on Markman brief.	WDH Work on BLNT-0001LT	0.00 0.00 0.00 0.00	350.00 T@1	0.00
98922	TIME 5/10/02 WIP Work on Markman brief.	WDH Work on BLNT-0001LT	3.00 0.00 0.00 0.00	350.00 T@1	1050.00
95660	TIME 5/10/02 WIP Discussions with Charles W. Gaines regarding [REDACTED]	GHP Misc BLNT-0001LT	1.10 0.00 0.00 0.00	175.00 T@1	192.50
95661	TIME 5/10/02 WIP Incorporate William D. Harris, Jr.'s Markman Brief suggestions of May 9, 2002.	GHP Misc BLNT-0001LT	1.80 0.00 0.00 0.00	175.00 T@1	315.00
95662	TIME 5/10/02 WIP [REDACTED]	GHP Review BLNT-0001LT	1.30 0.00 0.00 0.00	175.00 T@1	227.50
95666	TIME 5/13/02 WIP Discuss claim interpretation with William D. Harris, Jr. and make changes.	GHP Misc BLNT-0001LT	2.40 0.00 0.00 0.00	175.00 T@1	420.00
98923	TIME 5/15/02 WIP Work on Markman brief.	WDH Work on BLNT-0001LT	1.00 0.00 0.00 0.00	350.00 T@1	350.00

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95672	TIME	GHP	3.10	175.00	542.50
	5/15/02	Misc	0.00	T@1	
	WIP	BLNT-0001LT	0.00		
	Work on claim interpretation.		0.00		
96208	TIME	CWG	2.50	290.00	725.00
	5/16/02	Misc	0.00	T@1	
	WIP	BLNT-0001LT	0.00		
	Conference with Bill Harris and Greg Parker regarding [REDACTED]		0.00		
95676	TIME	GHP	8.30	175.00	1452.50
	5/16/02	Misc	0.00	T@1	
	WIP	BLNT-0001LT	0.00		
	Discuss claim interpretation with William D. Harris, Jr. and make changes.		0.00		
96232	TIME	TAM	2.00	65.00	130.00
	5/17/02	Misc	0.00	T@1	
	WIP	BLNT-0001LT	0.00		
	Assist in preparation and service of Markman Brief.		0.00		
95678	TIME	GHP	9.10	175.00	1592.50
	5/17/02	Misc	0.00	T@1	
	WIP	BLNT-0001LT	0.00		
	Finalize and file claim interpretation.		0.00		
95679	TIME	GHP	0.90	175.00	157.50
	5/20/02	Misc	0.00	T@1	
	WIP	BLNT-0001LT	0.00		
	Discussions with William D. Harris, Jr. about finalized version of claim interpretation.		0.00		
95684	TIME	GHP	0.80	175.00	140.00
	5/21/02	Misc	0.00	T@1	
	WIP	BLNT-0001LT	0.00		
	Various conversations b/w myself, William D. Harris, Jr. and Charles W. Gaines regarding the [REDACTED]		0.00		
96238	TIME	GHP	2.30	175.00	402.50
	5/28/02	Misc	0.00	T@1	
	WIP	BLNT-0001LT	0.00		
	General discussions regarding the hearing before Magistrate Stickney, as well as [REDACTED]		0.00		
96241	TIME	GHP	6.10	175.00	1067.50
	5/29/02	Misc	0.00	T@1	
	WIP	BLNT-0001LT	0.00		
	Discussions with William D. Harris and Charles W. Gaines regarding [REDACTED]		0.00		

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96224	TIME	CWG	1.00	290.00	290.00
5/30/02		Interoffice	0.00	T@1	
WIP		BLNT-0001LT	0.00		
	Interoffice conference with Bill Harris and Greg Parker regarding		0.00		
96236	TIME	TAM	0.50	65.00	32.50
5/30/02		Misc	0.00	T@1	
WIP		BLNT-0001LT	0.00		
	Locate and obtain copies of case law.		0.00		
96243	TIME	GHP	5.20	175.00	910.00
5/30/02		Draft	0.00	T@1	
WIP		BLNT-0001LT	0.00		
	Draft Markman Reply.		0.00		
96244	TIME	GHP	3.20	175.00	560.00
5/31/02		Prepare	0.00	T@1	
WIP		BLNT-0001LT	0.00		
	Preparation for and hearing before Judge Stickney regarding Bill McLaughlin as a witness.		0.00		
96245	TIME	GHP	6.10	175.00	1067.50
5/31/02		Draft	0.00	T@1	
WIP		BLNT-0001LT	0.00		
	Draft Markman Reply.		0.00		
98182	TIME	GHP	8.20	175.00	1435.00
6/3/02		Draft	0.00	T@1	
WIP		BLNT-0001LT	0.00		
	Draft/Formalize/File Markman Reply.		0.00		
98940	TIME	WDH	7.00	350.00	2450.00
6/3/02		Misc	0.00	T@1	
WIP		BLNT-0001LT	0.00		
	Further work of WDH on Reply Brief and filing of same.		0.00		
98941	TIME	WDH	1.00	350.00	350.00
6/26/02		Prepare	0.00	T@1	
WIP		BLNT-0001LT	0.00		
	Preparation for and conference concerning the start-up of an orderly trial preparation for the trial setting of July 29, 30 and 31.		0.00		
98212	TIME	GHP	0.90	175.00	157.50
6/26/02		Misc	0.00	T@1	
WIP		BLNT-0001LT	0.00		

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	Posting Status	Client	DNB Time	Rate Info	
	Description	File	Est. Time	Bill Status	
			Variance		
	Discussions with William D. Harris, Jr. and Charles W. Gaines regarding [REDACTED]		0.00		
98942	TIME	WDH	1.20	350.00	420.00
6/27/02		Review	0.00	T@1	
WIP		BLNT-0001LT	0.00		
	Review of materials needed and further preparation and the start of deposition summaries of Leslie Bortz and Bill McLaughlin.		0.00		
98218	TIME	GHP	1.40	175.00	245.00
6/27/02		Misc	0.00	T@1	
WIP		BLNT-0001LT	0.00		
	Reingage for Trial Preparation.		0.00		
98943	TIME	WDH	0.30	350.00	105.00
6/28/02		Review	0.00	T@1	
WIP		BLNT-0001LT	0.00		
	Review of defendant's statutory notice of prior art under 35 USC Section 282.		0.00		
101143	TIME	WDH	4.00	350.00	1400.00
7/5/02		Prepare	0.00	T@1	
WIP		BLNT-0001LT	0.00		
	Preparation for and work on forthcoming trial.		0.00		
99991	TIME	TAM	0.20	65.00	13.00
7/12/02		Misc	0.00	T@1	
WIP		BLNT-0001LT	0.00		
	Update pleadings index.		0.00		
100070	TIME	GHP	4.10	175.00	717.50
7/16/02		Misc	0.00	T@1	
WIP		BLNT-0001LT	0.00		
	Trial Preparation -- Exhibits.		0.00		
99994	TIME	TAM	1.00	65.00	65.00
7/16/02		Prepare	0.00	T@1	
WIP		BLNT-0001LT	0.00		
	Prepare submission of exhibits, update exhibits list and notebooks.		0.00		
100073	TIME	GHP	6.10	175.00	1067.50
7/17/02		Misc	0.00	T@1	
WIP		BLNT-0001LT	0.00		
	Trial Preparation -- Review exhibits, finding of facts and conclusions of law, and defendant's exhibits.		0.00		
99995	TIME	TAM	1.00	65.00	65.00
7/17/02		Prepare	0.00	T@1	
WIP		BLNT-0001LT	0.00		

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	Posting Status	Client File	DNB Time	Rate Info	
	Description		Est. Time	Bill Status	
			Variance		
	Finalize exhibit notebooks and arrange for filing.		0.00		
100080	TIME	GHP	3.10	175.00	542.50
7/19/02		Misc	0.00	T@1	
WIP		BLNT-0001LT	0.00		
	Trial Preparation.		0.00		
100081	TIME	GHP	2.90	175.00	507.50
7/21/02		Research	0.00	T@1	
WIP		BLNT-0001LT	0.00		
	Research regarding damages.		0.00		
101144	TIME	WDH	6.50	350.00	2275.00
7/22/02		Misc	0.00	T@1	
WIP		BLNT-0001LT	0.00		
	Study of the McLaughlin and Leslie Bortz depositions [REDACTED]		0.00		
100083	TIME	GHP	11.30	175.00	1977.50
7/22/02		Misc	0.00	T@1	
WIP		BLNT-0001LT	0.00		
	Trial Preparation.		0.00		
99844	TIME	CWG	2.00	290.00	580.00
7/23/02		Misc	0.00	T@1	
WIP		BLNT-0001LT	0.00		
	Discuss case strategy with Greg H. Parker.		0.00		
100084	TIME	GHP	12.70	175.00	2222.50
7/23/02		Misc	0.00	T@1	
WIP		BLNT-0001LT	0.00		
	Trial Preparation.		0.00		
101145	TIME	WDH	5.00	350.00	1750.00
7/23/02		Misc	0.00	T@1	
WIP		BLNT-0001LT	0.00		
	[REDACTED] order to draft an opening statement in the lawsuit.		0.00		
99849	TIME	CWG	2.50	290.00	725.00
7/24/02		Misc	0.00	T@1	
WIP		BLNT-0001LT	0.00		
	Discuss case strategy with Greg H. Parker and Bill Harris.		0.00		
101146	TIME	WDH	5.00	350.00	1750.00
7/24/02		Misc	0.00	T@1	
WIP		BLNT-0001LT	0.00		
	Intense trial preparations.		0.00		

A048

JT-APP 0660



8/22/02  
10:34 AM

HITT GAINES & BOISBRUN, P.C.  
Slip Listing

Page 38

Slip ID	Dates and Time Posting Status Description	Attorney Activity Client File	Units DNB Time Est. Time Variance	Rate Rate Info Bill Status	Slip Value
100085	TIME	GHP	13.70	175.00	2397.50
7/24/02		Misc	0.00	T@1	
WIP		BLNT-0001LT	0.00		
	Trial Preparation.		0.00		
99852	TIME	CWG	2.00	290.00	580.00
7/25/02		Prepare	0.00	T@1	
WIP		BLNT-0001LT	0.00		
	Prepare for trial.		0.00		
101147	TIME	WDH	3.50	350.00	1225.00
7/25/02		Prepare	0.00	T@1	
WIP		BLNT-0001LT	0.00		
	Preparation for trial including interview with Mr. Blount.		0.00		
100086	TIME	GHP	13.90	175.00	2432.50
7/25/02		Misc	0.00	T@1	
WIP		BLNT-0001LT	0.00		
	Trial Preparation.		0.00		
100087	TIME	GHP	14.00	175.00	2450.00
7/26/02		Misc	0.00	T@1	
WIP		BLNT-0001LT	0.00		
	Trial Preparation.		0.00		
99856	TIME	CWG	5.00	290.00	1450.00
7/26/02		Misc	0.00	T@1	
WIP		BLNT-0001LT	0.00		
	Trial preparation.		0.00		
101148	TIME	WDH	5.00	350.00	1750.00
7/26/02		Prepare	0.00	T@1	
WIP		BLNT-0001LT	0.00		
	Preparation for trial.		0.00		
101149	TIME	WDH	4.00	350.00	1400.00
7/27/02		Prepare	0.00	T@1	
WIP		BLNT-0001LT	0.00		
	Preparation for trial including interview with Mr. Blount.		0.00		
99996	TIME	TAM	8.00	65.00	520.00
7/27/02		Misc	0.00	T@1	
WIP		BLNT-0001LT	0.00		
	Assist in preparation of trial, prepare duplicates of defendant's exhibits.		0.00		
99857	TIME	CWG	11.00	290.00	3190.00
7/27/02		Misc	0.00	T@1	
WIP		BLNT-0001LT	0.00		
	Trial preparation.		0.00		

A049

JT-APP 0661

8/22/02  
10:34 AM

HITT GAINES & BOISBRUN, P.C.  
Slip Listing

Page 39

Slip ID	Dates and Time	Attorney Activity	Units	Rate	Slip Value
Posting Status		Client	DNB Time	Rate Info	
Description		File	Est. Time	Bill Status	
			Variance		
100088	TIME	GHP	12.00	175.00	2100.00
7/27/02		Misc	0.00	T@1	
WIP		BLNT-0001LT	0.00		
Trial Preparation.			0.00		
101150	TIME	WDH	4.00	350.00	1400.00
7/28/02		Prepare	0.00	T@1	
WIP		BLNT-0001LT	0.00		
Preparation for trial.			0.00		
99858	TIME	CWG	6.00	290.00	1740.00
7/28/02		Prepare	0.00	T@1	
WIP		BLNT-0001LT	0.00		
Prepare witness materials.			0.00		
99997	TIME	TAM	4.00	65.00	260.00
7/28/02		Misc	0.00	T@1	
WIP		BLNT-0001LT	0.00		
Assist in preparation for trial, prepare trial notebooks.			0.00		
100089	TIME	GHP	9.50	175.00	1662.50
7/28/02		Misc	0.00	T@1	
WIP		BLNT-0001LT	0.00		
Trial Preparation.			0.00		
99859	TIME	CWG	13.00	290.00	3770.00
7/29/02		Misc	0.00	T@1	
WIP		BLNT-0001LT	0.00		
Attend trial and prepare materials for following day.			0.00		
100090	TIME	GHP	15.50	175.00	2712.50
7/29/02		Misc	0.00	T@1	
WIP		BLNT-0001LT	0.00		
Trial.			0.00		
101151	TIME	WDH	10.00	350.00	3500.00
7/29/02		Misc	0.00	T@1	
WIP		BLNT-0001LT	0.00		
Further preparation for trial and participation of first day at trial.			0.00		
101152	TIME	WDH	11.00	350.00	3850.00
7/30/02		Misc	0.00	T@1	
WIP		BLNT-0001LT	0.00		
Further preparation for trial and participation of second day at trial.			0.00		
99860	TIME	CWG	14.00	290.00	4060.00
7/30/02		Misc	0.00	T@1	
WIP		BLNT-0001LT	0.00		
Attend trial and prepare materials for following day.			0.00		

A050

JT-APP 0662

8/22/02  
10:34 AM

HITT GAINES & BOISBRUN, P.C.  
Slip Listing

Page 40

Slip ID Dates and Time Posting Status Description	Attorney Activity Client File	Units DNB Time Est. Time Variance	Rate Rate Info Bill Status	Slip Value
100091 7/30/02 WIP Trial.	TIME GHP Misc BLNT-0001LT	17.10 0.00 0.00 0.00	175.00 T@1	2992.50
100092 7/31/02 WIP Trial.	TIME GHP Misc BLNT-0001LT	7.80 0.00 0.00 0.00	175.00 T@1	1365.00
101153 7/31/02 WIP Early morning preparation for trial and conclusion of trial.	TIME WDH Misc BLNT-0001LT	6.00 0.00 0.00 0.00	350.00 T@1	2100.00
99861 7/31/02 WIP Attend trial.	TIME CWG Misc BLNT-0001LT	5.00 0.00 0.00 0.00	290.00 T@1	1450.00
Grand Total	Billable Unbillable Total	1252.50 2.00 1254.50		313381.50 550.00 313931.50

A051

JT-APP 0663

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

GOLDEN BLOUNT, INC.

Plaintiff,

v.

ROBERT H. PETERSON CO.,

Defendant.

§  
§  
§  
§  
§  
§  
§  
§  
§  
§

CIVIL ACTION NO.  
3-01-CV-0127-R

AFFIDAVIT OF ROY W. HARDIN IN SUPPORT OF PLAINTIFF'S  
APPLICATION FOR ATTORNEYS' FEES PURSUANT TO 35 U.S.C. § 285

BEFORE ME, the undersigned authority, on this day personally appeared Roy W. Hardin, who being duly sworn according to law, did upon his oath depose and say:

1. "My name is Roy W. Hardin. I am over the age of twenty-one (21) years, am of sound mind, have never been convicted of a crime, and am fully competent in all respects to make this Affidavit. I have personal knowledge of the facts stated in this Affidavit

2. "I am an attorney licensed to practice law in the State of Texas. I have been licensed to practice law in the State of Texas for over 25 years. I am familiar with the time and expenses involved in prosecuting and defending patent infringement actions in Dallas, Dallas County, Texas. I am a partner in the law firm of Locke, Liddell & Sapp, L.L.P., which was counsel of record for Golden Blount, Inc. ("Golden Blount") in the above-styled and numbered cause of action.

3. Attached hereto is a genuine, true and correct copy of the time records of the law firm of Locke, Liddell & Sapp, L.L.P. from January 2000 through July 2001 with

AFFIDAVIT OF ROY W. HARDIN IN SUPPORT OF PLAINTIFF'S APPLICATION FOR  
ATTORNEYS' FEES PURSUANT TO 35 U.S.C. § 285 - Page 1 of 2

A052

JT-APP 0664

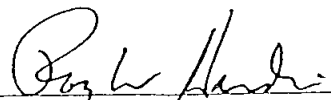
regard to the case at hand. Locke, Liddell & Sapp, L.L.P. has maintained true and correct copies of these documents in its files since they were generated by our office. Members of the Locke, Liddell & Sapp, L.L.P. firm billed the hours to the case. The numbers of hours billed and their hourly rates is listed below:

<u>Name</u>	<u>Hours</u>	<u>Hourly Rate</u>
L. Dan Tucker	1.90	\$325.00
Monty L. Ross	1.50	\$335.00
Roy W. Hardin	22.75	\$350.00 - \$375.00
Charles Phipps	34.00	\$230.00
Michael W. Dubner	20.00	\$135.00


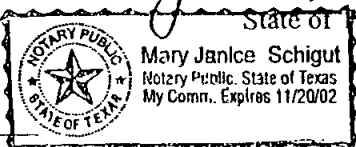
4. "In my opinion, the hours billed by myself and the other members of my firm listed above were reasonable and necessary for proper prosecution of the case. I further believe that the hourly rates for the members of the firm are reasonable in relation to similar services performed at comparable levels of competence by attorneys and paralegals in the Northern District of Texas.

5. "Therefore, in my opinion, the total value of time and effort expended by the law firm of Locke, Liddell & Sapp, L.L.P. of \$18,967.50 was reasonable and necessary for proper prosecution of this case."

FURTHER AFFIANT SAITH NOT.

  
Roy W. Hardin

SUBSCRIBED AND SWORN TO BEFORE ME by the said Roy W. Hardin on this, the 23 day of August, 2002, to certify which witness my official hand and seal of office.

  
Notary Public in and for the  
State of Texas  
  
Mary Janice Schigut  
Notary Public, State of Texas  
My Comm. Expires 11/20/02

My Commission Expires:

AFFIDAVIT OF ROY W. HARDIN IN SUPPORT OF PLAINTIFF'S APPLICATION FOR ATTORNEYS' FEES PURSUANT TO 35 U.S.C. § 285 - Page 2 of 2

A053

JT-APP 0665

LOCKE LIDDELL & SAPP LLP  
ATTORNEYS & COUNSELORS

P. O. Box 911541  
DALLAS, TEXAS 75391-1541  
TAX ID 74-1164324

February 18, 2000

Golden Blount  
4200 West Grove  
Dallas, TX 75248

As of January 31, 2000

File No.: 09842/60434

Re: Gas-Fired Artifl Logs & Coals-Burner Assembly

DATE	SERVICES	ATTY	HOURS	VALUE
12/10/99	Preparation of cease and desist letters.	LDT	1.00	325.00
	TOTAL HOURS		1.00	

TOTAL SERVICES . . . . . \$325.00

DATE	CHARGES	VALUE
	Facsimiles @ 1.00 per page	2.00
	TOTAL CHARGES . . . . .	\$2.00
	TOTAL SERVICES AND CHARGES . . . . .	\$327.00
	TOTAL DUE THIS STATEMENT . . . . .	\$327.00

Please remit payment to:  
Locke Liddell & Sapp LLP  
P. O. Box 911541  
Dallas, Texas 75391-1541

A054

JT-APP 0666

February 18, 2000

Golden Blount  
Page 2

As of January 31, 2000

File No.: 09842/60434

Re: Gas-Fired Artifl Logs & Coals-Burner Assembly

This statement is due upon receipt. Please call Roy W. Hardin (214) 740-8000 of this firm if you have questions concerning legal services covered by it or if you dispute the amount of the statement. Ms. Emily Teague in our Accounting Department (214) 740-8347 can answer questions concerning payments on your account.

Any payment for less than the full amount of this statement tendered in full satisfaction of this statement (or any portion of it) should be sent to: Locke Liddell & Sapp LLP, Attention: Accounts Receivable, 2200 Ross Avenue, Suite 2200, Dallas, Texas 75201-6776

PRIVACY NOTICE

Locke Liddell & Sapp may acquire and collect nonpublic personal information about clients and former clients in the course of providing legal services. Such information may be obtained from the client; may be generated as a result of the services provided; or may be received from third parties involved in, or affiliated with, the services provided.

Locke Liddell & Sapp does not disclose, nor does Locke Liddell & Sapp reserve the right to disclose, any nonpublic personal information about clients or former clients, except as permitted by law.

Locke Liddell & Sapp restricts access to nonpublic personal information to those employees who need to know that information to provide the applicable services. Locke Liddell & Sapp maintains physical, electronic and procedural safeguards that comply with federal regulations to guard the nonpublic personal information of clients and former clients.

JT-APP 0667

A055

LOCKE LIDDELL & SAPP LLP  
ATTORNEYS & COUNSELORS

P. O. Box 911541  
DALLAS, TEXAS 75391-1541  
TAX ID 74-1164324

May 12, 2000

Golden Blount  
4200 West Grove  
Dallas, TX 75248

As of April 30, 2000

File No.: 09842/60434

Re: Gas-Fired Artifl Logs & Coals-Burner Assembly

DATE	SERVICES	ATTY	HOURS	VALUE
03/21/00	Conference with Mr. Blount regarding <del>_____</del>	LDT	.50	175.00
04/26/00	Telephone conference with Mr. Blount and preparation of demand letter to Robert H. Peterson Co.	LDT	.40	140.00
TOTAL HOURS			.90	
TOTAL SERVICES . . . . .				\$315.00
TOTAL DUE THIS STATEMENT . . . . .				\$315.00

Please remit payment to:  
Locke Liddell & Sapp LLP  
P. O. Box 911541  
Dallas, Texas 75391-1541

JT-APP 0668

A056



May 12, 2000

Golden Blount  
Page 2

As of April 30, 2000

File No.: 09842/60434

Re: Gas-Fired Artifl Logs & Coals-Burner Assembly

This statement is due upon receipt. Please call Roy W. Hardin (214) 740-8000 of this firm if you have questions concerning legal services covered by it or if you dispute the amount of the statement. Ms. Emily Teague in our Accounting Department (214) 740-8347 can answer questions concerning payments on your account.

Any payment for less than the full amount of this statement tendered in full satisfaction of this statement (or any portion of it) should be sent to: Locke Liddell & Sapp LLP, Attention: Accounts Receivable, 2200 Ross Avenue, Suite 2200, Dallas, Texas 75201-6776

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JT-APP 0669

A057

LOCKE LIDDELL & SAPP LLP  
ATTORNEYS & COUNSELORS

P. O. BOX 911541  
DALLAS, TEXAS 75391-1541  
TAX ID 74-1164324

October 23, 2000

Golden Blount  
4200 West Grove  
Dallas, TX 75248

As of October 18, 2000

File No.: 09842/60434

Re: Gas-Fired Artifi Logs & Coals-Burner Assembly

DATE	SERVICES	ATTY	HOURS	VALUE
07/14/00	Sketch views of patent drawings; consultation with patent draftman.	MLR	1.50	502.50
10/11/00	Review of file and [REDACTED] on [REDACTED] [REDACTED] [REDACTED]	RWH	1.00	350.00
10/11/00	Begin research for case law to [REDACTED] [REDACTED]	MD	4.00	540.00
10/12/00	Continue research on [REDACTED] [REDACTED] [REDACTED] [REDACTED]	MD	8.25	1,113.75
10/18/00	Prepare Complaint for Patent Infringement--Golden Blount, Inc. v. Robert H. Peterson Company	MD	3.25	438.75
TOTAL HOURS			18.00	
TOTAL SERVICES				\$2,945.00

JT-APP 0670

A058

October 23, 2000

Golden Blount  
Page 2

As of October 18, 2000

File No.: 09842/60434

Re: Gas-Fired Artifl Logs & Coals-Burner Assembly

DATE	CHARGES	VALUE
	Photocopies @.20 per page	8.40
	TOTAL CHARGES . . . . .	\$8.40
	TOTAL SERVICES AND CHARGES . . . . .	\$2,953.40
	TOTAL DUE THIS STATEMENT . . . . .	\$2,953.40

Please remit payment to:  
Locke Liddell & Sapp LLP  
P. O. Box 911541  
Dallas, Texas 75391-1541

This statement is due upon receipt. Please call Roy W. Hardin (214) 740-8000 of this firm if you have questions concerning legal services covered by it or if you dispute the amount of the statement. Ms. Emily Teague in our Accounting Department (214) 740-8347 can answer questions concerning payments on your account.

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JT-APP 0671

A059

Golden Blount  
Page 3

October 23, 2000

A6 of October 18, 2000

File No.: 09842/60434

Re: Gas-Fired Artifl Logs & Coals-Burner Assembly

with, the services provided.

Locke Liddell & Sapp does not disclose, nor does Locke Liddell & Sapp reserve the right to disclose, any nonpublic personal information about clients or former clients, except as permitted by law.

Locke Liddell & Sapp restricts access to nonpublic personal information to those employees who need to know that information to provide the applicable services. Locke Liddell & Sapp maintains physical, electronic and procedural safeguards that comply with federal regulations to guard the nonpublic personal information of clients and former clients.

JT-APP 0672

A060

LOCKE LIDDELL & SAPP LLP  
ATTORNEYS & COUNSELORS

P. O. Box 911541  
DALLAS, TEXAS 75391-1541  
TAX ID 74-1164324

February 21, 2001

Golden Blount  
Golden Blount, Inc.  
4301 Westgrove  
Addison, TX 75001

As of January 31, 2001

File No.: 09842/60434

Re: Gas-Fired Artifl Logs & Coals-Burner Assembly

DATE	SERVICES	ATTY	HOURS	VALUE
10/17/00	Telecon with Mr. Blount and review of information necessary for [REDACTED]	RWH	.50	175.00
11/06/00	Telecon with Golden [REDACTED] [REDACTED]	RWH	.75	262.50
11/06/00	Prepare patent assignment form for assignment of '159 Patent to Golden Blount, Inc.; draft letter to Mr. Blount [REDACTED]	MD	2.00	270.00
11/07/00	Complete assignment of patent application and draft of letter to Mr. Blount concerning [REDACTED]	MD	2.50	337.50
01/08/01	Prepare letter and complaint and send to client for approval.	RWH	3.50	1,312.50
01/09/01	Review of file histories and considering [REDACTED] at [REDACTED]	RWH	3.50	1,312.50

TOTAL HOURS 12.75

TOTAL SERVICES . . . . . \$3,670.00

JT-APP 0673

A061

February 21, 2001

Golden Blount  
Page 2

As of January 31, 2001

File No.: 09842/60434

Re: Gas-Fired Artifl Logs & Coals-Burner Assembly

LESS DISCOUNT (\$1,170.00)  
TOTAL SERVICES BILLED \$2,500.00

DATE	CHARGES	VALUE
		19.66
	Air Freight Shipments	13.00
	Messenger Services	9.80
	Photocopies @.20 per page	40.00
12/22/00	Comm. of Patents & Trademarks - Recordal of Assignment	150.00
01/18/01	Clerk, U.S. District Court - Filing fee for Complaint	
	TOTAL CHARGES	\$232.46
	TOTAL SERVICES AND CHARGES	\$2,732.46
	TOTAL DUE THIS STATEMENT	\$2,732.46

Please remit payment to:  
Locke Liddell & Sapp LLP  
P. O. Box 911541  
Dallas, Texas 75391-1541

This statement is due upon receipt. Please call Roy W. Hardin (214) 740-8000 of this firm if you have questions concerning legal services covered by it or if you dispute the amount of the statement. Ms. Emily Teague in our Accounting Department (214) 740-8347 can answer questions concerning payments on your account.

Any payment for less than the full amount of this statement tendered in full satisfaction of this statement (or any portion of it) should be sent to: Locke Liddell & Sapp LLP, Attention: Accounts Receivable, 2200 Ross Avenue, Suite 2200, Dallas, Texas 75201-6776

JT-APP 0674

A062

February 21, 2001

Golden Blount

Page 3

As of January 31, 2001

File No.: 09842/60434

Re: Gas-Fired Artifl Logs & Coals-Burner Assembly

PRIVACY NOTICE

Locke Liddell & Sapp may acquire and collect nonpublic personal information about clients and former clients in the course of providing legal services. Such information may be obtained from the client; may be generated as a result of the services provided; or may be received from third parties involved in, or affiliated with, the services provided.

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JT-APP 0675

A063

LOCKE LIDDELL & SAPP LLP  
ATTORNEYS & COUNSELORS

P. O. Box 911541  
DALLAS, TEXAS 75391-1541  
TAX ID 74-1164324

March 13, 2001

Golden Blount  
Golden Blount, Inc.  
4301 Westgrove  
Addison, TX 75001

As of February 28, 2001

File No.: 09842/79075

Re: Golden Blount, Inc. v. Robert H. Peterson Co.

DATE	CHARGES	VALUE
	Messenger Services	26.00
	TOTAL CHARGES . . . . .	\$26.00
	TOTAL DUE THIS STATEMENT . . . . .	\$26.00

Please remit payment to:  
Locke Liddell & Sapp LLP  
P. O. Box 911541  
Dallas, Texas 75391-1541

This statement is due upon receipt. Please call Roy W. Hardin (214) 740-8000 of this firm if you have questions concerning legal services covered by it or if you dispute the amount of the statement. Ms. Emily Teague in our Accounting Department (214) 740-8347 can answer questions concerning payments on your account.

Any payment for less than the full amount of this statement tendered in full satisfaction of this statement (or any portion of it) should be sent to: Locke Liddell & Sapp LLP, Attention: Accounts Receivable, 2200 Ross Avenue, Suite 2200, Dallas, Texas 75201-6776

7064

JT-APP 0676



Golden Blount  
Page 2

March 13, 2001

As of February 28, 2001

File No.: 09842/79075

Re: Golden Blount, Inc. v. Robert H. Peterson Co.

PRIVACY NOTICE

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JT-APP 0677

A065

LOCKE LIDDELL & SAPP LLP  
ATTORNEYS & COUNSELORS

P. O. BOX 911541  
DALLAS, TEXAS 75391-1541  
TAX ID 74-1164324

May 15, 2001

Golden Blount  
Golden Blount, Inc.  
4301 Westgrove  
Addison, TX 75001

File No.: 09842/79075

Re: Golden Blount, Inc. v. Robert H. Peterson Co.

DATE	SERVICES	ATTY	HOURS	VALUE
03/28/01	Review of Judge's Scheduling Order and conference regarding [REDACTED] [REDACTED] [REDACTED]	RWH	2.00	750.00
04/09/01	Review files and correspondence concerning the present action; discuss [REDACTED] with Roy Hardin; draft discovery requests.	CEP	2.00	460.00
04/10/01	Review pleadings and correspondence concerning the present action; review United State patent 5,988,159; draft discovery requests including document requests and interrogatories.	CEP	5.00	1,150.00
04/11/01	Review of proposed discovery requests	RWH	1.00	375.00
04/11/01	Revise drafts of Golden Blount's document requests and interrogatories to Robert Peterson Co.	CEP	1.00	230.00
04/12/01	Revise Golden Blount's document requests and interrogatories to Robert Peterson Co. in view of [REDACTED] [REDACTED]	CEP	1.00	230.00
04/17/01	Letter to client and service of first wave of discovery.	RWH	.50	187.50
TOTAL HOURS			12.50	

JT-APP 0678

A066

May 15, 2001

Golden Blount  
Page 2

File No.: 09842/79075

Re: Golden Blount, Inc. v. Robert H. Peterson Co.

TOTAL SERVICES . . . . . \$3,382.50

DATE	CHARGES	VALUE
	Photocopies @.20 per page	9.60
	Facsimiles @ 1.00 per page	24.00
	TOTAL CHARGES . . . . .	\$33.60
	TOTAL SERVICES AND CHARGES . . . . .	\$3,416.10
	TOTAL DUE THIS STATEMENT . . . . .	\$3,416.10

Please remit payment to:  
Locke Liddell & Sapp LLP  
P. O. Box 911541  
Dallas, Texas 75391-1541

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JT-APP-0679

A067

May 15, 2001

Golden Blount  
Page 3

File No.: 09842/79075

Re: Golden Blount, Inc. v. Robert H. Peterson Co.

with, the services provided.

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JT-APP 0680

A068

LOCKE LIDDELL & SAPP LLP  
ATTORNEYS & COUNSELORS

P. O. Box 911541  
DALLAS, TEXAS 75391-1541  
TAX ID 74-1164324

June 19, 2001

Golden Blount  
Golden Blount, Inc.  
4301 Westgrove  
Addison, TX 75001

As of May 31, 2001

File No.: 09842/79075

Re: Golden Blount, Inc. v. Robert H. Peterson Co.

DATE	SERVICES	ATTY	HOURS	VALUE
05/17/01	Attention to Scheduling Order and considering [REDACTED]; preparing and transmitting proposed form of Joint Status Conference paper to opposing counsel.	RWH	2.00	750.00
05/18/01	Attention to corrected joint report; telecon with opposing counsel.	RWH	.75	281.25
05/22/01	[REDACTED]	CEP	.50	115.00
05/23/01	Review discovery responses of Defendant Robert H. Peterson Co.; draft correspondence concerning same.	CEP	1.00	230.00
05/29/01	Review discovery requests of Defendant Robert Peterson to Plaintiff Golden Blount; draft written discovery responses of Plaintiff Golden Blount; [REDACTED]	CEP	4.00	920.00
05/30/01	Revise written discovery responses of Plaintiff Golden Blount.	CEP	2.00	460.00
TOTAL HOURS			10.25	
TOTAL SERVICES . . . . .				\$2,756.25

JT-APP 0681

A069

Golden Blount  
Page 2

June 19, 2001

As of May 31, 2001

File No.: 09842/79075

Re: Golden Blount, Inc. v. Robert H. Peterson Co.

DATE	CHARGES	VALUE
	Messenger Services	40.00
	Postage	5.63
	Photocopies @ .20 per page	10.00
	Facsimiles @ 1.00 per page	10.00
	TOTAL CHARGES . . . . .	\$65.63
	TOTAL SERVICES AND CHARGES . . . . .	\$2,821.88
	TOTAL DUE THIS STATEMENT . . . . .	\$2,821.88

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P. O. Box 911541  
Dallas, Texas 75391-1541

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JT-APP 0682

A070-

Golden Blount  
Page 3

June 19, 2001

As of May 31, 2001

File No.: 09842/79075

Re: Golden Blount, Inc. v. Robert H. Peterson Co.

with, the services provided.

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JT-APP 0683

A071

LOCKE LIDDELL & SAPP LLP  
ATTORNEYS & COUNSELORS

P. O. Box 911541  
DALLAS, TEXAS 75391-1541  
TAX ID 74-1164324

July 17, 2001

Golden Blount  
Golden Blount, Inc.  
4301 Westgrove  
Addison, TX 75001

As of June 30, 2002

File No.: 09842/79075

Re: Golden Blount, Inc. v. Robert H. Peterson Co.

DATE	SERVICES	ATTY	HOURS	VALUE
06/01/01	[REDACTED]; draft proposed Protective Order; revise draft of Golden Blount's response to RHP's discovery requests.	CEP	3.00	690.00
06/04/01	Attention to proposed Protective Order; [REDACTED]	RWH	.50	187.50
06/04/01	Draft Protective Order; [REDACTED]; draft joint motion for discovery of the agreed protective order; draft correspondence concerning the present action; revise draft of Golden Blount's response to RHP's document requests; revise draft of Golden Blount's response to RHP's Interrogatories; [REDACTED]	CEP	6.00	1,380.00
06/06/01	Prepare for meeting with client regarding [REDACTED]	RWH	.50	187.50
06/13/01	Review prosecution history of patent in suit; [REDACTED]	CEP	5.00	1,150.00

JT-APP 0684

A072



July 17, 2001

File No.: 09842/79075

Re: Golden Blount, Inc. v. Robert H. Peterson Co.

TOTAL HOURS	22.00
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TOTAL SERVICES . . . . .	\$5,712.50
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DATE	CHARGES	VALUE
	Air Freight Shipments	11.14
	Messenger Services	20.00
	Postage	24.50

**JT-APP 0685**

A073

July 17, 2001

Golden Blount  
Page 3

As of June 30, 2002

File No.: 09842/79075

Re: Golden Blount, Inc. v. Robert H. Peterson Co.

DATE	CHARGES	VALUE
	Photocopies @.20 per page	158.80
	Facsimiles @ 1.00 per page	46.00
06/27/01	Computerized Research - Dialog (05/01)	24.21
	TOTAL CHARGES . . . . .	\$284.65
	TOTAL SERVICES AND CHARGES . . . . .	\$5,997.15
	TOTAL DUE THIS STATEMENT . . . . .	\$5,997.15

Please remit payment to:  
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P. O. Box 911541  
Dallas, Texas 75391-1541

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JT-APP 0686

A074

Golden Blount  
Page 4

July 17, 2001

As of June 30, 2002

File No.: 09842/79075

Re: Golden Blount, Inc. v. Robert H. Peterson Co.

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JT-APP 0687

A075

LOCKE LIDDELL & SAPP LLP  
ATTORNEYS & COUNSELORS

P. O. Box 911541  
DALLAS, TEXAS 75391-1541  
TAX ID 74-1164324

August 14, 2001

Golden Blount  
Golden Blount, Inc.  
4301 Westgrove  
Addison, TX 75001

As of July 31, 2001

File No.: 09842/79075

Re: Golden Blount, Inc. v. Robert H. Peterson Co.

DATE	SERVICES	ATTY	HOURS	VALUE
07/19/01	[REDACTED] a [REDACTED], call to opposing counsel regarding discovery matters.	RWH	.25	93.75
07/24/01	Review of Peterson claims regarding [REDACTED] to [REDACTED] it.	RWH	1.50	562.50
07/24/01	Telecon with opposing counsel to inquire whether Peterson to take product off market; [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]	RWH	.50	187.50
07/31/01	Telecon with opposing counsel regarding position of defendants on invalidity.	RWH	.50	187.50
TOTAL HOURS			2.75	

TOTAL SERVICES . . . . . \$1,031.25

TOTAL DUE THIS STATEMENT . . . . . \$1,031.25

JT-APP 0688

A076

August 14, 2001

Golden Blount  
Page 2

As of July 31, 2001

File No.: 09842/79075

Re: Golden Blount, Inc. v. Robert H. Peterson Co.

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Locke Liddell & Sapp LLP  
P. O. Box 911541  
Dallas, Texas 75391-1541

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JT-APP 0689

A077

**SUMMARY OF LOCKE, LIDDELL, & SAPP, LLP BILLING**  
(From January, 2000 to July, 2001)

<b>FEE EARNER</b>	<b>TOTAL HOURS</b>	<b>BILLING RATE</b>
L. Dan Tucker	1.90	\$325.00
Monty L. Ross	1.50	\$335.00
Roy W. Hardin	22.75	\$350.00 - \$375.00
Michael W. Dubner	20.00	\$135.00
Charles Phipps	34.00	\$130.00
<b>Total:</b>	<b>80.15 hours</b>	<b>\$18,967.50</b>

**SUMMARY OF HITT, GAINES, & BOISBURN, P.C. BILLING**  
(From August, 2001 to August, 2002)

<b>FEE EARNER</b>	<b>TOTAL HOURS</b>	<b>BILLING RATE</b>
William D. Harris	437.00	\$350.00
Charles W. Gaines	202.80	\$290.00
Greg H. Parker	492.30	\$175.00
James Ortega	67.50	\$175.00
Carol Garland (Paralegal)	21.60	\$75.00
Trudy McGruder (Paralegal)	31.30	\$65.00
<b>Total:</b>	<b>1252.50 hours</b>	<b>\$313,381.50</b>

JT-APP 0690

A078

# **AIPLA**

## **Report of Economic Survey**

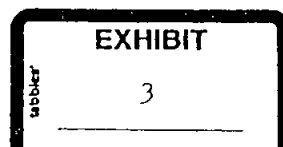
### **2001**

PREPARED UNDER DIRECTION OF  
LAW PRACTICE MANAGEMENT COMMITTEE

American Intellectual Property Law Association

2001 Jefferson Davis Highway, Suite 203  
Arlington, Virginia 22202  
[www.aipla.org](http://www.aipla.org)

JT-APP 0691



A007

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Arlington, Virginia 22202-3694  
(703) 415-0780  
[www.aipla.org](http://www.aipla.org)

A008

JT-APP 0692



Table 165: Average Hourly Billing Rate by Type Of Practice and Location of Primary Place of Work

	Total Survey	Location of Respondent's Primary Place of Work										
		Boston Area	NYC Area	Philadelphia-Wilmington	Washington DC Area	Other East	Metro Southeast	Other Southeast	Chicago Area	Minneapolis-St. Paul	Other Central	California Texas
ALL PRIVATE PRACTICE												
Number Reporting	1088	40	61	36	221	75	41	14	79	50	192	83
% of total		4%	6%	3%	20%	7%	4%	1%	7%	5%	18%	8%
75th percentile	\$300	\$390	\$375	\$280	\$316	\$280	\$275	\$245	\$300	\$270	\$230	\$300
Median	\$240	\$325	\$320	\$250	\$256	\$220	\$220	\$193	\$250	\$218	\$195	\$240
25th percentile	\$198	\$245	\$265	\$213	\$215	\$180	\$165	\$170	\$205	\$180	\$160	\$200
Average	\$252	\$321	\$331	\$252	\$269	\$230	\$232	\$216	\$256	\$223	\$202	\$253
PARTNERS												
Number Reporting	522	21	33	22	92	36	20	6	46	22	102	29
% of total		4%	6%	4%	18%	7%	4%	1%	9%	4%	20%	6%
75th percentile	\$340	\$440	\$440	\$325	\$358	\$292	\$325	\$200	\$320	\$300	\$250	\$350
Median	\$280	\$385	\$370	\$270	\$316	\$250	\$250	\$200	\$290	\$273	\$225	\$300
25th percentile	\$230	\$350	\$320	\$250	\$270	\$200	\$222	\$180	\$260	\$230	\$195	\$260
Average	\$290	\$386	\$395	\$281	\$317	\$255	\$269	\$201	\$294	\$267	\$229	\$307
ASSOCIATES												
Number Reporting	391	14	25	9	95	18	14	3	26	24	69	35
% of total		4%	6%	2%	24%	5%	4%	1%	7%	6%	18%	9%
75th percentile	\$240	\$275	\$300	\$210	\$250	\$215	\$210		\$220	\$220	\$180	\$250
Median	\$200	\$238	\$250	\$210	\$215	\$178	\$165	\$170	\$200	\$183	\$160	\$215
25th percentile	\$168	\$225	\$220	\$170	\$185	\$155	\$150		\$175	\$160	\$145	\$190
Average	\$206	\$242	\$257	\$195	\$219	\$185	\$173	\$168	\$198	\$191	\$166	\$216
OF COUNSEL												
Number Reporting	66	1	3	2	20	8	3	1	3	1	8	5
% of total		2%	5%	3%	30%	12%	5%	2%	5%	2%	12%	8%
75th percentile	\$325				\$320	\$325			\$240		\$235	\$326
Median	\$278		\$325		\$278	\$290	\$276				\$214	\$280
25th percentile	\$240				\$250	\$230					\$160	\$240
Average	\$277		\$252	\$250	\$287	\$268	\$283		\$235		\$207	\$283
SOLO PRACTITIONERS												
Number Reporting	109	4	0	3	14	13	4	4	4	3	13	14
% of total		4%	-	3%	13%	12%	4%	4%	4%	3%	12%	13%
75th percentile	\$250				\$300	\$210			\$200		\$200	\$275
Median	\$200	\$240		\$225	\$240	\$180	\$175	\$200		\$150	\$180	\$200
25th percentile	\$165				\$225	\$165					\$150	\$185
Average	\$220	\$241		\$212	\$265	\$200	\$210	\$230	\$206	\$163	\$178	\$223

# 17b. Hourly Billing Rate by Type of Practice and Years of Experience

	Total Survey	RESPONDENT'S YEARS OF INTELLECTUAL PROPERTY LAW EXPERIENCE										35- 39	40 or More
		Less than 5	5-6	7-9	10- 14	15- 19	20- 24	25- 29	30- 34	35- 39			
ALL PRIVATE PRACTICE													
Number Reporting % of total	1088	176 16%	140 13%	133 12%	164 15%	107 10%	92 8%	74 7%	60 6%	62 6%	72 7%		
75th percentile													
Median	\$300	\$215	\$240	\$280	\$300	\$340	\$315	\$365	\$365	\$350	\$368		
25th percentile	\$240	\$180	\$210	\$235	\$240	\$290	\$275	\$288	\$284	\$300	\$300		
Average	\$198	\$150	\$175	\$200	\$210	\$240	\$223	\$225	\$250	\$230	\$228		
	\$252	\$188	\$214	\$236	\$256	\$292	\$275	\$296	\$297	\$301	\$294		
PARTNERS													
Number Reporting % of total	522	6 1%	17 3%	60 11%	106 20%	88 17%	66 13%	55 11%	46 9%	38 7%	40 8%		
75th percentile													
Median	\$340	\$205	\$250	\$270	\$310	\$350	\$325	\$375	\$375	\$380	\$380		
25th percentile	\$280	\$173	\$220	\$238	\$250	\$300	\$280	\$305	\$313	\$300	\$325		
Average	\$230	\$135	\$200	\$200	\$210	\$255	\$250	\$245	\$260	\$275	\$250		
	\$290	\$182	\$236	\$237	\$267	\$305	\$291	\$320	\$319	\$329	\$322		
ASSOCIATES													
Number Reporting % of total	391	165 42%	115 29%	59 15%	33 8%	5 1%	5 1%	0 -	1 0%	1 0%	0 -		
75th percentile													
Median	\$240	\$215	\$240	\$260	\$270	\$250	\$210	-	-	-	-		
25th percentile	\$200	\$180	\$210	\$225	\$240	\$235	\$205	-	-	-	-		
Average	\$168	\$150	\$175	\$195	\$215	\$200	\$165	-	-	-	-		
	\$206	\$189	\$211	\$227	\$242	\$230	\$193	-	-	-	-		
OF COUNSEL													
Number Reporting % of total	66	0 -	3 5%	7 11%	8 12%	7 11%	6 9%	4 6%	7 11%	11 17%	12 18%		
75th percentile													
Median	\$325	-	-	\$320	\$273	\$350	\$327	\$224	\$280	\$375	\$325		
25th percentile	\$278	-	\$220	\$300	\$250	\$275	\$310	-	\$251	\$325	\$300		
Average	\$240	-	-	\$290	\$240	\$216	\$250	-	\$231	\$250	\$240		
	\$277	-	\$238	\$304	\$259	\$275	\$298	\$222	\$263	\$316	\$278		
SOLO PRACTITIONERS													
Number Reporting % of total	109	5 5%	5 5%	7 6%	17 16%	7 6%	15 14%	15 14%	6 6%	12 11%	20 18%		
75th percentile													
Median	\$250	\$175	\$190	\$280	\$250	\$225	\$250	\$300	\$235	\$275	\$295		
25th percentile	\$200	\$150	\$180	\$225	\$200	\$195	\$200	\$225	\$200	\$188	\$235		
Average	\$165	\$150	\$165	\$185	\$165	\$150	\$185	\$195	\$165	\$150	\$183		
	\$220	\$150	\$150	---	---	---	---	---	---	\$208	\$250		

A010

Table 22. Estimated Costs of Litigation, by Location of Primary Place of Work

	Total Survey	Location of Respondent's Primary Place of Work											
		Boston Area	NYC Area	Philadelphia- Wilmington	Washington DC Area	Other East	Metro Southeast	Other Southeast	Chicago Area	Minneapolis- St. Paul	Other Central	California	Other West
THOUSANDS OF DOLLARS													
ESTIMATE OF TOTAL COST, THROUGH END OF DISCOVERY AND INCLUSIVE, IN A PATENT INFRINGEMENT SUIT LESS THAN \$1 MILLION AT RISK													
End of discovery													
Number Reporting	250	13	13	7	30	27	15	7	21	8	55	24	14
% of total		5%	5%	3%	12%	11%	6%	3%	8%	3%	22%	10%	6%
75th percentile	\$451	\$601	\$499	\$399	\$499	\$500	\$449	\$249	\$501	\$700	\$298	\$450	\$400
Median	\$250	\$499	\$251	\$301	\$299	\$299	\$250	\$150	\$350	\$275	\$201	\$225	\$213
25th percentile	\$151	\$249	\$199	\$176	\$198	\$151	\$126	\$52	\$250	\$163	\$148	\$102	\$75
Inclusive, all costs													
Number Reporting	242	12	13	7	30	27	15	7	21	7	51	22	14
% of total		5%	5%	3%	12%	11%	6%	3%	9%	3%	21%	9%	6%
75th percentile	\$750	\$1,050	\$752	\$749	\$800	\$999	\$599	\$398	\$1,001	\$1,499	\$501	\$700	\$900
Median	\$499	\$750	\$501	\$451	\$502	\$600	\$498	\$251	\$600	\$400	\$400	\$450	\$325
25th percentile	\$301	\$450	\$301	\$376	\$398	\$399	\$252	\$101	\$451	\$202	\$252	\$350	\$150
\$1-\$25 MILLION AT RISK													
End of discovery													
Number Reporting	299	17	15	10	40	33	16	7	23	7	61	31	16
% of total		6%	5%	3%	13%	11%	5%	2%	8%	2%	20%	10%	5%
75th percentile	\$1,495	\$1,703	\$1,496	\$1,400	\$1,500	\$1,499	\$1,000	\$998	\$1,503	\$998	\$755	\$1,504	\$1,500
Median	\$797	\$1,497	\$996	\$900	\$900	\$798	\$625	\$500	\$1,001	\$500	\$505	\$998	\$1,000
25th percentile	\$496	\$898	\$504	\$450	\$550	\$348	\$265	\$203	\$504	\$299	\$400	\$453	\$390
Inclusive, all costs													
Number Reporting	295	15	15	10	40	33	17	7	23	6	61	28	18
% of total		5%	5%	3%	14%	11%	6%	2%	8%	2%	21%	9%	6%
75th percentile	\$2,497	\$2,503	\$2,598	\$2,500	\$2,750	\$3,000	\$1,499	\$1,798	\$2,999	\$2,000	\$1,502	\$3,003	\$2,500
Median	\$1,499	\$2,003	\$1,999	\$1,350	\$1,752	\$1,503	\$1,253	\$700	\$1,753	\$1,150	\$1,001	\$1,750	\$1,750
25th percentile	\$802	\$1,498	\$1,203	\$700	\$1,200	\$798	\$1,001	\$349	\$1,253	\$550	\$748	\$850	\$600

A011

JT-APP 0695

# UNITED STATES DISTRICT COURT

Northern District of Texas

Golden Blount, Inc.,

## BILL OF COSTS

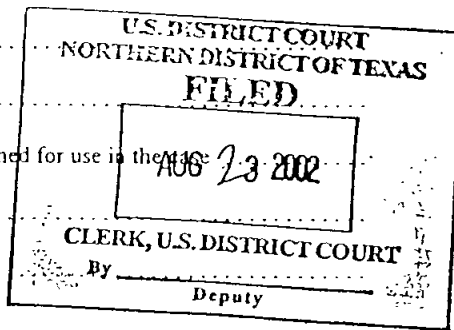
V.

Robert H. Peterson Co.

Case Number: 3-01-CV-0127-R

Judgment having been entered in the above entitled action on August 9, 2002 against Def., Robert H. Peterson Co.,  
the Clerk is requested to tax the following as costs:

Fees of the Clerk .....	\$ <u>150.00</u>
Fees for service of summons and subpoena .....	<u>0.00</u>
Fees of the court reporter for all or any part of the transcript necessarily obtained for use in the case .....	<u>1,312.43</u>
Fees and disbursements for printing .....	<u>0.00</u>
Fees for witnesses (itemize on reverse side) .....	<u>380.00</u>
Fees for exemplification and copies of papers necessarily obtained for use in the case .....	<u>1,817.40</u>
Docket fees under 28 U.S.C. 1923 .....	<u>20.00</u>
Costs as shown on Mandate of Court of Appeals .....	<u>0.00</u>
Compensation of court-appointed experts .....	<u>0.00</u>
Compensation of interpreters and costs of special interpretation services under 28 U.S.C. 1828 .....	<u>0.00</u>
Other costs (please itemize) .....	<u>6,351.21</u>
<b>TOTAL</b>	<b>\$ <u>10,031.04</u></b>



SPECIAL NOTE: Attach to your bill an itemization and documentation for requested costs in all categories.

### DECLARATION

I declare under penalty of perjury that the foregoing costs are correct and were necessarily incurred in this action and that the services for which fees have been charged were actually and necessarily performed. A copy of this bill was mailed today with postage prepaid to: all counsel of record for Defendant, Robert H. Peterson

Signature of Attorney: William D. Harris, Jr.

Name of Attorney: William D. Harris, Jr.

For: Golden Blount, Inc.

Date: August 23, 2002

Name of Claiming Party

Costs are taxed in the amount of ten thousand thirty one dollars and four cents and included in the judgment.

Karen Mitchell  
Clerk of Court

By: [Signature]

Deputy Clerk

Date: 8/27/02

**WITNESS FEES (computation, cf. 28 U.S.C. 1821 for statutory fees)**

NAME AND RESIDENCE	ATTENDANCE		SUBSISTENCE		MILEAGE		Total Cost Each Witness
	Days	Total Cost	Days	Total Cost	Miles	Total Cost	
Charlie Hanft, 2316 Main Street, Tucker, Georgia 30084 Airline Parking							348.00 32.00
					<b>TOTAL</b>		380.00

**NOTICE**

Section 1924, Title 28, U.S. Code (effective September 1, 1948) provides:  
 "Sec. 1924. Verification of bill of costs."

"Before any bill of costs is taxed, the party claiming any item of cost or disbursement shall attach thereto an affidavit, made by himself or by his duly authorized attorney or agent having knowledge of the facts, that such item is correct and has been necessarily incurred in the case and that the services for which fees have been charged were actually and necessarily performed."

See also Section 1920 of Title 28, which reads in part as follows:

"A bill of costs shall be filed in the case and, upon allowance, included in the judgment or decree."

The Federal Rules of Civil Procedure contain the following provisions:

**Rule 54 (d)**

"Except when express provision therefor is made either in a statute of the United States or in these rules, costs shall be allowed as of course to the prevailing party unless the court otherwise directs, but costs against the United States, its officers, and agencies shall be imposed only to the extent permitted by law. Costs may be taxed by the clerk on one day's notice. On motion served within 5 days thereafter, the action of the clerk may be reviewed by the court."

**Rule 6(e)**

"Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him by mail, 3 days shall be added to the prescribed period."

**Rule 58 (In Part)**

"Entry of the judgment shall not be delayed for the taxing of costs."

**JT-APP 0697**

# ADDENDUM TO BILL OF COSTS

ITEM	AMOUNT
Other Costs .....	
postage-Hitt Gaines & Boisbrun (HGB)	\$ 549.80
postage-Locke Liddell & Sapp (LLS)	60.90
facsimile-HGB	263.00
facsimile-LLS	82.00
courier services-HGB	586.10
courier services-LLS	99.00
on-line search expense-HGB	1,627.16
on-line search expense-LLS	24.21
trial supplies	465.84
obtaining patents	864.20
airfare---deposition in Chicago	1,565.00
taxi---deposition in Chicago	80.00
parking for and in preparation for trial	84.00
TOTAL	\$ 6,351.21

Hitt Gaines & Boisbrun, P.C.  
P.O. Box 832570  
Richardson, TX 75083  
Federal Tax ID No. 75-2576576  
September 30, 2001

Mr. Golden Blount  
Golden Blount, Inc.  
4301 Westgrove  
Addison TX 75001

Re: Our File: BLNT-0001LT  
GOLDEN BLOUNT, INC. v. ROBERT H. PETERSON COMPANY  
Invoice # 53289

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Expenses

	<u>Amount</u>
Air Travel	1,565.00
Facsimile	19.50
Food/Beverage/Entertainment	8.00
Parking	16.00
Photocopying	878.16
Postage	157.02
Taxi	80.00
Total Expenses	<u>\$2,723.68</u>

Hitt Gaines & Boisbrun, P.C.  
P.O. Box 832570  
Richardson, TX 75083  
Federal Tax ID No. 75-2576576  
October 31, 2001

Mr. Golden Blount  
Golden Blount, Inc.  
4301 Westgrove  
Addison TX 75001

Re: Our File: BLNT-0001LT  
GOLDEN BLOUNT, INC. v. ROBERT H. PETERSON COMPANY  
Invoice # 54001

Legal fees and expenses  
October 1, 2001 through October 31, 2001

Expenses

	<u>Amount</u>
Court Reporter Disbursement	1,085.53
Facsimile	19.50
Obtain patents	864.20
Photocopying	18.30
Postage	151.66
Total Expenses	<u>\$2,139.19</u>



Hitt Gaines & Boisbrun, P.C.  
P.O. Box 832570  
Richardson, TX 75083  
Federal Tax ID No. 75-2576576  
December 31, 2001

Mr. Golden Blount  
Golden Blount, Inc.  
4301 Westgrove  
Addison TX 75001

Re: Our File: BLNT-0001LT  
GOLDEN BLOUNT, INC. v. ROBERT H. PETERSON COMPANY  
Invoice # 54838

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<u>Expenses</u>	<u>Amount</u>
Copy of Transcript of Hearing	45.00
Facsimile	2.00
On-line search expense	130.00
Photocopying	7.90
Postage	1.02
Total Expenses	<u>\$185.92</u>

JT-APP 0701

Hitt Gaines & Boisbrun, P.C.  
P.O. Box 832570  
Richardson, TX 75083

Federal Tax ID No. 75-2576576

March 12, 2002

Mr. Golden Blount  
Golden Blount, Inc.  
4301 Westgrove  
Addison TX 75001

Re: Our File: BLNT-0001LT  
GOLDEN BLOUNT, INC. v. ROBERT H. PETERSON COMPANY  
Invoice # 55480

<u>Expenses</u>	<u>Amount</u>
Facsimile	34.00
On-line search expense	29.35
Photocopying	74.90
Postage	2.71
Total Expenses	<u>\$140.96</u>

Hitt Gaines & Boisbrun, P.C.  
P.O. Box 832570  
Richardson, TX 75083  
Federal Tax ID No. 75-2576576  
February 28, 2002

Mr. Golden Blount  
Golden Blount, Inc.  
4301 Westgrove  
Addison TX 75001

Re: Our File: BLNT-0001LT  
GOLDEN BLOUNT, INC. v. ROBERT H. PETERSON COMPANY  
Invoice # 55547

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Legal Fees and Expenses  
February 1, 2002, through February 28, 2002

<u>Expenses</u>	<u>Amount</u>
Facsimile	73.00
Photocopying	109.20
Postage	36.97
Total Expenses	<u>\$219.17</u>

JT-APP 0703

Hitt Gaines & Boisbrun, P.C.

P.O. Box 832570

Richardson, TX 75083

Federal Tax ID No. 75-2576576

March 31, 2002

Mr. Golden Blount  
Golden Blount, Inc.  
4301 Westgrove  
Addison TX 75001

Re: Our File: BLNT-0001LT  
GOLDEN BLOUNT, INC. v. ROBERT H. PETERSON COMPANY  
Invoice # 56028

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Expenses

	<u>Amount</u>
Courier Runs	192.45
Facsimile	35.50
Photocopying	20.90
Postage	8.14
Total Expenses	<u>\$256.99</u>

Hitt Gaines & Boisbrun, P.C.  
P.O. Box 832570  
Richardson, TX 75083  
Federal Tax ID No. 75-2576576  
April 30, 2002

Mr. Golden Blount  
Golden Blount, Inc.  
4301 Westgrove  
Addison TX 75001

Re: Our File: BLNT-0001LT  
GOLDEN BLOUNT, INC. v. ROBERT H. PETERSON COMPANY  
Invoice # 56377

<u>Expenses</u>	<u>Amount</u>
Facsimile	45.50
On-line search expense	14.00
Photocopying	93.40
Postage	132.06
Supplies	237.07
Total Expenses	<u>\$522.03</u>

Hitt Gaines & Boisbrun, P.C.  
P.O. Box 832570  
Richardson, TX 75083

Federal Tax ID No. 75-2576576

June 30, 2002

Mr. Golden Blount  
Golden Blount, Inc.  
4301 Westgrove  
Addison TX 75001

Re: Our File: BLNT-0001LT  
GOLDEN BLOUNT, INC. v. ROBERT H. PETERSON COMPANY

Invoice # 57180

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Expenses

	<u>Amount</u>
Courier Runs	297.75
Facsimile	17.50
On-line search expense	127.39
Parking	7.00
Photocopying	935.20
Postage	59.20
Supplies	217.41
Total Expenses	<u>\$1,661.45</u>

# HITT GAINES & BOISBRUN, P.C.

Intellectual Property Law & Related Matters

Hitt Gaines & Boisbrun, P.C.

P.O. Box 832570

Richardson, TX 75083

Federal Tax ID No. 75-2576576

August 22, 2002

Mr. Golden Blount  
Golden Blount, Inc.  
4301 Westgrove  
Addison TX 75001

Re: Our File: BLNT-0001LT  
GOLDEN BLOUNT, INC. v. ROBERT H. PETERSON COMPANY  
Invoice # 57589

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Expenses

	<u>Amount</u>
Courier Runs	95.90
Deposition	136.90
Facsimile	14.50
On-line search expense	532.51
Parking	61.00
Photocopying	413.89
Supplies	11.36
Total Expenses	<u>\$1,266.06</u>

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Mailing Address: P.O. Box 832570, Richardson, Texas 75083  
Street Address: 225 University Plaza, 275 West Campbell Road, Richardson, Texas 75080 U.S.A.  
Tel: (972) 480-8800 Fax: (972) 480-8865 firm@abstractassets.com

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HITT GAINES & BOISBRUN, P.C.  
Slip Listing

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Selection Criteria

Client (hand select) Include: BLNT-0001LT  
Activity (hand select) Include: Photocopying  
Slip Classification Open

Rate Info - identifies rate source and level

Slip ID	Dates and Time	Posting Status	Description	Attorney Activity Client File	Units DNB Time Est. Time Variance	Rate Rate Info Bill Status	Slip Value
76263	8/8/01	EXP	Billed Photocopying	HGB Photocopying BLNT-0001LT	4	0.25	1.00
76727	8/17/01	EXP	Billed Photocopying	HGB Photocopying BLNT-0001LT	10	0.25	2.50
78257	9/6/01	EXP	Billed Photocopying	HGB Photocopying BLNT-0001LT	9	0.25	2.25
78265	9/7/01	EXP	Billed Photocopying	HGB Photocopying BLNT-0001LT	32	0.25	8.00
78307	9/5/01	EXP	Billed Photocopying	HGB Photocopying BLNT-0001LT	66	0.25	16.50
78565	9/7/01	EXP	Billed Photocopying	HGB Photocopying BLNT-0001LT	135	0.25	33.75
78569	9/7/01	EXP	Billed Photocopying	HGB Photocopying BLNT-0001LT	500	0.25	125.00
78570	9/8/01	EXP	Billed Photocopying	HGB Photocopying BLNT-0001LT	3	0.25	0.75
78572	9/8/01	EXP	Billed Photocopying	HGB Photocopying BLNT-0001LT	1	0.25	0.25



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Slip ID	Dates and Time	Posting Status	Description	Attorney Activity Client File	Units DNB Time Est. Time Variance	Rate Rate Info Bill Status	Slip Value
78634	9/7/01	EXP	Billed Photocopying	HGB BLNT-0001LT	5	0.25	1.25
78753	9/24/01	EXP	Billed Photocopying	HGB BLNT-0001LT	1	587.41	587.41
78842	9/19/01	EXP	Billed Photocopying	HGB BLNT-0001LT	36	0.25	9.00
78887	9/5/01	EXP	Billed Photocopying	HGB BLNT-0001LT	66	0.25	16.50
78899	9/12/01	EXP	Billed Photocopying	HGB BLNT-0001LT	27	0.25	6.75
78901	9/13/01	EXP	Billed Photocopying	HGB BLNT-0001LT	122	0.25	30.50
79158	9/24/01	EXP	Billed Photocopying	HGB BLNT-0001LT	86	0.25	21.50
79168	9/25/01	EXP	Billed Photocopying	HGB BLNT-0001LT	18	0.25	4.50
79271	9/27/01	EXP	Billed Photocopying	HGB BLNT-0001LT	9	0.25	2.25
79344	9/28/01	EXP	Billed Photocopying	HGB BLNT-0001LT	22	0.25	5.50
79360	9/28/01	EXP	Billed Photocopying	HGB BLNT-0001LT	12	0.25	3.00

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Slip ID	Dates and Time	Posting Status	Description	Attorney Activity Client File	Units DNB Time Est. Time Variance	Rate Rate Info Bill Status	Slip Value
79932	10/2/01	EXP	Billed Photocopying	HGB Photocopying BLNT-0001LT	16	0.15	2.40
80313	10/4/01	EXP	Billed Photocopying	HGB Photocopying BLNT-0001LT	16	0.15	2.40
80751	10/16/01	EXP	Billed Photocopying	HGB Photocopying BLNT-0001LT	39	0.15	5.85
80808	10/11/01	EXP	Billed Photocopying	HGB Photocopying BLNT-0001LT	5	0.15	0.75
80824	10/12/01	EXP	Billed Photocopying	HGB Photocopying BLNT-0001LT	30	0.15	4.50
81039	10/8/01	EXP	Billed Photocopying	HGB Photocopying BLNT-0001LT	11	0.15	1.65
81040	10/8/01	EXP	Billed Photocopying	HGB Photocopying BLNT-0001LT	2	0.15	0.30
81114	10/22/01	EXP	Billed Photocopying	HGB Photocopying BLNT-0001LT	3	0.15	0.45
82191	11/2/01	EXP	Billed Photocopying	HGB Photocopying BLNT-0001LT	27	0.10	2.70
82522	11/5/01	EXP	Billed Photocopying	HGB Photocopying BLNT-0001LT	22	0.10	2.20
82535	11/6/01	EXP	Billed Photocopying	HGB Photocopying BLNT-0001LT	5	0.10	0.50

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Slip ID	Dates and Time Posting Status Description	Attorney Activity Client File	Units DNB Time Est. Time Variance	Rate Rate Info Bill Status	Slip Value
82797	EXP 11/13/01 Billed Photocopying	G:56377 4/30/02 HGB Photocopying BLNT-0001LT	42	0.10	4.20
83158	EXP 11/21/01 Billed Photocopying	G:56377 4/30/02 HGB Photocopying BLNT-0001LT	23	0.10	2.30
83270	EXP 11/27/01 Billed Photocopying	G:56377 4/30/02 HGB Photocopying BLNT-0001LT	6	0.10	0.60
84906	EXP 12/18/01 Billed Photocopying	G:54802 12/31/01 HGB Photocopying BLNT-0001LT	79	0.10	7.90
86511	EXP 1/7/02 Billed Photocopying	G:55480 3/12/02 HGB Photocopying BLNT-0001LT	4	0.10	0.40
86606	EXP 1/14/02 Billed Photocopying	G:55480 3/12/02 HGB Photocopying BLNT-0001LT	75	0.10	7.50
86611	EXP 1/14/02 Billed Photocopying	G:55480 3/12/02 HGB Photocopying BLNT-0001LT	6	0.10	0.60
86613	EXP 1/15/02 Billed Photocopying	G:55480 3/12/02 HGB Photocopying BLNT-0001LT	297	0.10	29.70
86849	EXP 1/17/02 Billed Photocopying	G:55480 3/12/02 HGB Photocopying BLNT-0001LT	7	0.10	0.70
86865	EXP 1/22/02 Billed Photocopying	G:55480 3/12/02 HGB Photocopying BLNT-0001LT	20	0.10	2.00
87221	EXP 1/25/02 Billed Photocopying	G:55480 3/12/02 HGB Photocopying BLNT-0001LT	34	0.10	3.40

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Slip ID	Dates and Time	Posting Status	Description	Attorney Activity Client File	Units DNB Time Est. Time Variance	Rate Rate Info Bill Status	Slip Value
87242	1/28/02	EXP	Billed Photocopying	HGB BLNT-0001LT	60	0.10	6.00
87247	1/29/02	EXP	Billed Photocopying	HGB BLNT-0001LT	16	0.10	1.60
87531	1/31/02	EXP	Billed Photocopying	HGB BLNT-0001LT	204	0.10	20.40
87537	1/30/02	EXP	Billed Photocopying	HGB BLNT-0001LT	20	0.10	2.00
87550	1/31/02	EXP	Billed Photocopying	HGB BLNT-0001LT	6	0.10	0.60
88221	2/1/02	EXP	Billed Photocopying	HGB BLNT-0001LT	105	0.10	10.50
88222	2/1/02	EXP	Billed Photocopying	HGB BLNT-0001LT	99	0.10	9.90
88226	2/1/02	EXP	Billed Photocopying	HGB BLNT-0001LT	15	0.10	1.50
88430	12/31/01	EXP	Billed Photocopying	HGB BLNT-0001LT	1	7.90	7.90
88443	2/11/02	EXP	Billed Photocopying	HGB BLNT-0001LT	20	0.10	2.00
88460	2/12/02	EXP	Billed Photocopying	HGB BLNT-0001LT	24	0.10	2.40

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Slip ID Dates and Time Posting Status Description			Attorney Activity Client File	Units DNB Time Est. Time Variance	Rate Rate Info Bill Status	Slip Value
88510 2/13/02 Billed Photocopying	EXP		HGB Photocopying BLNT-0001LT	18	0.10	1.80
	G:55547	2/28/02				
88602 2/7/02 Billed Photocopying	EXP		HGB Photocopying BLNT-0001LT	14	0.10	1.40
	G:55547	2/28/02				
88613 2/11/02 Billed Photocopying	EXP		HGB Photocopying BLNT-0001LT	6	0.10	0.60
	G:55547	2/28/02				
88706 2/5/02 Billed Photocopying	EXP		HGB Photocopying BLNT-0001LT	9	0.10	0.90
	G:55547	2/28/02				
88711 2/6/02 Billed Photocopying	EXP		HGB Photocopying BLNT-0001LT	11	0.10	1.10
	G:55547	2/28/02				
88713 2/6/02 Billed Photocopying	EXP		HGB Photocopying BLNT-0001LT	22	0.10	2.20
	G:55547	2/28/02				
88815 2/14/02 Billed Photocopying	EXP		HGB Photocopying BLNT-0001LT	9	0.10	0.90
	G:55547	2/28/02				
88953 2/22/02 Billed Photocopying	EXP		HGB Photocopying BLNT-0001LT	25	0.10	2.50
	G:55547	2/28/02				
88999 2/19/02 Billed Photocopying	EXP		HGB Photocopying BLNT-0001LT	21	0.10	2.10
	G:55547	2/28/02				
89004 2/19/02 Billed Photocopying	EXP		HGB Photocopying BLNT-0001LT	6	0.10	0.60
	G:55547	2/28/02				
89006 2/20/02 Billed Photocopying	EXP		HGB Photocopying BLNT-0001LT	38	0.10	3.80
	G:55547	2/28/02				

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Slip ID	Dates and Time	Posting Status	Description	Attorney Activity Client File	Units DNB Time Est. Time Variance	Rate Rate Info Bill Status	Slip Value
89010	2/20/02	EXP	Billed Photocopying	HGB Photocopying BLNT-0001LT	140	0.10	14.00
89072	2/15/02	EXP	Billed Photocopying	HGB Photocopying BLNT-0001LT	6	0.10	0.60
89209	2/21/02	EXP	Billed Photocopying	HGB Photocopying BLNT-0001LT	158	0.10	15.80
89344	2/26/02	EXP	Billed Photocopying	HGB Photocopying BLNT-0001LT	15	0.10	1.50
89349	2/26/02	EXP	Billed Photocopying	HGB Photocopying BLNT-0001LT	36	0.10	3.60
89353	2/27/02	EXP	Billed Photocopying	HGB Photocopying BLNT-0001LT	18	0.10	1.80
89355	2/27/02	EXP	Billed Photocopying	HGB Photocopying BLNT-0001LT	28	0.10	2.80
90163	2/27/02	EXP	Billed Photocopying	HGB Photocopying BLNT-0001LT	228	0.10	22.80
90164	2/27/02	EXP	Billed Photocopying	HGB Photocopying BLNT-0001LT	6	0.10	0.60
90166	2/28/02	EXP	Billed Photocopying	HGB Photocopying BLNT-0001LT	15	0.10	1.50
90492	3/6/02	EXP	Billed Photocopying	HGB Photocopying BLNT-0001LT	8	0.10	0.80

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Slip ID	Dates and Time	Posting Status	Description	Attorney Activity Client File	Units DNB Time Est. Time Variance	Rate Rate Info Bill Status	Slip Value
90532	3/5/02	EXP	Billed Photocopying	HGB Photocopying BLNT-0001LT	8	0.10	0.80
90805	3/12/02	EXP	Billed Photocopying	HGB Photocopying BLNT-0001LT	67	0.10	6.70
91006	3/15/02	EXP	Billed Photocopying	HGB Photocopying BLNT-0001LT	34	0.10	3.40
91011	3/18/02	EXP	Billed Photocopying	HGB Photocopying BLNT-0001LT	11	0.10	1.10
91038	3/7/02	EXP	Billed Photocopying	HGB Photocopying BLNT-0001LT	67	0.10	6.70
91040	3/11/02	EXP	Billed Photocopying	HGB Photocopying BLNT-0001LT	8	0.10	0.80
91815	3/27/02	EXP	Billed Photocopying	HGB Photocopying BLNT-0001LT	6	0.10	0.60
92687	4/2/02	EXP	Billed Photocopying	HGB Photocopying BLNT-0001LT	5	0.10	0.50
92695	4/3/02	EXP	Billed Photocopying	HGB Photocopying BLNT-0001LT	4	0.10	0.40
93273	4/16/02	EXP	Billed Photocopying	HGB Photocopying BLNT-0001LT	6	0.10	0.60
93417	4/17/02	EXP	Billed Photocopying	HGB Photocopying BLNT-0001LT	8	0.10	0.80

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Slip ID	Dates and Time	Posting Status	Description	Attorney Activity Client File	Units DNB Time Est. Time Variance	Rate Rate Info Bill Status	Slip Value
93421	4/18/02	EXP	Billed Photocopying	HGB Photocopying BLNT-0001LT	7	0.10	0.70
93589	4/19/02	EXP	Billed Photocopying	HGB Photocopying BLNT-0001LT	5	0.10	0.50
93595	4/19/02	EXP	Billed Photocopying	HGB Photocopying BLNT-0001LT	65	0.10	6.50
93596	4/19/02	EXP	Billed Photocopying	HGB Photocopying BLNT-0001LT	131	0.10	13.10
93706	4/23/02	EXP	Billed Photocopying	HGB Photocopying BLNT-0001LT	61	0.10	6.10
93711	4/24/02	EXP	Billed Photocopying	HGB Photocopying BLNT-0001LT	132	0.10	13.20
93718	4/25/02	EXP	Billed Photocopying	HGB Photocopying BLNT-0001LT	18	0.10	1.80
93867	4/25/02	EXP	Billed Photocopying	HGB Photocopying BLNT-0001LT	41	0.10	4.10
93883	4/30/02	EXP	Billed Photocopying	HGB Photocopying BLNT-0001LT	16	0.10	1.60
93901	4/30/02	EXP	Billed Photocopying	HGB Photocopying BLNT-0001LT	116	0.10	11.60
93905	4/25/02	EXP	Billed Photocopying	HGB Photocopying BLNT-0001LT	194	0.10	19.40



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Slip ID	Dates and Time Posting Status Description	Attorney Activity Client File	Units DNB Time Est. Time Variance	Rate Rate Info Bill Status	Slip Value
94685	EXP 5/6/02 Billed Photocopying	HGB Photocopying BLNT-0001LT	1	625.27	625.27
94711	EXP 5/2/02 Billed Photocopying	HGB Photocopying BLNT-0001LT	88	0.10	8.80
94713	EXP 5/3/02 Billed Photocopying	HGB Photocopying BLNT-0001LT	16	0.10	1.60
94736	EXP 5/3/02 Billed Photocopying	HGB Photocopying BLNT-0001LT	8	0.10	0.80
94742	EXP 5/3/02 Billed Photocopying	HGB Photocopying BLNT-0001LT	10	0.10	1.00
94823	EXP 5/10/02 Billed Photocopying	HGB Photocopying BLNT-0001LT	38	0.10	3.80
94828	EXP 5/10/02 Billed Photocopying	HGB Photocopying BLNT-0001LT	83	0.10	8.30
95344	EXP 5/17/02 Billed Photocopying	HGB Photocopying BLNT-0001LT	1	247.33	247.33
95355	EXP 5/20/02 Billed Photocopying	HGB Photocopying BLNT-0001LT	6	0.10	0.60
95619	EXP 5/24/02 Billed Photocopying	HGB Photocopying BLNT-0001LT	6	0.10	0.60
95809	EXP 5/29/02 Billed Photocopying	HGB Photocopying BLNT-0001LT	174	0.10	17.40

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Slip ID	Dates and Time	Posting Status	Description	Attorney Activity	Client File	Units DNB Time	Est. Time Variance	Rate Rate Info	Bill Status	Slip Value
95908	5/30/02	EXP	Billed Photocopying	G:57180	6/30/02	HGB Photocopying	BLNT-0001LT	30	0.10	3.00
95958	5/31/02	EXP	Billed Photocopying	G:57180	6/30/02	HGB Photocopying	BLNT-0001LT	90	0.10	9.00
96513	6/3/02	EXP	Billed Photocopying	G:57180	6/30/02	HGB Photocopying	BLNT-0001LT	8	0.10	0.80
96516	6/3/02	EXP	Billed Photocopying	G:57180	6/30/02	HGB Photocopying	BLNT-0001LT	60	0.10	6.00
98281	6/28/02	EXP	Billed Photocopying	G:57180	6/30/02	HGB Photocopying	BLNT-0001LT	9	0.10	0.90
99198	7/16/02	EXP	WIP Photocopying			HGB Photocopying	BLNT-0001LT	14	0.10	1.40
99199	7/16/02	EXP	WIP Photocopying			HGB Photocopying	BLNT-0001LT	7	0.10	0.70
99201	7/17/02	EXP	WIP Photocopying			HGB Photocopying	BLNT-0001LT	9	0.10	0.90
99519	7/23/02	EXP	WIP Photocopying			HGB Photocopying	BLNT-0001LT	304	0.10	30.40
99531	7/25/02	EXP	WIP Photocopying			HGB Photocopying	BLNT-0001LT	12	0.10	1.20
99616	7/26/02	EXP	WIP Photocopying			HGB Photocopying	BLNT-0001LT	36	0.10	3.60

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Slip ID Dates and Time Posting Status Description	Attorney Activity Client File	Units DNB Time Est. Time Variance	Rate Rate Info Bill Status	Slip Value
99618 EXP 7/26/02 WIP Photocopying	HGB Photocopying BLNT-0001LT	18	0.10	1.80
99620 EXP 7/27/02 WIP Photocopying	HGB Photocopying BLNT-0001LT	77	0.10	7.70
99621 EXP 7/28/02 WIP Photocopying	HGB Photocopying BLNT-0001LT	87	0.10	8.70
99622 EXP 7/28/02 WIP Photocopying	HGB Photocopying BLNT-0001LT	1380	0.10	138.00
99623 EXP 7/28/02 WIP Photocopying	HGB Photocopying BLNT-0001LT	200	0.10	20.00
99663 EXP 7/27/02 WIP Photocopying	HGB Photocopying BLNT-0001LT	1	182.31	182.31
99795 EXP 7/28/02 WIP Photocopying	HGB Photocopying BLNT-0001LT	38	0.10	3.80
100655 EXP 7/25/02 WIP Photocopying	HGB Photocopying BLNT-0001LT	1	2.48	2.48
100872 EXP 8/12/02 WIP Photocopying	HGB Photocopying BLNT-0001LT	27	0.10	2.70
100881 EXP 8/13/02 WIP Photocopying	HGB Photocopying BLNT-0001LT	45	0.10	4.50
101020 EXP 8/15/02 WIP Photocopying	HGB Photocopying BLNT-0001LT	10	0.10	1.00

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Slip ID Dates and Time Posting Status Description	Attorney Activity Client File	Units DNB Time Est. Time Variance	Rate Rate Info Bill Status	Slip Value
Grand Total				
	Billable	0.00		2557.05
	Unbillable	0.00		0.00
	Total	0.00		2557.05

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Slip Listing

Page 1

Selection Criteria

Client (hand select) Include: BLNT-0001LT  
Activity (hand select) Include: Postage  
Slip Classification Open

Rate Info - identifies rate source and level

Slip ID	Dates and Time	Posting Status	Description	Attorney Activity Client File	Units DNB Time Est. Time Variance	Rate Rate Info Bill Status	Slip Value
76140	8/8/01	EXP	Billed Postage	HGB Postage BLNT-0001LT	1	0.34	0.34
76823	8/23/01	EXP	Billed Postage	HGB Postage BLNT-0001LT	1	31.30	31.30
76824	8/23/01	EXP	Billed Postage	HGB Postage BLNT-0001LT	1	23.80	23.80
76825	8/23/01	EXP	Billed Postage	HGB Postage BLNT-0001LT	1	29.75	29.75
79114	9/11/01	EXP	Billed Postage	HGB Postage BLNT-0001LT	1	35.75	35.75
79115	9/11/01	EXP	Billed Postage	HGB Postage BLNT-0001LT	1	33.80	33.80
79136	9/24/01	EXP	Billed Postage	HGB Postage BLNT-0001LT	1	0.34	0.34
79152	9/25/01	EXP	Billed Postage	HGB Postage BLNT-0001LT	2	0.80	1.60
79281	9/27/01	EXP	Billed Postage	HGB Postage BLNT-0001LT	1	0.34	0.34

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Slip ID	Dates and Time	Posting Status	Description	Attorney Activity Client File	Units DNB Time Est. Time Variance	Rate Rate Info Bill Status	Slip Value
80252	10/8/01	EXP	Billed Postage	HGB Postage BLNT-0001LT	1	43.99	43.99
	G:54001		10/31/01				
80257	10/2/01	EXP	Billed Postage	HGB Postage BLNT-0001LT	2	0.57	1.14
	G:54001		10/31/01				
80620	10/12/01	EXP	Billed Postage	HGB Postage BLNT-0001LT	1	33.80	33.80
	G:54001		10/31/01				
80621	10/12/01	EXP	Billed Postage	HGB Postage BLNT-0001LT	1	23.80	23.80
	G:54001		10/31/01				
80622	10/12/01	EXP	Billed Postage	HGB Postage BLNT-0001LT	1	33.80	33.80
	G:54001		10/31/01				
80839	10/12/01	EXP	Billed Postage	HGB Postage BLNT-0001LT	1	1.03	1.03
	G:54001		10/31/01				
80903	10/29/01	EXP	Billed Postage	HGB Postage BLNT-0001LT	1	13.76	13.76
	G:54001		10/31/01				
81095	10/22/01	EXP	Billed Postage	HGB Postage BLNT-0001LT	1	0.34	0.34
	G:54001		10/31/01				
82138	11/2/01	EXP	Billed Postage	HGB Postage BLNT-0001LT	1	0.80	0.80
	G:56377		4/30/02				
82820	11/13/01	EXP	Billed Postage	HGB Postage BLNT-0001LT	1	7.00	7.00
	G:56377		4/30/02				
84098	11/13/01	EXP	Billed Postage	HGB Postage BLNT-0001LT	1	23.80	23.80
	G:56377		4/30/02				

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Slip ID	Dates and Time	Posting Status	Description	Attorney Activity Client File	Units DNB Time Est. Time Variance	Rate Rate Info Bill Status	Slip Value
84099	11/13/01	EXP	Billed Postage	HGB Postage BLNT-0001LT	1	29.75	29.75
84100	11/13/01	EXP	Billed Postage	HGB Postage BLNT-0001LT	1	35.75	35.75
84101	11/13/01	EXP	Billed Postage	HGB Postage BLNT-0001LT	1	7.50	7.50
84102	11/14/01	EXP	Billed Postage	HGB Postage BLNT-0001LT	1	23.80	23.80
85073	12/28/01	EXP	Billed Postage	HGB Postage BLNT-0001LT	1	1.02	1.02
86844	1/22/02	EXP	Billed Postage	HGB Postage BLNT-0001LT	2	0.57	1.14
87295	1/29/02	EXP	Billed Postage	HGB Postage BLNT-0001LT	1	1.57	1.57
88316	2/5/02	EXP	Billed Postage	HGB Postage BLNT-0001LT	2	0.57	1.14
88431	12/31/01	EXP	Billed Postage	HGB Postage BLNT-0001LT	1	1.02	1.02
88631	2/8/02	EXP	Billed Postage	HGB Postage BLNT-0001LT	1	0.34	0.34
89450	2/20/02	EXP	Billed Postage	HGB Postage BLNT-0001LT	1	16.25	16.25

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Slip ID	Dates and Time	Posting Status	Description	Attorney Activity Client File	Units DNB Time Est. Time Variance	Rate Rate Info Bill Status	Slip Value
89451	2/20/02	EXP	Billed Postage	HGB Postage BLNT-0001LT	1	16.25	16.25
	G:55547	2/28/02					
89505	2/27/02	EXP	Billed Postage	HGB Postage BLNT-0001LT	1	1.97	1.97
	G:55547	2/28/02					
89511	2/27/02	EXP	Billed Postage	HGB Postage BLNT-0001LT	3	0.34	1.02
	G:55547	2/28/02					
90604	3/6/02	EXP	Billed Postage	HGB Postage BLNT-0001LT	1	7.00	7.00
	G:56028	3/31/02					
91025	3/15/02	EXP	Billed Postage	HGB Postage BLNT-0001LT	2	0.57	1.14
	G:56028	3/31/02					
93456	4/19/02	EXP	Billed Postage	HGB Postage BLNT-0001LT	1	3.66	3.66
	G:56377	4/30/02					
95061	5/17/02	EXP	Billed Postage	HGB Postage BLNT-0001LT	1	16.25	16.25
	G:57180	6/30/02					
95062	5/17/02	EXP	Billed Postage	HGB Postage BLNT-0001LT	1	16.25	16.25
	G:57180	6/30/02					
95302	5/20/02	EXP	Billed Postage	HGB Postage BLNT-0001LT	1	12.45	12.45
	G:57180	6/30/02					
95303	5/20/02	EXP	Billed Postage	HGB Postage BLNT-0001LT	1	12.45	12.45
	G:57180	6/30/02					
96558	6/3/02	EXP	Billed Postage	HGB Postage BLNT-0001LT	1	1.80	1.80
	G:57180	6/30/02					

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Slip Listing

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Slip ID Dates and Time Posting Status Description	Attorney Activity Client File	Units DNB Time Est. Time Variance	Rate Rate Info Bill Status	Slip Value
Grand Total	Billable	0.00		549.80
	Unbillable	0.00		0.00
	Total	0.00		549.80

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Slip Listing

Page 1

Selection Criteria

Client (hand select) Include: BLNT-0001LT  
Activity (hand select) Include: Facsimile  
Slip Classification Open

Rate Info - identifies rate source and level

Slip ID	Dates and Time	Posting Status	Description	Attorney Activity	Client File	Units DNB Time	Est. Time Variance	Rate Rate Info	Bill Status	Slip Value
76680	EXP			HGB		3		0.50		1.50
8/20/01				Facsimile						
Billed	G:53289	9/30/01		BLNT-0001LT						
Facsimile/Telephone										
78547 *	EXP			HGB		5		0.50		2.50
9/7/01				Facsimile						
Billed	G:53289	9/30/01		BLNT-0001LT						
Facsimile/Telephone										
79199	EXP			HGB		5		0.50		2.50
9/24/01				Facsimile						
Billed	G:53289	9/30/01		BLNT-0001LT						
Facsimile/Telephone										
79292	EXP			HGB		8		0.50		4.00
9/27/01				Facsimile						
Billed	G:53289	9/30/01		BLNT-0001LT						
Facsimile/Telephone										
79300	EXP			HGB		18		0.50		9.00
9/28/01				Facsimile						
Billed	G:53289	9/30/01		BLNT-0001LT						
Facsimile/Telephone										
79950	EXP			HGB		16		0.50		8.00
10/2/01				Facsimile						
Billed	G:54001	10/31/01		BLNT-0001LT						
Facsimile/Telephone										
80328	EXP			HGB		8		0.50		4.00
10/4/01				Facsimile						
Billed	G:54001	10/31/01		BLNT-0001LT						
Facsimile/Telephone										
80331	EXP			HGB		2		0.50		1.00
10/4/01				Facsimile						
Billed	G:54001	10/31/01		BLNT-0001LT						
Facsimile/Telephone										
80807	EXP			HGB		13		0.50		6.50
10/12/01				Facsimile						
Billed	G:54001	10/31/01		BLNT-0001LT						
Facsimile/Telephone										

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Slip Listing

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Slip ID	Dates and Time Posting Status Description	Attorney Activity Client File	Units DNB Time Est. Time Variance	Rate Rate Info Bill Status	Slip Value
82540	EXP 11/1/01 Billed Facsimile/Telephone	HGB Facsimile BLNT-0001LT	11	0.50	5.50
	G:56377 4/30/02				
82541	EXP 11/1/01 Billed Facsimile/Telephone	HGB Facsimile BLNT-0001LT	6	0.50	3.00
	G:56377 4/30/02				
84655	EXP 12/17/01 Billed Facsimile/Telephone	HGB Facsimile BLNT-0001LT	4	0.50	2.00
	G:54802 12/31/01				
86760	EXP 1/17/02 Billed Facsimile/Telephone	HGB Facsimile BLNT-0001LT	2	0.50	1.00
	G:55480 3/12/02				
86874	EXP 1/22/02 Billed Facsimile/Telephone	HGB Facsimile BLNT-0001LT	14	0.50	7.00
	G:55480 3/12/02				
87263	EXP 1/28/02 Billed Facsimile/Telephone	HGB Facsimile BLNT-0001LT	32	0.50	16.00
	G:55480 3/12/02				
87267	EXP 1/29/02 Billed Facsimile/Telephone	HGB Facsimile BLNT-0001LT	14	0.50	7.00
	G:55480 3/12/02				
87433	EXP 1/31/02 Billed Facsimile/Telephone	HGB Facsimile BLNT-0001LT	6	0.50	3.00
	G:55480 3/12/02				
88428	EXP 12/31/01 Billed Facsimile/Telephone	HGB Facsimile BLNT-0001LT	1	2.00	2.00
	G:54838 12/31/01				
88595	EXP 2/11/02 Billed Facsimile/Telephone	HGB Facsimile BLNT-0001LT	4	0.50	2.00
	G:55547 2/28/02				
88697	EXP 2/6/02 Billed Facsimile/Telephone	HGB Facsimile BLNT-0001LT	34	0.50	17.00
	G:55547 2/28/02				

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Slip Listing

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Slip ID	Dates and Time	Posting Status	Description	Attorney Activity Client File	Units DNB Time Est. Time Variance	Rate Rate Info Bill Status	Slip Value
88753	2/15/02	EXP	Billed	HGB Facsimile BLNT-0001LT	4	0.50	2.00
			G:55547 2/28/02 Facsimile/Telephone				
88839	2/14/02	EXP	Billed	HGB Facsimile BLNT-0001LT	5	0.50	2.50
			G:55547 2/28/02 Facsimile/Telephone				
89038	2/11/02	EXP	Billed	HGB Facsimile BLNT-0001LT	12	0.50	6.00
			G:55547 2/28/02 Facsimile/Telephone				
89044	2/4/02	EXP	Billed	HGB Facsimile BLNT-0001LT	20	0.50	10.00
			G:55547 2/28/02 Facsimile/Telephone				
89045	2/5/02	EXP	Billed	HGB Facsimile BLNT-0001LT	10	0.50	5.00
			G:55547 2/28/02 Facsimile/Telephone				
89049	2/18/02	EXP	Billed	HGB Facsimile BLNT-0001LT	3	0.50	1.50
			G:55547 2/28/02 Facsimile/Telephone				
89051	2/19/02	EXP	Billed	HGB Facsimile BLNT-0001LT	20	0.50	10.00
			G:55547 2/28/02 Facsimile/Telephone				
89190	2/20/02	EXP	Billed	HGB Facsimile BLNT-0001LT	17	0.50	8.50
			G:55547 2/28/02 Facsimile/Telephone				
89200	2/22/02	EXP	Billed	HGB Facsimile BLNT-0001LT	3	0.50	1.50
			G:55547 2/28/02 Facsimile/Telephone				
89284	2/26/02	EXP	Billed	HGB Facsimile BLNT-0001LT	4	0.50	2.00
			G:55547 2/28/02 Facsimile/Telephone				
89288	2/26/02	EXP	Billed	HGB Facsimile BLNT-0001LT	6	0.50	3.00
			G:55547 2/28/02 Facsimile/Telephone				

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Slip Listing

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Slip ID	Dates and Time	Posting Status	Description	Attorney Activity Client File	Units DNB Time Est. Time Variance	Rate Rate Info Bill Status	Slip Value
90154	2/28/02	EXP	Billed Facsimile/Telephone	HGB Facsimile BLNT-0001LT	4	0.50	2.00
90697	3/6/02	EXP	Billed Facsimile/Telephone	HGB Facsimile BLNT-0001LT	71	0.50	35.50
93333	4/17/02	EXP	Billed Facsimile/Telephone	HGB Facsimile BLNT-0001LT	3	0.50	1.50
93612	4/18/02	EXP	Billed Facsimile/Telephone	HGB Facsimile BLNT-0001LT	7	0.50	3.50
93615	4/19/02	EXP	Billed Facsimile/Telephone	HGB Facsimile BLNT-0001LT	8	0.50	4.00
93620	4/19/02	EXP	Billed Facsimile/Telephone	HGB Facsimile BLNT-0001LT	54	0.50	27.00
93917	4/30/02	EXP	Billed Facsimile/Telephone	HGB Facsimile BLNT-0001LT	2	0.50	1.00
95438	5/20/02	EXP	Billed Facsimile/Telephone	HGB Facsimile BLNT-0001LT	6	0.50	3.00
95694	5/23/02	EXP	Billed Facsimile/Telephone	HGB Facsimile BLNT-0001LT	4	0.50	2.00
95701	5/24/02	EXP	Billed Facsimile/Telephone	HGB Facsimile BLNT-0001LT	6	0.50	3.00
96536	6/3/02	EXP	Billed Facsimile/Telephone	HGB Facsimile BLNT-0001LT	19	0.50	9.50

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Slip Listing

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Slip ID	Dates and Time	Posting Status	Description	Attorney Activity Client File	Units DNB Time Est. Time Variance	Rate Rate Info Bill Status	Slip Value
99603	7/25/02	EXP	WIP Facsimile/Telephone	HGB Facsimile BLNT-0001LT	4	0.50	2.00
99608	7/26/02	EXP	WIP Facsimile/Telephone	HGB Facsimile BLNT-0001LT	13	0.50	6.50
100979	8/14/02	EXP	WIP Facsimile/Telephone	HGB Facsimile BLNT-0001LT	12	0.50	6.00
Grand Total				Billable	0.00		263.00
				Unbillable	0.00		0.00
				Total	0.00		263.00

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Slip Listing

Page 1

Selection Criteria

Client (hand select) Include: BLNT-0001LT  
Activity (hand select) Include: Courier  
Slip Classification Open

Rate Info - identifies rate source and level

Slip ID	Dates and Time	Posting Status	Description	Attorney Activity Client File	Units DNB Time Est. Time Variance	Rate Rate Info Bill Status	Slip Value
90657	EXP			HGB	1	192.45	192.45
	3/12/02			Courier			
	Billed	G:56028	3/31/02	BLNT-0001LT			
	Courier						
94691	EXP			HGB	1	23.80	23.80
	5/6/02			Courier			
	Billed	G:57180	6/30/02	BLNT-0001LT			
	Courier Runs						
94696	EXP			HGB	1	94.55	94.55
	5/8/02			Courier			
	Billed	G:57180	6/30/02	BLNT-0001LT			
	Courier Runs						
95567	EXP			HGB	1	41.00	41.00
	5/23/02			Courier			
	Billed	G:57180	6/30/02	BLNT-0001LT			
	Courier Runs						
96445	EXP			HGB	1	47.60	47.60
	5/20/02			Courier			
	Billed	G:57180	6/30/02	BLNT-0001LT			
	Courier Runs						
97274	EXP			HGB	1	90.80	90.80
	6/21/02			Courier			
	Billed	G:57180	6/30/02	BLNT-0001LT			
	Courier Runs						
99670	EXP			HGB	1	52.60	52.60
	7/27/02			Courier			
	WIP			BLNT-0001LT			
	Courier Runs						
99672	EXP			HGB	1	43.30	43.30
	7/27/02			Courier			
	WIP			BLNT-0001LT			
	Courier Runs						
Grand Total				Billable	0.00		586.10

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Slip Listing

Page 2

Slip ID Dates and Time Posting Status Description	Attorney Activity Client File	Units DNB Time Est. Time Variance	Rate Rate Info Bill Status	Slip Value
	Unbillable	0.00		0.00
	Total	0.00		586.10

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Slip Listing

Page 1

Selection Criteria

Client (hand select) Include: BLNT-0001LT  
Activity (hand select) Include: Search  
Slip Classification Open

Rate Info - identifies rate source and level

Slip ID	Dates and Time	Attorney	Units	Rate	Slip Value
	Posting Status	Activity	DNB Time	Rate Info	
	Description	Client	Est. Time	Bill Status	
		File	Variance		
83057	EXP	HGB	1	14.00	14.00
11/30/01		Search			
Billed	G:56377	BLNT-0001LT			
4/30/02					
On-line search expense					
85793	EXP	HGB	1	884.01	884.01
12/31/01		Search			
Billed	G:54802	BLNT-0001LT			
12/31/01					
On-line search expense					
85799	EXP	HGB	1	69.68	69.68
12/31/01		Search			
Billed	G:54802	BLNT-0001LT			
12/31/01					
On-line search expense					
85800	EXP	HGB	1	40.97	40.97
12/31/01		Search			
Billed	G:54802	BLNT-0001LT			
12/31/01					
On-line search expense					
86690	EXP	HGB	1	29.35	29.35
1/17/02		Search			
Billed	G:55480	BLNT-0001LT			
3/12/02					
On-line search expense					
88429	EXP	HGB	1	130.00	130.00
12/31/01		Search			
Billed	G:54838	BLNT-0001LT			
12/31/01					
On-line search expense					
95574	EXP	HGB	1	33.33	33.33
5/23/02		Search			
Billed	G:57180	BLNT-0001LT			
6/30/02					
On-line search expense					
95575	EXP	HGB	1	69.47	69.47
5/23/02		Search			
Billed	G:57180	BLNT-0001LT			
6/30/02					
On-line search expense					
95576	EXP	HGB	1	24.59	24.59
5/23/02		Search			
Billed	G:57180	BLNT-0001LT			
6/30/02					
On-line search expense					

JT-APP 0733

8/22/02  
7:53 AM

HITT GAINES & BOISBRUN, P.C.  
Slip Listing

Page 2

Slip ID Dates and Time Posting Status Description	Attorney Activity Client File	Units DNB Time Est. Time Variance	Rate Rate Info Bill Status	Slip Value
100676 EXP 8/8/02 WIP On-line search expense	HGB Search BLNT-0001LT	1	122.18	122.18
100683 EXP 8/8/02 WIP On-line search expense	HGB Search BLNT-0001LT	1	117.23	117.23
100684 EXP 8/8/02 WIP On-line search expense	HGB Search BLNT-0001LT	1	41.92	41.92
100692 EXP 8/8/02 WIP On-line search expense	HGB Search BLNT-0001LT	1	24.12	24.12
100693 EXP 8/8/02 WIP On-line search expense	HGB Search BLNT-0001LT	1	26.31	26.31
Grand Total	Billable Unbillable Total	0.00 0.00 0.00		1627.16 0.00 1627.16

JT-APP 0734

8/22/02  
7:52 AM

HITT GAINES & BOISBRUN, P.C.  
Slip Listing

Page 1

Selection Criteria

Client (hand select) Include: BLNT-0001LT  
Activity (hand select) Include: Obtain patents  
Slip Classification Open

Rate Info - identifies rate source and level

Slip ID	Dates and Time	Posting Status	Description	Attorney Activity	Client File	Units DNB Time	Est. Time	Variance	Rate Rate Info	Bill Status	Slip Value
79921	10/3/01	EXP	Billed	HGB	Obtain patents	1			289.80		289.80
	10/31/01		Obtain patents		BLNT-0001LT						
80626	10/19/01	EXP	Billed	HGB	Obtain patents	1			283.00		283.00
	10/31/01		Obtain patents		BLNT-0001LT						
80627	10/19/01	EXP	Billed	HGB	Obtain patents	1			291.40		291.40
	10/31/01		Obtain patents		BLNT-0001LT						
Grand Total				Billable		0.00					864.20
				Unbillable		0.00					0.00
				Total		0.00					864.20

JT-APP 0735

8/22/02  
7:54 AM

HITT GAINES & BOISBRUN, P.C.  
Slip Listing

Page 1

Selection Criteria

Client (hand select) Include: BLNT-0001LT  
Activity (hand select) Include: Deposition  
Slip Classification Open

Rate Info - identifies rate source and level

Slip ID		Attorney	Units	Rate	Slip Value
Dates and Time		Activity	DNB Time	Rate Info	
Posting Status		Client	Est. Time	Bill Status	
Description		File	Variance		
100696	EXP	HGB	1	136.90	136.90
8/8/02		Deposition			
WIP		BLNT-0001LT			
Deposition					
Grand Total					
		Billable	0.00		136.90
		Unbillable	0.00		0.00
		Total	0.00		136.90

JT-APP 0736

8/22/02  
7:52 AM

HITT GAINES & BOISBRUN, P.C.  
Slip Listing

Page 1

Selection Criteria

Client (hand select) Include: BLNT-0001LT  
Activity (hand select) Include: Court Reporter  
Slip Classification Open

Rate Info - identifies rate source and level

Slip ID	Attorney	Units	Rate	Slip Value
Dates and Time	Activity	DNB Time	Rate Info	
Posting Status	Client	Est. Time	Bill Status	
Description	File	Variance		
81345	HGB	1	1085.53	1085.53
10/15/01	Court Reporter			
Billed	BLNT-0001LT			
G:54001				
10/31/01				
Court Reporter Disbursement				
Grand Total	Billable	0.00		1085.53
	Unbillable	0.00		0.00
	Total	0.00		1085.53

JT-APP 0737

8/22/02  
7:53 AM

HITT GAINES & BOISBRUN, P.C.  
Slip Listing

Page 1

Selection Criteria

Client (hand select) Include: BLNT-0001LT  
Activity (hand select) Include: Transcript  
Slip Classification Open

Rate Info - identifies rate source and level

Slip ID	Dates and Time	Posting Status	Description	Attorney Activity Client File	Units DNB Time Est. Time Variance	Rate Rate Info Bill Status	Slip Value
84616	EXP			HGB	1	45.00	45.00
	12/18/01			Transcript			
	Billed	G:54802	12/31/01	BLNT-0001LT			
			Copy of Transcript of Hearing				
88427	EXP			HGB	1	45.00	45.00
	12/31/01			Transcript			
	Billed	G:54838	12/31/01	BLNT-0001LT			
			Copy of Transcript of Hearing				
Grand Total				Billable	0.00		90.00
				Unbillable	0.00		0.00
				Total	0.00		90.00

JT-APP 0738

8/22/02  
7:52 AM

HITT GAINES & BOISBRUN, P.C.  
Slip Listing

Page 1

Selection Criteria

Client (hand select) Include: BLNT-0001LT  
Activity (hand select) Include: Taxi  
Slip Classification Open

Rate Info - identifies rate source and level

Slip ID	Dates and Time	Posting Status	Description	Attorney Activity	Client File	Units DNB Time	Est. Time	Variance	Rate Rate Info	Bill Status	Slip Value
80604	9/30/01	EXP		HGB	Taxi	1			80.00		80.00
	Billed	G:53289	9/30/01	BLNT-0001LT							
	Taxi										

Grand Total

Billable	0.00	80.00
Unbillable	0.00	0.00
Total	0.00	80.00

JT-APP 0739

8/22/02  
7:51 AM

HITT GAINES & BOISBRUN, P.C.  
Slip Listing

Page 1

Selection Criteria

Client (hand select) Include: BLNT-0001LT  
Activity (hand select) Include: Parking  
Slip Classification Open

Rate Info - identifies rate source and level

Slip ID	Dates and Time	Posting Status	Description	Attorney Activity Client File	Units DNB Time Est. Time Variance	Rate Rate Info Bill Status	Slip Value
80605	9/30/01	EXP	Billed Parking	HGB Parking BLNT-0001LT	1	16.00	16.00
95305	5/3/02	EXP	Billed Parking	HGB Parking BLNT-0001LT	1	7.00	7.00
100656	7/17/02	EXP	WIP Parking	HGB Parking BLNT-0001LT	1	2.00	2.00
101142	8/21/02	EXP	WIP Parking	HGB Parking BLNT-0001LT	1	59.00	59.00
Grand Total				Billable	0.00		84.00
				Unbillable	0.00		0.00
				Total	0.00		84.00

JT-APP 0740



8/22/02  
7:54 AM

HITT GAINES & BOISBRUN, P.C.  
Slip Listing

Page 1

Selection Criteria

Client (hand select) Include: BLNT-0001LT  
Activity (hand select) Include: Supplies  
Slip Classification Open

Rate Info - identifies rate source and level

Slip ID	Dates and Time	Posting Status	Description	Attorney Activity Client File	Units DNB Time Est. Time Variance	Rate Rate Info Bill Status	Slip Value
93895	4/30/02	EXP	Billed Supplies	HGB Supplies BLNT-0001LT	1	237.07	237.07
94567	5/2/02	EXP	Billed Supplies	HGB Supplies BLNT-0001LT	1	107.11	107.11
94568	5/2/02	EXP	Billed Supplies	HGB Supplies BLNT-0001LT	1	23.54	23.54
94569	5/2/02	EXP	Billed Supplies	HGB Supplies BLNT-0001LT	1	86.76	86.76
99660	7/27/02	EXP	WIP Supplies	HGB Supplies BLNT-0001LT	1	11.36	11.36
Grand Total				Billable	0.00		465.84
				Unbillable	0.00		0.00
				Total	0.00		465.84

JT-APP 0741

LOCKE LIDDELL & SAPP LLP  
ATTORNEYS & COUNSELORS

P. O. Box 911541  
DALLAS, TEXAS 75391-1541  
TAX ID 74-1164324

Golden Blount  
4200 West Grove  
Dallas, TX 75248

February 18, 2000

As of January 31, 2000

File No.: 09842/60434

Re: Gas-Fired Artifl Logs & Coals-Burner Assembly

DATE	SERVICES	ATTY	HOURS	VALUE
12/10/99	Preparation of cease and desist letters.	LDT	1.00	325.00
	TOTAL HOURS		1.00	

TOTAL SERVICES . . . . . \$325.00

DATE	CHARGES	VALUE
	Facsimiles @ 1.00 per page	2.00
	TOTAL CHARGES . . . . .	\$2.00
	TOTAL SERVICES AND CHARGES . . . . .	\$327.00
	TOTAL DUE THIS STATEMENT . . . . .	\$327.00

Please remit payment to:  
Locke Liddell & Sapp LLP  
P. O. Box 911541  
Dallas, Texas 75391-1541

JT-APP 0742

February 18, 2000

Golden Blount  
Page 2

As of January 31, 2000

File No.: 09842/60434

Re: Gas-Fired Artifl Logs & Coals-Burner Assembly

This statement is due upon receipt. Please call Roy W. Hardin (214) 740-8000 of this firm if you have questions concerning legal services covered by it or if you dispute the amount of the statement. Ms. Emily Teague in our Accounting Department (214) 740-8347 can answer questions concerning payments on your account.

Any payment for less than the full amount of this statement tendered in full satisfaction of this statement (or any portion of it) should be sent to: Locke Liddell & Sapp LLP, Attention: Accounts Receivable, 2200 Ross Avenue, Suite 2200, Dallas, Texas 75201-6776

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JT-APP 0743

LOCKE LIDDELL & SAPP LLP  
ATTORNEYS & COUNSELORS

P. O. Box 911541  
DALLAS, TEXAS 75391-1541  
TAX ID 74-1164324

Golden Blount  
4200 West Grove  
Dallas, TX 75248

May 12, 2000

As of April 30, 2000

File No.: 09842/60434

Re: Gas-Fired Artifi Logs & Coals-Burner Assembly

DATE	SERVICES	ATTY	HOURS	VALUE
03/21/00	Conference with Mr. Blount regarding [REDACTED]	LDT	.50	175.00
04/26/00	Telephone conference with Mr. Blount and preparation of demand letter to Robert H. Peterson Co.	LDT	.40	140.00
TOTAL HOURS			.90	
TOTAL SERVICES . . . . .				\$315.00
TOTAL DUE THIS STATEMENT . . . . .				\$315.00

Please remit payment to:  
Locke Liddell & Sapp LLP  
P. O. Box 911541  
Dallas, Texas 75391-1541

JT-APP 0744

May 12, 2000

Golden Blount  
Page 2

As of April 30, 2000

File No.: 09842/60434

Re: Gas-Fired Artifl Logs & Coals-Burner Assembly

This statement is due upon receipt. Please call Roy W. Hardin (214) 740-8000 of this firm if you have questions concerning legal services covered by it or if you dispute the amount of the statement. Ms. Emily Teague in our Accounting Department (214) 740-8347 can answer questions concerning payments on your account.

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JT-APP 0745

LOCKE LIDDELL & SAPP LLP  
ATTORNEYS & COUNSELORS

P. O. BOX 911541  
DALLAS, TEXAS 75391-1541  
TAX ID 74-1164324

October 23, 2000

Golden Blount  
4200 West Grove  
Dallas, TX 75248

As of October 18, 2000

File No.: 09842/60434

Re: Gas-Fired Artifl Logs & Coals-Burner Assembly

DATE	SERVICES	ATTY	HOURS	VALUE
07/14/00	Sketch views of patent drawings; consultation with patent draftoman.	MLR	1.50	502.50
10/11/00	Review of file and [REDACTED]	RWH	1.00	350.00
10/11/00	Begin research for case law to [REDACTED]	MD	4.00	540.00
10/12/00	Continue research on [REDACTED]	MD	8.25	1,113.75
10/18/00	Prepare Complaint for Patent Infringement--Golden Blount, Inc. v. Robert H. Peterson Company	MD	3.25	438.75
TOTAL HOURS			18.00	
TOTAL SERVICES				\$2,945.00

JT-APP 0746

Golden Blount  
Page 2

October 23, 2000

As of October 18, 2000

File No.: 09842/60434

Re: Gas-Fired Artifl Logs & Coals-Burner Assembly

DATE	CHARGES	VALUE
	Photocopies @.20 per page	8.40
	TOTAL CHARGES . . . . .	\$8.40
	TOTAL SERVICES AND CHARGES . . . . .	\$2,953.40
	TOTAL DUE THIS STATEMENT . . . . .	\$2,953.40

Please remit payment to:  
Locke Liddell & Sapp LLP  
P. O. Box 911541  
Dallas, Texas 75391-1541

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JT-APP 0747

October 23, 2000

Golden Blount  
Page 3

As of October 18, 2000

File No.: 09842/60434

Re: Gas-Fired Artifl Logs & Coals-Burner Assembly

with, the services provided.

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JT-APP 0748



LOCKE LIDDELL & SAPP LLP  
ATTORNEYS & COUNSELORS

P. O. Box 911541  
DALLAS, TEXAS 75391-1541  
TAX ID 74-1164324

Golden Blount  
Golden Blount, Inc.  
4301 Westgrove  
Addison, TX 75001

February 21, 2001

As of January 31, 2001

File No.: 09842/60434

Re: Gas-Fired Artifl Logs & Coals-Burner Assembly

DATE	SERVICES	ATTY	HOURS	VALUE
10/17/00	Telecon with Mr. Blount and review of information necessary for [REDACTED]	RWH	.50	175.00
11/06/00	Telecon with Golden [REDACTED]	RWH	.75	262.50
11/06/00	Prepare patent assignment form for assignment of '159 Patent to Golden Blount, Inc.; draft letter to Mr. Blount [REDACTED]	MD	2.00	270.00
11/07/00	Complete assignment of patent application and draft of letter to Mr. Blount concerning [REDACTED]	MD	2.50	337.50
01/08/01	Prepare letter and complaint and send to client for approval.	RWH	3.50	1,312.50
01/09/01	Review of file histories and considering [REDACTED]	RWH	3.50	1,312.50

TOTAL HOURS 12.75

TOTAL SERVICES . . . . . \$3,670.00

JT-APP 0749

February 21, 2001

Golden Blount  
Page 2

As of January 31, 2001

File No.: 09842/60434

Re: Gas-Fired Artifl Logs & Coals-Burner Assembly

LESS DISCOUNT (\$1,170.00)  
TOTAL SERVICES BILLED . . . . . \$2,500.00

DATE	CHARGES	VALUE
	Air Freight Shipments	19.66
	Messenger Services	13.00
	Photocopies @.20 per page	9.80
12/22/00	Comm. of Patents & Trademarks - Recordal of Assignment	40.00
01/18/01	Clerk, U.S. District Court - Filing fee for Complaint	150.00
	TOTAL CHARGES . . . . .	\$232.46
	TOTAL SERVICES AND CHARGES . . . . .	\$2,732.46
	TOTAL DUE THIS STATEMENT . . . . .	\$2,732.46

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P. O. Box 911541  
Dallas, Texas 75391-1541

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JT-APP 0750

Golden Blount  
Page 3

February 21, 2001

As of January 31, 2001

File No.: 09842/60434

Re: Gas-Fired Artifl Logs & Coals-Burner Assembly

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JT-APP 0751

LOCKE LIDDELL & SAPP LLP  
ATTORNEYS & COUNSELORS

P. O. Box 911541  
DALLAS, TEXAS 75391-1541  
TAX ID 74-1164324

Golden Blount  
Golden Blount, Inc.  
4301 Westgrove  
Addison, TX 75001

March 13, 2001

As of February 28, 2001

File No.: 09842/79075

Re: Golden Blount, Inc. v. Robert H. Peterson Co.

DATE	CHARGES	VALUE
	Messenger Services	26.00
	TOTAL CHARGES . . . . .	\$26.00
	TOTAL DUE THIS STATEMENT . . . . .	\$26.00

Please remit payment to:  
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P. O. Box 911541  
Dallas, Texas 75391-1541

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(214) 740-8000 of this firm if you have questions concerning  
legal services covered by it or if you dispute the amount of the  
statement. Ms. Emily Teague in our Accounting Department  
(214) 740-8347 can answer questions concerning payments on your account.

Any payment for less than the full amount of this statement tendered  
in full satisfaction of this statement (or any portion of it) should  
be sent to: Locke Liddell & Sapp LLP, Attention: Accounts Receivable,  
2200 Ross Avenue, Suite 2200, Dallas, Texas 75201-6776

JT-APP 0752

Golden Blount  
Page 2

March 13, 2001

As of February 28, 2001

File No.: 09842/79075

Re: Golden Blount, Inc. v. Robert H. Peterson Co.

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JT-APP 0753

LOCKE LIDDELL & SAPP LLP  
ATTORNEYS & COUNSELORS

P. O. BOX 911541  
DALLAS, TEXAS 75391-1541  
TAX ID 74-1164324

May 15, 2001

Golden Blount  
Golden Blount, Inc.  
4301 Westgrove  
Addison, TX 75001

File No.: 09842/79075

Re: Golden Blount, Inc. v. Robert H. Peterson Co.

DATE	SERVICES	ATTY	HOURS	VALUE
03/28/01	Review of Judge's Scheduling Order and conference regarding [REDACTED] non-infringement claim by Defendants.	RWH	2.00	750.00
04/09/01	Review files and correspondence concerning the present action; discuss [REDACTED] with Roy Hardin; draft discovery requests.	CEP	2.00	460.00
04/10/01	Review pleadings and correspondence concerning the present action; review United State patent 5,988,159; draft discovery requests including document requests and interrogatories.	CEP	5.00	1,150.00
04/11/01	Review of proposed discovery requests	RWH	1.00	375.00
04/11/01	Revise drafts of Golden Blount's document requests and interrogatories to Robert Peterson Co.	CEP	1.00	230.00
04/12/01	Revise Golden Blount's document requests and interrogatories to Robert Peterson Co. in view of [REDACTED]	CEP	1.00	230.00
04/17/01	Letter to client and service of first wave of discovery.	RWH	.50	187.50
TOTAL HOURS			12.50	

JT-APP 0754

May 15, 2001

Golden Blount  
Page 2

File No.: 09842/79075

Re: Golden Blount, Inc. v. Robert H. Peterson Co.

TOTAL SERVICES . . . . . \$3,382.50

DATE	CHARGES	VALUE
	Photocopies @.20 per page	9.60
	Facsimiles @ 1.00 per page	24.00
	TOTAL CHARGES . . . . .	\$33.60
	TOTAL SERVICES AND CHARGES . . . . .	\$3,416.10
	TOTAL DUE THIS STATEMENT . . . . .	\$3,416.10

Please remit payment to:  
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P. O. Box 911541  
Dallas, Texas 75391-1541

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JT-APP 0755

May 15, 2001

Golden Blount  
Page 3

File No.: 09842/79075

Re: Golden Blount, Inc. v. Robert H. Peterson Co.

with, the services provided.

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JT-APP 0756



LOCKE LIDDELL & SAPP LLP  
ATTORNEYS & COUNSELORS

P. O. Box 911541  
DALLAS, TEXAS 75391-1541  
TAX ID 74-1164324

June 19, 2001

Golden Blount  
Golden Blount, Inc.  
4301 Westgrove  
Addison, TX 75001

As of May 31, 2001

File No.: 09842/79075

Re: Golden Blount, Inc. v. Robert H. Peterson Co.

DATE	SERVICES	ATTY	HOURS	VALUE
05/17/01	Attention to Scheduling Order and considering [REDACTED] preparing and transmitting proposed form of Joint Status Conference paper to opposing counsel.	RWH	2.00	750.00
05/18/01	Attention to corrected joint report; telecon with opposing counsel.	RWH	.75	281.25
05/22/01	[REDACTED]	CEP	.50	115.00
05/23/01	Review discovery responses of Defendant Robert H. Peterson Co.; draft correspondence concerning same.	CEP	1.00	230.00
05/29/01	Review discovery requests of Defendant Robert Peterson to Plaintiff Golden Blount; draft written discovery responses of Plaintiff Golden Blount; [REDACTED]	CEP	4.00	920.00
05/30/01	Revise written discovery responses of Plaintiff Golden Blount.	CEP	2.00	460.00
TOTAL HOURS			10.25	
TOTAL SERVICES				\$2,756.25

JT-APP 0757

Golden Blount  
Page 2

June 19, 2001

As of May 31, 2001

File No.: 09842/79075

Re: Golden Blount, Inc. v. Robert H. Peterson Co.

DATE	CHARGES	VALUE
	Messenger Services	40.00
	Postage	5.63
	Photocopies @.20 per page	10.00
	Facsimiles @ 1.00 per page	10.00
	TOTAL CHARGES . . . . .	\$65.63
	TOTAL SERVICES AND CHARGES . . . . .	\$2,821.88
	TOTAL DUE THIS STATEMENT . . . . .	\$2,821.88

Please remit payment to:  
Locke Liddell & Sapp LLP  
P. O. Box 911541  
Dallas, Texas 75391-1541

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JT-APP 0758

Golden Blount  
Page 3

June 19, 2001

As of May 31, 2001

File No.: 09842/79075

Re: Golden Blount, Inc. v. Robert H. Peterson Co.

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JT-APP 0759

LOCKE LIDDELL & SAPP LLP  
ATTORNEYS & COUNSELORS

P. O. Box 911541  
DALLAS, TEXAS 75391-1541  
TAX ID 74-1164324

July 17, 2001

Golden Blount  
Golden Blount, Inc.  
4301 Westgrove  
Addison, TX 75001

As of June 30, 2002

File No.: 09842/79075

Re: Golden Blount, Inc. v. Robert H. Peterson Co.

DATE	SERVICES	ATTY	HOURS	VALUE
06/01/01	[REDACTED]; draft proposed Protective Order; revise draft of Golden Blount's response to RHP's discovery requests.	CEP	3.00	690.00
06/04/01	Attention to proposed Protective Order; [REDACTED]	RWH	.50	187.50
06/04/01	Draft Protective Order; [REDACTED] [REDACTED] draft joint motion for discovery of the agreed protective order; draft correspondence concerning the present action; revise draft of Golden Blount's response to RHP's document requests; revise draft of Golden Blount's response to RHP's Interrogatories; [REDACTED]	CEP	6.00	1,380.00
06/06/01	Prepare for meeting with client regarding [REDACTED]	RWH	.50	187.50
06/13/01	Review prosecution history of patent in suit; [REDACTED] [REDACTED]	CEP	5.00	1,150.00

JT-APP 0760

Golden Blount  
Page 2

July 17, 2001

As of June 30, 2002

File No.: 09842/79075

Re: Golden Blount, Inc. v. Robert H. Peterson Co.

DATE	SERVICES	ATTY	HOURS	VALUE
06/14/01	Review files [REDACTED] [REDACTED] review correspondence concerning [REDACTED]	CEP	2.00	460.00
06/18/01	[REDACTED] [REDACTED] review prior art in view of [REDACTED] [REDACTED]; draft correspondence to client concerning same; review prosecution history of the patent in suit in view of [REDACTED] [REDACTED]	CEP	1.50	345.00
06/19/01	Review of prior art submitted by defendant; adding responses to interrogatory answers; [REDACTED] [REDACTED]	RWH	2.50	937.50
06/22/01	Attention to service of discovery responses and correction of document responses.	RWH	.50	187.50
06/29/01	Preparing for and conferring with opposing counsel to deliver offer to drop past infringement damage charge if attorney fees are paid and product removed from market [REDACTED] [REDACTED]	RWH	.50	187.50
TOTAL HOURS			22.00	
TOTAL SERVICES				\$5,712.50

DATE	CHARGES	VALUE
	Air Freight Shipments	11.14
	Messenger Services	20.00
	Postage	24.50

JT-APP 0761

July 17, 2001

Golden Blount  
Page 3

As of June 30, 2002

File No.: 09842/79075

Re: Golden Blount, Inc. v. Robert H. Peterson Co.

DATE	CHARGES	VALUE
	Photocopies @.20 per page	158.80
	Facsimiles @ 1.00 per page	46.00
06/27/01	Computerized Research - Dialog (05/01)	24.21
	TOTAL CHARGES . . . . .	\$284.65
	TOTAL SERVICES AND CHARGES . . . . .	\$5,997.15
	TOTAL DUE THIS STATEMENT . . . . .	\$5,997.15

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P. O. Box 911541  
Dallas, Texas 75391-1541

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legal services covered by it or if you dispute the amount of the  
statement. Ms. Emily Teague in our Accounting Department  
(214) 740-8347 can answer questions concerning payments on your account.

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JT-APP 0762

July 17, 2001

Golden Blount  
Page 4

As of June 30, 2002

File No.: 09842/79075

Re: Golden Blount, Inc. v. Robert H. Peterson Co.

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JT-APP 0763

LOCKE LIDDELL & SAPP LLP  
ATTORNEYS & COUNSELORS

P. O. Box 911541  
DALLAS, TEXAS 75391-1541  
TAX ID 74-1164324

Golden Blount  
Golden Blount, Inc.  
4301 Westgrove  
Addison, TX 75001

August 14, 2001

As of July 31, 2001

File No.: 09842/79075

Re: Golden Blount, Inc. v. Robert H. Peterson Co.

DATE	SERVICES	ATTY	HOURS	VALUE
07/19/01	[REDACTED] call to opposing counsel regarding discovery matters.	RWH	.25	93.75
07/24/01	Review of Peterson claims regarding [REDACTED]	RWH	1.50	562.50
07/24/01	Telecon with opposing counsel to inquire whether Peterson to take product off market; [REDACTED]	RWH	.50	187.50
07/31/01	Telecon with opposing counsel regarding position of defendants on invalidity.	RWH	.50	187.50
TOTAL HOURS			2.75	
TOTAL SERVICES . . . . .				\$1,031.25
TOTAL DUE THIS STATEMENT . . . . .				\$1,031.25

JT-APP 0764



Golden Blount  
Page 2

August 14, 2001

As of July 31, 2001

File No.: 09842/79075

Re: Golden Blount, Inc. v. Robert H. Peterson Co.

Please remit payment to:  
Locke Liddell & Sapp LLP  
P. O. Box 911541  
Dallas, Texas 75391-1541

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JT-APP 0765

HARTSFIELD ATLANTA  
INT'L AIRPORT

\*\*\* thank you \*\*\*

Entrance: 06:01 07/27/02 Lane 02

Exit: 17:19 07/31/02 Lane 31

CASHIER (54 SEDN 2064

AMOUNT PAID \$632.00

51.00

*Perkins*

### AirTran Customer Receipt

Itinerary Number: HQFYBH  
Passenger: HANFT/CHARLES  
Payment Type: Visa

### Flight Itinerary

27JUL02 Flight No(s): 72  
ATLANTA, GA Depart: 0820  
DALLAS/FT. WORTH, TX Arrive: 0935

Class of Service: L-COACH  
One Way Fare: 82.78  
Taxes: 9.21  
9-11 Security Fee(s): 2.50  
Passenger Facility Charge(s): 4.50

30JUL02 Flight No(s): 112  
DALLAS/FT. WORTH, TX Depart: 1403  
ATLANTA, GA Arrive: 1703

Class of Service: Y-COACH  
One Way Fare: 272.33  
Taxes: 19.87  
9-11 Security Fee(s): 2.50  
Passenger Facility Charge(s): 4.50

Total Fare: 305.12  
Total Taxes: 28.88  
Total 9-11 Security Fee(s): 5.00  
Total Passenger Facility Charge(s): 9.00  
Other Charges: 0.00

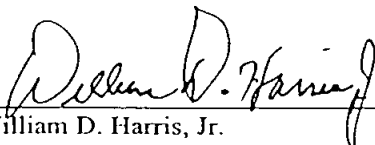
Total Cost: 348.00

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Plaintiff Golden Blount, Inc.'s Bill of Costs were served on counsel for Defendant via First-Class Mail and by facsimile as indicated below:

Jerry R. Selinger (via facsimile)  
Jenkins & Gilchrist  
1445 Ross Avenue, Suite 3200  
Dallas, Texas 75202  
214/855-4500 (Telephone)  
214/855-4300 (Facsimile)

F. William McLaughlin (via First-Class Mail)  
Dean A. Monco  
Wood, Phillips, VanSanten,  
Clark & Mortimer  
500 W. Madison Street, Suite 3800  
Chicago, IL 60611-2511  
312/876-1800 (Telephone)  
312/876-2020 (Facsimile)

  
\_\_\_\_\_  
William D. Harris, Jr.

MAILING ADDRESS: P.O. Box 832570, RICHARDSON, TEXAS 75083  
STREET ADDRESS: 225 UNIVERSITY PLAZA, 275 WEST CAMPBELL ROAD, RICHARDSON, TEXAS 75080 U.S.A.  
TEL: (972) 480-8800 FAX: (972) 480-8885 FIRM@ABSTRACTASSETS.COM

JT-APP 0767

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

GOLDEN BLOUNT, INC.,	§	
	§	
Plaintiff,	§	
	§	Civil Action No.
v.	§	
	§	
ROBERT H. PETERSON CO.,	§	3-01CV0127-R
	§	
Defendant.	§	

PLAINTIFF GOLDEN BLOUNT, INC.'S REPLY TO  
DEFENDANT ROBERT H. PETERSON COMPANY'S OPPOSITION  
TO PLAINTIFF'S MOTION TO DISREGARD THE TESTIMONY  
OF JOHN PALASKI

This is in reply to Defendant Robert H. Peterson Company's Opposition To Plaintiff's Motion To Disregard The Testimony of John Palaski (hereinafter "Plaintiff's Motion").

I. THE GIST

The Courts Findings of Fact and Conclusions of Law were entered without any stated conclusion in them or elsewhere that Plaintiff's Motion had been granted or had in any way influenced the Court. It is speculated that it had no influence since it was submitted on the last day of a two and one-half day trial, primarily to furnish a brief to the Court, and never was it acknowledged as a document considered by the Court. For this reason the point of consideration of the present motion and brief are moot.

To illustrate that consideration was given the tendered Palaski evidence by the Court, see Nos. 8 and 9 of the Court's Findings of Fact and Conclusions of Law, wherein the Court said:

"A recent sketch, made long after the patent was filed, was made to illustrate that which Defendant is trying to establish was prior art in the eighties. Defendant says it went off the market long ago. The sketch was made long after the fact, to illustrate a device allegedly made public or sold by a third party in the eighties. The recent sketch was made with inputs and assistance of the defendant's personnel. The alleged prior art, shown in the sketch, was not sufficiently proved to consider it as meeting the standard of being shown by clear and convincing evidence. Even if it did, it was for quite a different purpose than the patented device, and further the end use has not been shown."

## II. SO-CALLED "FACTUAL BACKGROUND" HAS BEEN CONSIDERED BY THE COURT

The Court has obviously considered this "evidence" and found it lacking. The Judge had Mr. Palaski before him, as well as testimony seeking to make the ancient structure into something to suit the Defendant's purpose at the moment. The Court issued its Findings of Fact and Conclusions of Law, having considered all the evidence, and that should be the end of the matter. A rehash is not necessary or appropriate.

## III. LEGAL STANDARD UNDER THE CASE LAW

The following is in response to Defendant's section III: "Mr. Palaski's Testimony Meets The Legal Standard Under The Case Law And Should Be Accorded Substantial Weight By The Court."

- 1) The argued point is not persuasive since it depends on many years for reconstruction. At best it seeks to shorten a long 25 years to 20 years, and this still leaves a long dormant period since the alleged remote event.
- 2) Mr. Palaski was shown to be a close and long time personal friend with personnel at Peterson. Even were this not so, the testimony was evaluated by the Court and it was not persuasive to the Court "by clear and convincing evidence."
- 3) The testimony of Palaski that there were differences between what he remembered and what was at first represented to be the same structure was a significant strike against the standard of clear and convincing evidence.
- 4) The sale of F-3 service burner units is simply in no way in point, nor is "identification" of a 1977 Peterson price list which shows nothing of significance. The identification of drawings dated July 1, 1983 is at most of academic interest. The drawings are not virtually identical. Here the Defendant is grossly mistaken.
- 5), 6), 7) and 8)

Here Defendant is redundant. The points have been treated, and Plaintiff rejects them as did the Court.

## IV. RESPONDING TO DEFENDANT'S SECTION IV

The *Juicy Whip, Inc. v. Orange Bang, Inc.* 292 F.3rd 728 (Fed. Cir. 2002) case is indeed good law: It points out, *inter alia* "reliable evidence of corroboration comes in the form of physical records, contemporaneous with the alleged prior invention."

The true point is that here no such records of significance exist. The effort to take sketches of the F-3 multiple burner and make them something it is not is shameful; the same regarding D-46; and the same regarding random individual components of years ago.

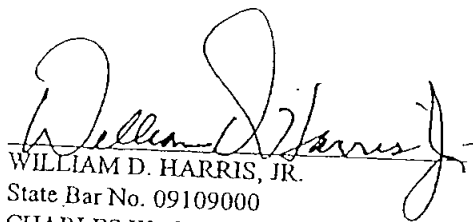
There is no responsible way one can bootstrap the foregoing to verify anything about Mr. Palaski's alleged unit.

#### CONCLUSION

The Court is requested to make no alternations that upgrade Mr. Palaski's purported contribution, nor to change in any other aspect of the Court's Findings and Conclusions as a result of Defendant's argument. Plaintiff considers its own motion moot.

Respectfully submitted,

For Plaintiff Golden Blount, Inc.



WILLIAM D. HARRIS, JR.

State Bar No. 09109000

CHARLES W. GAINES

State Bar No. 07570580

Hitt Gaines & Boisbrun, P.C.

225 University Plaza

275 West Campbell Road

Richardson, Texas 75080

972/480-8800 (Telephone)

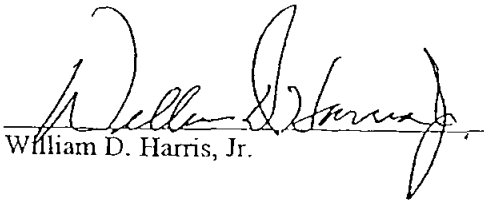
972/480-8865 (Facsimile)

# CERTIFICATE OF SERVICE

I hereby certify that a true copy of the enclosed was served on the following counsel of record on September 4, 2002, by first class mail and facsimile:

Jerry R. Selinger  
Jenkins & Gilchrist  
1445 Ross Avenue, Suite 3200  
Dallas, Texas 75202  
214/855-4500 (Telephone)  
214/855-4300 (Facsimile)

F. William McLaughlin  
Dean A. Monco  
Wood, Phillips, VanSanten,  
Clark & Mortimer  
500 W. Madison Street, Suite 3800  
Chicago, IL 60611-2511  
312/876-1800 (Telephone)  
312/876-2020 (Facsimile)

  
William D. Harris, Jr.

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

SEP 19 2002

CLERK, U.S. DISTRICT COURT

By \_\_\_\_\_

Deputy

GOLDEN BLOUNT, INC., )

Plaintiff, )

v. )

ROBERT H. PETERSON CO., )

Defendant. )

Civil Action No.: 3:01-CV-0127-R

**PETERSON COMPANY'S OBJECTIONS TO  
PLAINTIFF'S CLAIM FOR ATTORNEY'S FEES**

Defendant Robert H. Peterson Company ("PETERSON COMPANY") respectfully submits its opposition to Plaintiff Golden Blount, Inc.'s ("BLOUNT") petition for attorney's fees awarded by this Court in its Order of August 9, 2002, relying upon the Court's Findings Of Fact And Conclusions Of Law of the same date. PETERSON COMPANY'S opposition is specifically directed to categories identified below.

At the outset, PETERSON COMPANY reasserts that this case is not an exceptional case under 35 U.S.C. § 284. PETERSON COMPANY continues its opposition to the award of treble damages and attorneys fees for the reasons stated in the final pretrial order and presented at trial.

**I. THE APPLICABLE LEGAL STANDARD**

The applicable legal standard for this District for determining reasonable attorney's fees in patent infringement cases is set forth in *In Re Dahlgren International*

JT-APP 0772



811 F.Supp.1182 (N.D. Texas 1992). In *Dahlgren*, the Court held that *Johnson v. Georgia* 488 F.2d 714 (5<sup>th</sup> Cir. 1974) should be followed in determining the reasonableness of attorney's fees.

II. OBJECTION TO FEES PRIOR TO REPRESENTATION OF PLAINTIFF  
GOLDEN BLOUNT

Paragraph 3 of the affidavit of William D. Harris, Jr. on Attorneys' Fees (A002) states that Mr. Harris became lead counsel only three weeks before the close of discovery. The close of discovery was September 14, 2001. This means that Mr. Harris' firm was hired by plaintiff on August 24, 2001. Nevertheless, the appendix attached in support of BLOUNT's Motion for Attorney's Fees includes attorney time commencing August 6, 2001 through August 23, 2001. If Mr. Harris' firm was not yet retained by BLOUNT, then it is unclear why any charges, including costs and attorney fees, to BLOUNT would have been appropriate and therefore PETERSON COMPANY should have no obligation to pay any of these charges. Indeed, these fees include, for example, work involving a contingency agreement and review of materials, presumably for Mr. Harris and his firm to determine if they would even take the case. Such fees are not properly billable to BLOUNT and are therefore not properly chargeable to PETERSON COMPANY.

The total amount of attorney's fees prior to August 24, 2001 is \$7,767.00.

III. OBJECTION TO FEES REQUESTED FOR SERVICES WHICH ARE  
REDACTED

By PETERSON COMPANY'S count, approximately 77 entries of attorneys' time on the appendix submitted by Golden Blount have been partially or totally redacted. A

party seeking attorneys' fees is not permitted to submit a redacted version of such claims to the Court, thereby denying the opposing party an opportunity to object to inappropriate claim for fees. 35 U.S.C. § 285 provides:

The Court in exceptional cases may award reasonable attorneys fees to the prevailing party.

The "reasonableness" of Blount, Inc.'s claim for attorney fees cannot be determined if entries are partially or totally redacted. Since BLOUNT has chosen to redact these entries, without even providing an explanation, the claim for fees associated with such entries should be denied.

As the Supreme Court held in *Hensley v. Eckerhart* 461 U.S. 424, 433 (1983):

A district judge may not, in my view, authorize the payment of attorney's fees unless the attorney involved has established by clear and convincing evidence the time and effort claimed and has shown that the time expended was necessary to achieve the results obtained.

The records of the Hitt, Gains firm for attorney's fees are not only redacted, they are not sufficiently documented, vague and incomplete, and should be disregarded. *PPG Industries v. Celanese Polymer Specialties Co. Inc.* 840 F.2d 1565, 1570 (Fed. Cir. 1988). See also, *Suntiger v. Scientific Research Funding Group*, 9 F.Supp 2d 601 (1998 E.D. Va): "The Court limits plaintiffs' award to that portion that represents the work of the three lead counsel because plaintiffs' counsel submitted redacted records in support of the petition, making it impossible for the Court to determine what work was actually done and by whom." *Floydist James Martin et al v. Ray Mabus et al*, 734 F. Supp 1216 (S.D. Mo. 1990): "In examining the above hours for reasonableness, the Court noted many entries which lacked the explanatory detail necessary for the Court to test the reasonableness of the billing judgment of the attorney. Items such as 'phone

call to Rhodes,' or 'conference with Turnage,' or 'prepared for case,' of which the record is replete, do not state the subject matter of the activity and do not give the Court a basis upon which to test the reasonableness of the claimed hours." *Id.* At 1228; *Hockerson-Halberstadt v. Reebok International* 2000 U.S. Dist. Lexis 20665: " With no reliable means of determining whether the prorated portions of the partially redacted billing statements are reasonable, the Court declines to award any of those portions of SKGF's attorneys fees to Reebok." *Id.* at \*21.

The total amount of attorneys' fees for the partially or totally redacted entries is \$63,915.00.

#### IV. OBJECTION TO FEES FOR PREPARATION OF JURY INSTRUCTIONS

Blount, Inc.'s appendix attached in support of its motion for fees, shows a substantial amount of time submitted by the attorneys in preparing jury instructions and voir dire questions. BLOUNT had originally submitted a jury demand, but subsequently proposed to the PETERSON COMPANY that BLOUNT would be willing to drop its jury demand if the case would be tried to the District Court, rather than a magistrate. (Ex. 1). PETERSON COMPANY had no objection to BLOUNT'S request. Since it was Blount, Inc. that originally demanded and subsequently dropped its jury demand, PETERSON COMPANY should not be forced to pay attorneys fees for any work connected with the preparation of jury instructions and voir dire questions.

Line items for work connected with the preparation of jury instructions and Voir dire questions are found in Appendix pages A027, 029, 031, 032, 033, and 034. The total amount of attorneys' time charged for the preparation of jury instructions is shown as \$7,020.00.

V. OBJECTION TO TRIAL PREPARATION CONDUCTED IN APRIL, 2002

As noted in paragraph 7 of the affidavit of William Harris, the trial of this case was originally set for March, 2002. However, the delay of this trial was at the direct request of BLOUNT in order to conduct certain business meetings in China. (Ex. 2). PETERSON COMPANY, did not object to BLOUNT'S request, and the original trial date was vacated. The Court set a pretrial conference for May 3, 2002.

In the motion in which BLOUNT dropped its jury demand (Ex. 1), the parties also moved the Court to set a schedule for briefing and a Markman hearing to construe the patent claims at issue occurs, a period to allow a settlement conference, and lastly, if still required, a date for a bench trial. This was done in order to facilitate possible settlement to the case. Furthermore, BLOUNT was fully aware that PETERSON COMPANY intended to call third party out-of-state witnesses that would require sufficient notice in order to permit them to appear at trial.

Nevertheless, at the pretrial conference on May 3, attorneys for BLOUNT requested the Court to set the trial for the following Monday, May 6. PETERSON COMPANY informed the Court of the prior discussions regarding establishment of a Markman briefing schedule as well as PETERSON COMPANY'S intent to call third party out-of-state witnesses that required sufficient notice in order to permit them to appear at trial.

Having reviewed the attachments to Mr. Harris' affidavit, it is now clear that BLOUNT intended to conduct a trial by ambush when it requested the Court for the May 6, trial date. The Court, having heard the parties positions, set July 29-31, as the trial date, and further set a briefing schedule for claim interpretation, which the parties

followed.

PETERSON COMPANY respectfully submits that it should not be forced to pay for BLOUNT'S duplicate trial preparation. See *Performance Printing Corporation v. The Upper Deck Company*, 1999 WL 643811 (N.D. Tx) and *Walton v. Autotrol Corporation*, 1998 WL 50459 (N.D. Tx). The amount of time spent by BLOUNT'S attorneys in preparing for trial in April, 2002 was simply a gamble that it would be successful in its trial by ambush strategy. That strategy failed, and PETERSON COMPANY should not bear the costs for this attempt.

The entries for the attorney time spent in preparing for trial in April, appear in Appendix pages A039-042. Total amount of fees charged for this initial trial preparation time was \$23,267.50.

**VI. OBJECTION TO ATTORNEY'S FEES SUBMITTED FOR JAMES ORTEGA**

Paragraph 9 of Mr. Harris' affidavit states that James Ortega billed 67.5 hours at \$175.00 per hour regarding the present action. Mr. Ortega's time appears on A013-015 of the Appendix to Mr. Harris' affidavit. Mr. Ortega's time was spent virtually exclusively in reviewing the prosecution history and claim interpretation. No entries for Mr. Ortega's time were made after September 13, 2001. Shortly after Mr. Ortega ceased working on the present action, Greg Parker, an attorney of comparable experience, apparently took over Mr. Ortega's duties, and billed 492.3 hours on the present action at the same \$175.00 per hour rate.

Mr. Harris' affidavit provides no explanation as to why Mr. Ortega ceased working on the case in September, 2001, or what overall contribution Mr. Ortega made to the

representation of BLOUNT in the present action.

PETERSON COMPANY submits that Mr. Ortega's work in the present case appears duplicative to that performed by Greg Parker. As such, BLOUNT is not entitled to collect duplicative fees for work conducted on the case. Under the case law cited in Section III, supra, PETERSON COMPANY respectfully requests that the fee petition for Mr. Ortega's time spent in the present case be denied. The dollar value assigned to Mr Ortega's fees is \$11,880.00.

**VII. OBJECTION TO ATTORNEY'S FEES FOR LOCKE, LIDDELL AND SAPP**

PETERSON COMPANY objects to the submission of attorney's fees on behalf of Locke, Liddell and Sapp regarding its initial representation of BLOUNT. Five separate attorneys are identified as having worked at the Locke, Liddell firm (Plaintiff's Appendix, P. A087). An affidavit of Roy Harden, partner at Locke, Liddell and Sapp, was submitted in support of this claim for fees (Plaintiff's Appendix, P.A052-53). Virtually all of the work performed by the Locke, Liddell firm was duplicative of work subsequently performed by the Hitt, Gaines & Boisbrun firm on behalf of BLOUNT (Plaintiff's Appendix P.A054-077). Moreover, substantial portions of the invoices submitted are redacted in the same manner as those submitted by the Hitt, Gaines firm. PETERSON COMPANY further objects to these redacted invoices for the same reasons set forth with respect to the redactions made by the Hitt, Gaines firm identified and discussed above. PETERSON COMPANY respectfully request that the entire submission of fees made by the Locke, Liddell and Sapp firm totaling \$18,967.50 be denied.

**VIII. OBJECTION TO PHOTO COPYING CHARGES**

PETERSON COMPANY objects to the following photocopying charges found on BLOUNT'S submission:

<u>Date</u>	<u>SHIP ID</u>	<u>UNITS</u>	<u>RATE</u>	<u>SLIP VALUE</u>
9/24/01	78753	1	587.41	587.41
12/31/01	88430	1	7.90	7.90
5/6/02	94685	1	625.27	625.27
5/17/02	95344	1	247.33	247.33
7/27/02	99663	1	182.31	182.31
7/25/02	100655	1	2.48	2.48

Total: 1,652.70

No identification of what the copies were used for is provided. PETERSON COMPANY submits that these costs should be denied in their entirety. *Zapata Gulf Marine Corp. v. Puerto Rico Maritime Shipping Authority* 133 F.R.D. 481, 484 - 85 (E.D.La. 1990).

To the extent these exorbitant copy charges were for the production of charts, models and/or photography, PETERSON COMPANY objects to these as well, since BLOUNT did not obtain pretrial authorization from the Court for such expenses. Vague descriptions should not be reimbursed *Kohle v. Eastman Kodak Co.* 713 F.2d 128, 133 (5<sup>th</sup> Cir. 1983); *J.T. Gibbons, Inc. V. Cranford Fitting Co.* 760 F. 2d. 613, 615-16 (5<sup>th</sup> Cir. 1985).

**IX. OBJECTION TO CERTAIN POINTS RAISED IN BLOUNT, INC.'S MEMORANDUM IN SUPPORT OF ITS PETITION FOR ATTORNEY FEES**

For the record, PETERSON COMPANY has no objection to the hourly rates submitted by the attorneys for Blount, Inc. in its petition for attorney's fees. PETERSON COMPANY'S objections to certain times spent are set forth above and will not be

repeated here.

PETERSON COMPANY submits the following objections to certain points raised in the BLOUNT memorandum in support of its application for attorney's fees.

First, Plaintiff's memorandum (P.9) refers to the fact that William Harris in the law firm of Hitt, Gaines & Boisbrun "were hired to represent Golden Blount only three weeks before the close of discovery." This is not PETERSON COMPANY'S fault. BLOUNT'S original firm, Locke, Liddell & Sapp chose not to take the requisite discovery. That was BLOUNT'S choice. PETERSON COMPANY should not suffer any untoward consequences for BLOUNT'S failure to prosecute its own case.

Second, BLOUNT, INC.'S memorandum refers to PETERSON COMPANY'S failure to be "adequately prepared to proceed to trial" (P.10). This statement is untrue for the reasons cited above with respect to PETERSON COMPANY'S objection to the duplicative trial efforts expended by Plaintiff's counsel in an attempt to set up a "trial by ambush." In direct contradiction to agreements between the parties regarding asking the Court to conduct a Markman hearing prior to trial, BLOUNT asked the Court to instead commence trial immediately. BLOUNT'S attorneys should not be permitted to take advantage of their own duplicitous conduct in order to have PETERSON COMPANY pay for their trial preparation twice.

For these additional reasons, PETERSON COMPANY requests that BLOUNT'S petition for attorneys' fees be reduced by the amounts set forth above.

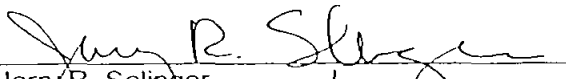


### CONCLUSIONS

For the above-stated reasons, Defendant PETERSON COMPANY respectfully request that the following fees be denied for the reasons set forth above:

1.	Fees for prior to representation -	\$7,767.00
2.	Fees for redacted entries of attorney's time -	\$63,915.00
3.	Fees for jury instructions -	\$7,020.00
4.	Fees for trial preparation in April, 2002 -	\$23,267.50
5.	Fees for James Ortega -	\$11,880.00
6.	Fees for Locke, Liddell & Sapp -	\$18,967.50
7.	Costs for Photocopying	\$1,652.70
	Total	\$134,469.70

Respectfully submitted,

  
Jerry R. Selinger  
JENKENS & GILCHRIST *by permission*  
1445 Ross Avenue  
Suite 3200  
Dallas, Texas 75202  
Telephone: (214) 855-4500  
Facsimile: (214) 855-4300  
ATTORNEY FOR DEFENDANT  
ROBERT H. PETERSON

### OF COUNSEL

Dean A. Monco  
F. William McLaughlin  
WOOD, PHILLIPS, KATZ,  
CLARK & MORTIMER  
500 West Madison Street, Suite 3800  
Chicago, Illinois 60661  
Telephone: (312) 876-1800  
Facsimile: (312) 876-2020



IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

GOLDEN BLOUNT, INC.,	§	
	§	
Plaintiff,	§	
	§	Civil Action No.
v.	§	
	§	3-01CV0127-R
ROBERT H. PETERSON CO.,	§	
	§	
Defendant.	§	

JOINT AGREED TO MOTION  
FOR TRIAL BY THE COURT SITTING WITHOUT A JURY

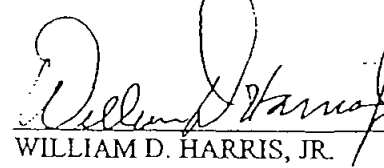
In accordance with F.R.C.P. 39(a)(2), Plaintiff, Golden Blount, Inc. ("Golden Blount"), by its attorneys, jointly with Defendant, Robert H. Peterson Co. ("Peterson"), by its attorneys, move the Court to withdraw the jury demand made by Golden Blount, and proceed to trial by the Court sitting without a jury. The parties have come to appreciate that the issues are such that the trial could be conducted much more quickly without a jury and without a massive infusion of instructions. Accordingly, the parties request the present case be tried by the Court sitting without a jury.

If the Court graciously allows the withdrawal of the jury demand, thus agreeing to a bench trial, the parties further move the Court to kindly consent to an agreed to date upon which a series of related events may occur. Namely, the parties move the Court to set a schedule for briefing and upon which a Markman Hearing to construe the patent claims at issue occurs, a period to allow a settlement conference, and lastly, if still required, a date for a bench trial. Both parties believe that such a format substantially reduces the burden placed upon the Court, as well as provides an environment upon which an agreed to settlement may ultimately occur. We assure the Court we believe this action to be in the interest of justice, and certainly not for delay.

JT-APP 0783

Respectfully submitted,

For Plaintiff Golden Blount, Inc.



WILLIAM D. HARRIS, JR.

State Bar No. 09109000

CHARLES W. GAINES

State Bar No. 07570580

Hitt Gaines & Boisbrun, P.C.

225 University Plaza

275 West Campbell Road

Richardson, Texas 75080

972/480-8800 (Telephone)

972/480-8865 (Facsimile)

OF COUNSEL:

Dean A. Monco

F. William McLaughlin

WOOD, PHILLIPS, VANSANTEN,

CLARK & MORTIMER

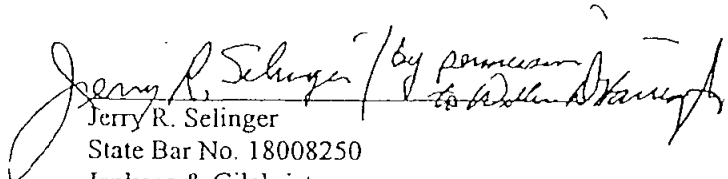
500 West Madison Street, Suite 3800

Chicago, Illinois 60661-2511

312/876-1800 (telephone)

312/876-2020 (facsimile)

For Defendant Robert H. Peterson Co.



Jerry R. Selinger

State Bar No. 18008250

Jenkins & Gilchrist

1445 Ross Avenue, Suite 3200

Dallas, Texas 75202

214/855-4500 (Telephone)

972/855-4300 (Facsimile)



IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

U.S. DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS

FILED

FEB 27 2002

CLERK, U.S. DISTRICT COURT

By \_\_\_\_\_  
Deputy

GOLDEN BLOUNT, INC.,

Plaintiff,

v.

ROBERT H. PETERSON CO.,

Defendant.

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Civil Action No.

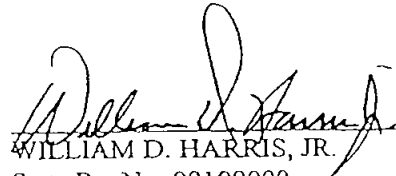
3-01CV0127-R

PLAINTIFF, GOLDEN BLOUNT, INC'S UN-OPPOSED  
MOTION FOR 60-DAY CONTINUANCE

For good cause shown in the accompanying Memo, the Plaintiff moves for a 60-day continuance, with the concurrence and approval of Defendant. The parties do not seek to change the pretrial setting this Friday, March 1, 2002, unless the Court should direct to the contrary, nor should the continuance effect any Markman hearing which the Court may decide to hold during the 60 day period - - the Plaintiff merely requests that the period until trial be extended by 60 days from the present setting of March 4, 2002.

Respectfully submitted,

For Plaintiff Golden Blount, Inc.

  
WILLIAM D. HARRIS, JR.

State Bar No. 09109000

CHARLES W. GAINES

State Bar No. 07570580

Hitt Gaines & Boisbrun, P.C.

225 University Plaza

275 West Campbell Road

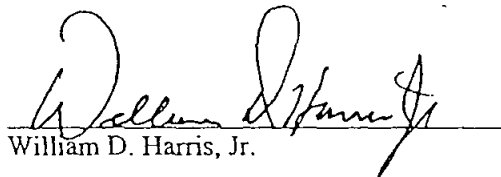
Richardson, Texas 75080

972/480-8800 (Telephone)

972/480-8865 (Facsimile)

CERTIFICATE OF CONFERENCE

The undersigned hereby certifies that counsel for Plaintiff, Golden Blount, Inc., has in good faith has conferred with F. William McLaughlin, counsel for Defendant, in an effort to resolve the subject of this Motion. Mr. McLaughlin, attorney for Defendant, graciously does not object to a brief continuance. This motion is therefore submitted to the Court for its determination.

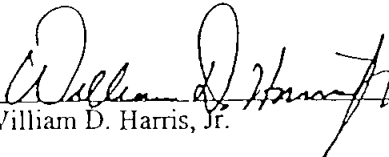
  
William D. Harris, Jr.

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the enclosed Plaintiff, Golden Blount, Inc.'s Un-  
Opposed Motion For 60-Day Continuance was served on the following counsel of record on  
February 27, 2002, by first class mail:

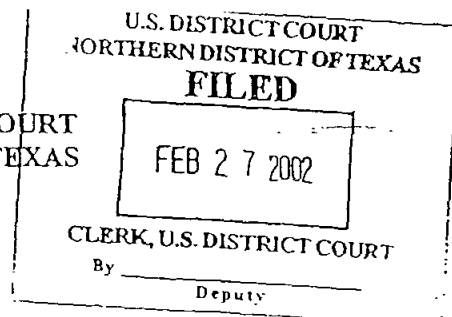
Jerry R. Selinger  
Jenkins & Gilchrist  
1445 Ross Avenue, Suite 3200  
Dallas, Texas 75202  
214/855-4500 (Telephone)  
214/855-4300 (Facsimile)

F. William McLaughlin  
Dean A. Monco  
Wood, Phillips, VanSanten, -  
Clark & Mortimer  
500 W. Madison Street, Suite 3800  
Chicago, IL 60611-2511  
312/876-1800 (Telephone)  
312/876-2020 (Facsimile)

  
William D. Harris, Jr.



IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION



GOLDEN BLOUNT, INC.,

Plaintiff,

v.

ROBERT H. PETERSON CO.,

Defendant.

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Civil Action No.

3-01CV0127-R

MEMO SUPPORTING PLAINTIFF, GOLDEN BLOUNT, INC'S  
UN-OPPOSED MOTION FOR 60-DAY CONTINUANCE

In support of this motion, the following facts are set out:

Facts

1. Mr. Golden Blount is the chief executive officer of Plaintiff, Golden Blount, Inc.
2. Mr. Blount's expected testimony is as the most important testimony for Plaintiff's case and it is essential that he be present for trial.
3. Quite recently and unexpectedly Mr. Blount has been given the opportunity to further his business most substantially. This opportunity requires almost immediate action, including a rather prolonged trip to China. The trip must be started during the month of March, although the exact day is not yet determined.
4. Mr. Blount will return from his trip no later than the end of April.
5. The present trial setting is on the 30 day docket of March 4, 2002.
6. Considering the foregoing, it is most unlikely that Mr. Blount would be able to be present for trial, and also make his important business trip to China.

Considering the above, Plaintiff's counsel has conferred with Defendant's counsel, and the party Defendant graciously does not object to a brief continuance to allow Mr. Blount to make his important business trip; more specifically, the Defendant and Plaintiff are in agreement for the 60-

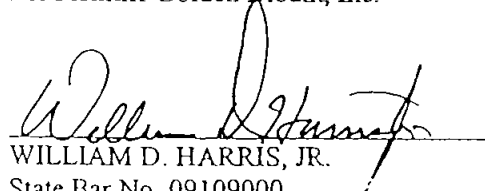
JT-APP 0789

day continuance as requested in the accompanying motion. Mr. Blount has verified this memo under oath.

The parties assure the Court that the present motion is being made for the precise purposes stated, and in no way just for delay.

Respectfully submitted,

For Plaintiff Golden Blount, Inc.



WILLIAM D. HARRIS, JR.

State Bar No. 09109000

CHARLES W. GAINES

State Bar No. 07570580

Hitt Gaines & Boisbrun, P.C.

225 University Plaza

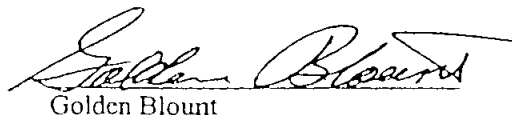
275 West Campbell Road

Richardson, Texas 75080

972/480-8800 (Telephone)

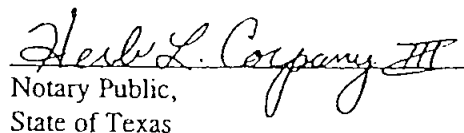
972/480-8865 (Facsimile)

The foregoing is verified and sworn to by me this 27th day of February, 2002, before the undersigned authority.

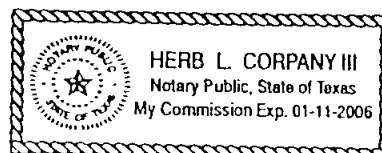
  
Golden Blount

STATE OF TEXAS §  
COUNTY OF Dallas §

On this 27th day of February, 2002, before me, a Notary Public in and for the State and County aforesaid, personally appeared Golden Blount, known by me to be the person of the above name who signed and sealed the foregoing instrument, and acknowledged the same to be his own free act and deed.

  
Notary Public,  
State of Texas

My Commission Expires: 01-11-2006



IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

GOLDEN BLOUNT, INC.,

Plaintiff,

v.

ROBERT H. PETERSON CO.,

Defendant.

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Civil Action No.

3-01CV0127-R

ORDER ON MOTION FOR 60-DAY CONTINUANCE

On the 27th day of February, 2002 came on for consideration Plaintiff, Golden Blount, Inc.'s Unopposed Motion for 60-Day Continuance, and supporting Memo. The Court, having considered the Motion and the supporting Memo, and having accepted the representation of the parties that the subject request is in good faith believed to be in the interest of justice, and most certainly not for delay, is of the opinion that the Motion should be GRANTED for a 60-day continuance.

The Pretrial Conference scheduled for Friday, March 1, 2002, will still be held.

IT IS SO ORDERED.

SIGNED this the \_\_\_\_\_ day of \_\_\_\_\_, 2002.

UNITED STATES DISTRICT JUDGE  
NORTHERN DISTRICT OF TEXAS

JT-APP 0791

CERTIFICATE OF SERVICE

This certifies that a copy of the foregoing document was served by hand delivery to counsel for Plaintiff, William D. Harris, Jr., Hitt Gaines Boisbrun, P.C., 225 University Plaza, 275 West Campbell Road, Richardson, Texas 75080, this 19<sup>th</sup> day of September, 2002.

Stacia Parker

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

GOLDEN BLOUNT, INC., )

Plaintiff, )

v. )

ROBERT H. PETERSON CO., )

Defendant. )

Civil Action No.: 3:01-CV-0127-R

SEP 19 2002

CLERK, U.S. DISTRICT COURT

By \_\_\_\_\_

Deputy

**PETERSON COMPANY'S OBJECTION TO  
GOLDEN BLOUNT'S MOTION FOR UPDATED DAMAGES**

Defendant Robert H. Peterson Co ("PETERSON CO.") respectfully submits this Memorandum and Opposition to Plaintiff Golden Blount, Inc's. ("BLOUNT") Motion for Updated Damages.

**BASIS OF MOTION**

On August 22, 2002, Golden BLOUNT forwarded its first written request for updated sales figures for PETERSON CO.'s accused ember flame burner unit (Plaintiff's Appendix to Motion, Exp. B) On August 26, 2002, PETERSON CO. forwarded its response to BLOUNT's request, identifying sales figures of the accused ember flame burner unit for the months of May and June (Ex. 1). Additionally, Peterson Company informed BLOUNT that it would provide the sales figures for July 1, 2002, through the date of judgment, upon the return of the employee in charge of generating such figures from his vacation. The total figures for May through August are now attached hereto as (Ex. 2). BLOUNT'S alternative method to determine damages has no basis in fact or law. BLOUNT'S alternative method offered cites no case law to

support such a theory since such an argument would be summarily dismissed by the Court of Appeals for the Federal Circuit. PETERSON CO. has not refused to provide such information, and in fact, has provided the information that it had regarding sales promptly.

PETERSON CO.'s August 26, 2002 letter (Ex.1), also informed BLOUNT that it would seek a reduction of any claim for damages by any returns of its accused ember flame booster units from PETERSON CO.'s distributors.

PETERSON CO. seeks a reduction of any post April 30, 2002, award of damages by any returns of the accused ember flame booster for the following reasons. First, PETERSON CO.'s ember flame booster, by itself, does not infringe any claim of the BLOUNT '159 patent-suit. It is only when the ember flame booster is connected with a basic G 4 burner that infringement is possible. PETERSON CO. sells to distributors who then sell the ember flame boosters to retail stores. It is the retail stores, not the distributors, that put the ember flame boosters together with the G4 burners.

Second, as a matter of law, inducement to infringement and contributory infringement cannot be charged unless there is actual direct infringement. *Joy Techs., Inc. v. Flakt, Inc.*, 6 F 3d 770, 28 USPQ2d 1378 (Fed. Cir. 1993). As such, if PETERSON CO. was able to withdraw its accused ember flame burner unit from the market prior to any sales to the retail market, no direct infringement has occurred, and, therefore, no inducement to infringe or contributory infringement has occurred. Therefore, Peterson Company's additional sales of 322 units must be offset by the 802 ember flame burner units returned. The net quantity is -480.

Under the Court's determination of damages set forth in its findings of fact and conclusion of law dated August 9, 2002, BLOUNT is entitled to no additional damages and its damage award should be reduced by \$56,601.60.

#### **BLOUNT, INC.'S CLAIM FOR PREJUDGMENT AND POST JUDGMENT INTEREST**

At the outset, PETERSON CO. asserts that, as a matter of law, BLOUNT is not entitled to prejudgment interest on any of the enhanced damages or attorney's fees awarded by the Court. In *Lam v. Johns Manville Corp.* 718 F.2d 1056, 1066 (Fed. Cir. 1983), the Federal Circuit held:

"Prejudgment interest may be assessed by the district court after damages have been found. Contrary to Lam's contention, where, as here, the damages were increased to punish J-M for its willful infringement, prejudgment interest cannot be assessed on the increased or punitive portion of the damage award."

The Federal Circuit in *Underwater Devices Inc. V. Morrison-Knudson Company* 717 F.2d 1380, 1389 (Fed. Cir. 1983), also held:

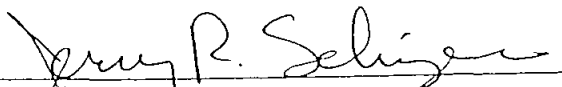
"The appellant further argues that the district court erroneously awarded prejudgment interest on the punitive or enhanced portion of the damages. We agree . . . [P]rejudgment interest can only be applied to the primary or actual damage portion and not to the punitive or enhanced portion."

PETERSON CO. has no objection to BLOUNT'S analysis regarding its claim of prejudgment and post judgment interest on actual damages assessed. However, PETERSON CO. maintains its objection to any award for damages based on its Rule 52(b) motions submitted on August 23, 2002, and its additional motion under Rule 52(b), Federal Rule of Civil Procedure to adjust the award of damages in accordance with the Court's findings of fact and conclusions of law, also submitted on August 23, 2002.

CONCLUSIONS

For the above stated reasons, Peterson Company respectfully request that BLOUNT'S petition for updated damages be modified in accordance with the disclosures contained herein.

Respectfully submitted,

  
Jerry R. Selinger  
JENKENS & GILCHRIST *by permission*  
1445 Ross Avenue  
Suite 3200  
Dallas, Texas 75202  
Telephone: (214) 855-4500  
Facsimile: (214) 855-4300  
**ATTORNEY FOR DEFENDANT**  
**ROBERT H. PETERSON**

OF COUNSEL

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F. William McLaughlin  
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500 West Madison Street, Suite 3800  
Chicago, Illinois 60661  
Telephone: (312) 876-1800  
Facsimile: (312) 876-2020





WOOD, PHILLIPS, KATZ, CLARK & MORTIMER

FOUNDED IN 1876

ATTORNEYS AT LAW

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MARTIN L. KATZ  
F. WILLIAM McLAUGHLIN  
DEANA MONCO  
JOHN S. MORTIMER  
PAUL M. ODELL  
RICHARD S. PHILLIPS  
JOEL E. SIEGEL

JOHN J. KING  
LISA V. MUELLER  
CHRISTOPHER D. WOOD PH.D.

OF COUNSEL  
WILLIAM A. VASANTEN  
HAROLD A. WILLIAMSON

SOMCHAY CHINYAVONG  
WASHINGTON, D.C. LEGAL ASSISTANT  
2001 JEFFERSON DAVIS HIGHWAY  
ARLINGTON, VA 22202  
(703) 415-0860  
FAX (703) 415-0863

August 26, 2002

Sent Via Fax

Confirmation Via Mail

William D. Harris, Jr., Esq.

Hitt, Gaines and Boisbrun, P.C.

P.O. Box 832570

Richardson, Texas 75083

Re: Golden Blount, Inc. v. Robert H. Peterson Co.

Dear Bill:

In response to your letter of August 22, 2002, we provide the following sales information for the months of May and June, 2002:

Product	Units	Total Sales
EMB-18"	61	\$1,443.60
EMB-24"	120	2,962.00
EMB-25"	35	963.80
Total Sales		\$5,369.40

With respect to the July numbers, the person in charge of the computer programming at Peterson Company is on vacation. We will forward the July numbers to you by the end of this week. The August numbers will be provided as soon as they are available which will probably not be until the end of August. Please be advised that Peterson Company has ceased sales of the accused Ember Flame Booster.

Please be further advised that the Peterson Company fully intends to deduct from any claim for damages any returns received from its distributors. The Ember Flame Booster cannot directly infringe any claims of the Blount Patent as a matter of law unless it is connected with a G-4 Burner Unit. If there is no direct infringement, there is no inducement


JT-APP 0798

WOOD, PHILLIPS, KATZ, CLARK & MORTIMER

William D. Harris Jr., Esq.  
August 26, 2002  
Page 2

to infringe. Consequently, any returns obtained by the Peterson Company will be deducted from any sales of units occurring in May-August. We anticipate having figures for total returns within 21 days. When received, those figures will be provided to you.

Sincerely,



Dean A. Monco

DAM:keh

cc: Leslie Bortz (via fax)  
F. William McLaughlin

JT-APP 0799





ROBERT H. PETERSON COMPANY

*Established in 1949*

**F A C S I M I L E**

DATE: September 18, 2002  
ATTN: Bill McLaughlin  
FIRM: Wood Phillips etal  
FAX: 312-876-2020  
FROM: Tod Corrin

Total No. of pages transmitted including this cover sheet: 2

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Hi Bill,

Following are the Ember Booster stats since 5/1/02. I have included the returns showing a net negative amount. This is the same method that was used in reporting previous period statistics. Please let me know if you have any questions.

Tod

For your info:

Gross Sales before returns:  
5/1/02-9/18/02

EMB-18	72
EMB-24	173
EMB-30	77

Total	322
-------	-----

from the desk of...

Tod M. Corrin  
Senior Vice President

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

(626) 369-5085  
(626) 369-5979

Attn: ☐ Reply Requested

Note: If receiving location does not receive all pages, PLEASE call (626) 369-5085

This fax is being transmitted from (626) 369-5979

JT-APP 0801

# Robert H Peterson Company

Sales Analysis Summary

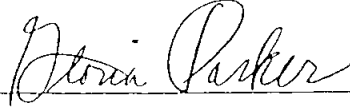
Period 5/1/02-9/18/02

Part Number	Description	Net Quantity	Total Returns
EMB-18	Ember Booster 18"	(221)	293
EMB-24	Ember Booster 24"	(151)	324
EMB-30	Ember Booster 30"	(108)	185
		(480)	802

JT-APP 0802

CERTIFICATE OF SERVICE

This certifies that a copy of the foregoing document was served by hand delivery to counsel for Plaintiff, William D. Harris, Jr., Hitt Gaines Boisbrun, P.C., 225 University Plaza, 275 West Campbell Road, Richardson, Texas 75080, this 19<sup>th</sup> day of September, 2002.

  
\_\_\_\_\_





IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

GOLDEN BLOUNT, INC.,

Plaintiff,

v.

ROBERT H. PETERSON CO.,

Defendant.

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§

Civil Action No.

3-01CV0127-R

GOLDEN BLOUNT INC.'S RESPONSE TO PETERSON COMPANY'S SECOND  
MOTION TO AMEND FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND JUDGMENT UNDER RULE 52(b), OR, FOR NEW TRIAL UNDER  
RULE 59(a), FEDERAL RULES OF CIVIL PROCEDURE

Plaintiff, Golden Blount, Inc. (hereinafter "Plaintiff") respectfully submits this Response to Defendant, Robert H. Peterson Company's (hereinafter "Defendant") Motion to Amend Findings of Fact, Conclusions of Law and Judgment Under Rule 52(b), or, for New Trial Under Rule 59(a).

I. INTRODUCTION

Defendant, in its memorandum supporting its motion, argued three main points: (1) that the Court erred by allowing Plaintiff's witnesses, Mr. Blount and Mr. Hanft, to testify to the sales of infringing devices, as both Mr. Blount and Mr. Hanft were not entitled to testify as expert witnesses, (2) that neither Mr. Blount nor Mr. Hanft had knowledge of how Defendant marketed and sold its products, and (3) that absent the testimony of Mr. Blount and Mr. Hanft, Plaintiff offered nothing justifying damages based on lost profits. Each of Defendant's arguments lacks significant foundation. Each of Defendant's points will now be addressed in the order set forth above.

A. Point One--Propriety of Testimony of Mr. Blount and Mr. Hanft

Concerning Defendant's comments about Mr. Blount and Mr. Hanft not being qualified to give testimony, pages 1, 2 and 4 of Defendant's Memorandum placed emphasis on Mr. Blount and Mr. Hanft being improperly allowed to serve as expert witnesses. Defendant placed particular emphasis on the fact that expert reports as provided in Rule 26(2)(B) were not furnished by Plaintiff. Plaintiff's response is simple. As is evidenced by the clear language of Rule 26(2)(B), no expert report is required unless the witness in question "is retained or specifically employed to provide expert testimony in the case or whose duties as an employee of the party regularly involves giving expert testimony." *See*, Fed. R. Civ. P. 26(2)(B). Both Mr. Blount and Mr. Hanft are individuals who are not so retained or specifically employed and who do not regularly have a duty of giving expert testimony. Clearly, then, no expert reports are required.

It is not necessary that the opinion of an expert witness be presented in court to establish information that is the basis for inferring or establishing damages. The testimony of both Mr. Blount and Mr. Hanft does not purport to be expert testimony, but is factual. Further, the testimony of both Mr. Blount and Mr. Hanft does not invade the domain of "scientific, technical, or other specialized knowledge" within the scope of Rule 702. *See*, Fed. R. Civ. P. 702. Indeed, as stated in Rule 701, the testimony was "(a) rationally based on the perception of the witness, (b) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue, and (c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702." *See*, Fed. R. Civ. P. 701.

The damage issue in this case posed a question that was subject to "determination of a fact in issue." Only under certain circumstances are accountants or marketing experts required as

witnesses. This case did not present such circumstances, nor did these witnesses testify to subject matter requiring an expert. Their testimony was based on facts of which they had personal knowledge, most of which was obtained during their regularly conducted business.

**B. Point 2--How Defendant Marketed the Infringing Device**

The Defendant in its memorandum, is attempting to convince the Court that Mr. Blount and Mr. Hanft lacked sufficient knowledge of how Defendant marketed its products, to establish lost profits. In actuality, this is not the case. The testimony of Plaintiff's third party witness Mr. Hanft (Transcript, Volume I, page 151, lines 14 thru page 153, line 19) together with that of Defendant's witness, Mr. Corrin (Transcript, Volume II, page 165, lines 1 thru 12), established at trial that both the Plaintiff and Defendant market their respective devices through distributors/dealers to the ultimate customer. The testimony further established that the companies are in competition, both selling artificial logs and related fire place equipment, and as the Court knows, their auxiliary ember burners are substantially identical.

There was also testimony by Mr. Hanft that illustrated competition within the business. In actuality, Mr. Hanft made a product selection as between competitive products, and discontinued selling Defendant's artificial log products a few years ago. The point is that it is obviously a situation where the parties market in the same way and that it is a competitive market. In addition, Mr. Hanft's testimony, Volume I, page 166, lines 9 thru 13 brings this out:

"I feel that my experiences and I do communicate a lot with other shops, and we all sell different stuff in Georgia and elsewhere. And I feel like their experiences parallel mine. The item is meant as an initial sales appeal. And there is very little market to go back with them."

Hanft also testified that he had once handled Defendant's products, but has since shifted to Plaintiff's products. (See Attachment A; Transcript, Volume I, page 151, line 14 thru page 153, line 5)

Concerning Defendant's testimony by Mr. Corrin that the ember flame booster was sold extensively as a retrofit, Mr. Corrin indicated on cross-examination that he did not have any numbers available to quantify how many ember flame boosters were sold as retrofits to already purchased log and burner sets, as compared to how many ember flame boosters were initially sold with an accompanying log and burner set. (Transcript, Volume II, page 196, lines 2 thru 11) As Senior Vice President, and formerly General Manager of Defendant's company, it would be thought that Mr. Corrin possessed the information required to answer the question as to what number of ember flame boosters are sold as retrofits to already purchased log and burner sets, as compared to what number of ember flame boosters are sold with an accompanying log and burner set. However, Mr. Corrin was evasive as to any specific numbers. The Court might consider Mr. Corrin somewhat less than credible as a result of his lack of candor in his response to a simple question posed to him at trial. (See Transcript Volume II, page 186, line 25, page 188, line 10) This portion of his testimony is concluded as Attachment B, and is offered merely to show how he avoided simple questions and was not forthcoming.

From the foregoing it can be said that Defendant's contention is not sound and that the findings and conclusions are appropriate.

**C. Point 3--Lost Profits**

There is testimony by Mr. Blount that on the order of 95% of the market is served by Golden Blount, Inc. and Peterson. (Transcript, Volume I, page 64, lines 3 thru 7). On the other hand,

Defendant had no testimony to show any other infringement or substitutes by third parties. From the foregoing, it follows that basically a two company market exists with respect to the subject product.

The Defendant was not able to quantify at all how many of the alleged retrofits actually were sold, and when asked, Defendant's witnesses were quite evasive. While the number is suggested by the undersigned as minimal, surely the Defendant could provide some concrete information if retrofitting was significant.

Defendant's officer, Mr. Bortz, testified how the ember booster and G4 burner are intended to be combined:

"We do not - we do not sell the unit with a G4. However, we sell the unit and the G4, and they are meant to be put together by the installer." (Plaintiff's Trial Exhibit 25; Bortz Deposition, page 27, lines 5 thru 8).

The third party witness Charlie Hanft, who had been in the fireplace equipment business for 12 years, testified that he was able to sell the auxiliary burner of Plaintiff and that about 39 out of 40 (i.e., 97.5%) auxiliary burner sales were accompanied by a sale of a log and burner set. His testimony on this point is at Volume I, page 160, lines 8 thru 22, of the trial transcript, and is reproduced at Attachment C. This supports the convoy finding. Mr. Hanft's testimony provides significant information in support of how the patented item is sold with the whole set, and further, how it essentially facilitates selling the set. (See also the preceding citation stated at Attachment C.)

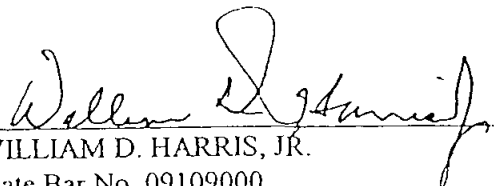
## II. CONCLUSION

It is noted that the points Defendant has offered regarding Mr. Blount's and Mr. Hanft's testimony, or any evidence for that matter, is generally up to the discretion of the trial court, as this

Court well knows. As this case was being tried to the court, the trial judge had considerable discretion as to what evidence should be admitted. *Aluminum Co. of America v. Sperry Products, Inc.*, 285 F.2d 911, 923 (6th Cir. Ohio 1960). The Federal Rules and practice favor admission of evidence rather than exclusion of evidence if the proffered evidence has any probative value at all. *Id.* Plaintiff believes that Mr. Blount's and Mr. Hanft's testimony "was admissible for what it appeared to be, and therefore, the question was one of weight rather than admissibility." *Id.*

For the above stated reasons, Plaintiff respectfully moves the Court to reject Defendant's Motion to Amend Findings of Fact, Conclusions of Law and Judgment Under Rule 52(b), or, for New Trial Under Rule 59(a).

Respectfully submitted,  
For Plaintiff Golden Blount, Inc.

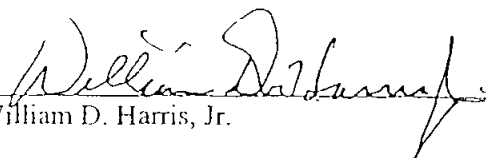
  
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William D. Harris, Jr.

ATTACHMENT A

JT-APP 0811



14 Q Okay. Approximately 12 years. Who was your major  
15 supplier of gas logs when you first entered the business?

16 A Peterson primarily.

17 Q Was there another supplier at the time?

18 A There was another significant one, which was the Heat  
19 Mentor.

20 Q But Peterson was one of your suppliers?

21 A Yes.

22 Q Are they still your major supplier for gas logs?

23 A No.

24 Q Okay. Who is your major supplier?

25 A Golden Blount.

1 Q Why is that? Why did you go from Peterson to Golden  
2 Blount?

3 A As they were both displayed for periods, when customers  
4 made choices, and the pricing was similar as well, they made  
5 them on appearance. And they consistently chose the Golden  
6 Blount log, and I want to go with what sells.

7 Q So then if I'm understanding you correctly, the Golden  
8 Blount logs kind of grew in number, and the Peterson's logs  
9 kind of decreased in number over a period of time?

10 A Yes.

11 Q Do you still handle products for Peterson?

12 A Very few. I can be specific if you like.

13 Q But they do still supply with you some of your products  
14 or you get it indirectly, I guess?

15 A It's all through distributors, yes.

16 Q So from 1991 to the present, then, so you've been  
17 purchasing Peterson products for about 11 to 12 years?

18 A Yes.

19 Q Okay. How do you keep up with the products for any  
20 given company from whom you buy products?

21 A They publish their offerings in a new catalog.

22 Q Is there anything else you do?

23 A Oh, yeah, the shows.

24 Q Tell us about what do you mean by shows.

25 A Trade shows. There's a national show that I try to make

1 every year. Outside of 1993 with the birth of my son, I've  
2 been to every one in my time in the business. There's a  
3 regional show that I've seen a lot, and there's manufacturers  
4 and distributors put on smaller shows. I try to get to them  
5 all.

ATTACHMENT B

JT-APP 0815

I want to start off talking a little bit about your

1 Exhibit D 30.

2 A Okay.

3 Q I notice that it's pretty recent product.

4 A No, our computer -- our new computer system for the cat  
5 creates a date on the drawing every time you print it,  
6 whatever date that is. So, for instance, I had this printed  
7 on February 15th of 2002. If I printed it today, that date  
8 would come up with today's date.

9 Q I hear exactly what you're saying, but what is the date  
10 of the drawing?

11 A You mean the date that it was actually originally drawn?

12 Q Yes.

13 A It's not dated at the bottom, so I do not know that.  
14 Normally that would be the approved by and approval date, so  
15 it's not dated on there.

16 Q You don't know how recent the item is; is that right?

17 A No.

18 Q And this is an item that you say that you're supplying  
19 customers to show them how to handle installations; is that  
20 right?

21 A Upon their request, yes.

22 Q And how long have you been doing that?

23 A Well, it would be just anyone that has requested it. I  
24 don't know how long we've been doing it.

25 Q It's absolutely after this lawsuit was filed, isn't it?

- 1 A Could be.
- 2 Q Not only could it be, but it is, isn't it?
- 3 A Are you answering the question or am I?
- 4 Q Well, let's both answer it the same way. I say you did  
it after the suit to try to do repair work.
- 6 A I had the -- it drawn by our CAD computer people, and
- 7 I'm not sure when that was, but it could have been after the
- 8 lawsuit, after January of 2001, yes.
- 9 Q Who made the decision to have such a drawing?
- 10 A I did. I had this drawn.

ATTACHMENT C

JT-APP 0819



8 A Thinking back over the years in terms of how they were  
9 sold, if I sold 40 more CEBBs from this day forward, 39 would  
10 go with a log set.

11 Q Wait, wait, wait. Hold on. 39 out of 40 would go with  
12 logs?

13 A Yes. I'm giving you two and a half percent. Yes. In  
14 other words, we will retrofit one. We can. We don't even  
15 promote that.

16 Q Now wait a minute. So you don't have -- your experience  
17 is that you don't have that many customers coming in and just  
18 asking for the CEBB burner by itself?

19 A No, they're coming in shopping for a gas log, and when  
20 they do that, they'll need a gas log as well. So that's one  
21 of the reasons why that happens. They go with the front  
22 burner.

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

GOLDEN BLOUNT, INC.,

Plaintiff,

v.

ROBERT H. PETERSON CO.,

Defendant.

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Civil Action No.

3-01CV0127-R

GOLDEN BLOUNT INC.'S RESPONSE TO PETERSON COMPANY'S FIRST  
MOTION TO AMEND FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND JUDGMENT IN ACCORDANCE WITH RULE 52(b)  
FEDERAL RULES OF CIVIL PROCEDURE

Plaintiff, Golden Blount, Inc. (hereinafter "Plaintiff") respectfully submits this Response to Peterson Company's (heremafter "Defendant") Motion to Amend Findings of Fact, Conclusions of Law and Judgment Under Rule 52(b) Federal Rules of Civil Procedure.

The Plaintiff agrees with Defendant on this matter. The calculation of damages inadvertently included a period before the stipulated date of the letter which was found to constitute notice of infringement. When Plaintiff asked for sales of the Ember Flame Booster, they were furnished by Defendant starting with November 23, 1999. Along with all of the sales after notice, the pre-notice sales were inadvertently included. Neither party noticed this pre-notice inclusion at trial.

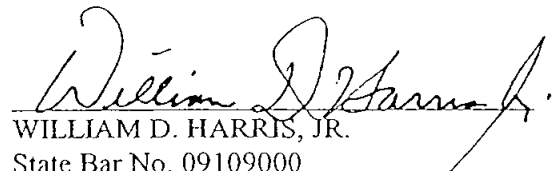
JT-APP 0821

Plaintiff does not object to correction on the present matter. Accordingly, Plaintiff agrees that Defendant is entitled to a reduction of the calculated damages using the formula set forth by Defendant, as shown below:

$$288 \text{ (units)} \times \$117.92 \text{ (profit margin)} \times 3 \text{ (triple damages)} = \$101,882.88$$

Accordingly, the damages Plaintiff is entitled to under paragraphs 9 & 10 of the Court's Conclusions of Law should be reduced from \$1,305,021 to \$1,203,138.12. Plaintiff, of course, leaves it in the hands of the Court as to how this correction should be made.

Respectfully submitted,  
For Plaintiff Golden Blount, Inc.



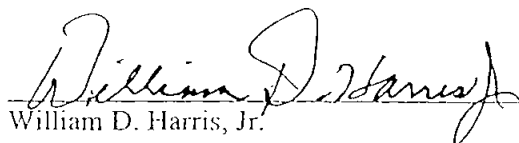
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William D. Harris, Jr.

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

GOLDEN BLOUNT, INC.,

Plaintiff,

v.

ROBERT H. PETERSON CO.,

Defendant.

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Civil Action No.

3-01CV0127-R

PLAINTIFF GOLDEN BLOUNT, INC.'S REPLY TO DEFENDANT PETERSON  
COMPANY'S OBJECTION TO GOLDEN BLOUNT INC.'S MOTION FOR  
UPDATED DAMAGES

Plaintiff Golden Blount, Inc. ("Plaintiff") respectfully submits this Reply to Defendant Robert H. Peterson Co.'s ("Defendant's") Objection to Golden Blount, Inc.'s Motion for Updated Damages. The Plaintiff will address each of the points advanced in the Defendant's response, in the following order: Updated Sales Figures from May 1, 2002 Through September 18, 2002; Reduction of Damage Award Due to Returned Units; and, Pre and Post-Judgment Interest.

**I. Updated Sales Figures**

Defendant, in its response of September 19, 2002, provided updated sales figures for the time period from May 1, 2002, through September 18, 2002, for its infringing ember flame burner unit. As the Defendant has provided the Plaintiff, as well as this Court, the updated figures for the sale of the infringing ember flame burner unit through September 18, 2002, there is no need for this Court

to consider the Plaintiff's alternative method for determining damages, which was advanced in Plaintiff's original motion.

The updated sales figures, which were represented to this Court as amounting to 322 units, increase the total number of infringing ember flame burner units from 3,689 to 3,723, which also takes into account the agreed to subtraction of 288 units prior to the Defendant receiving the notice letter. The Plaintiff, accordingly, requests this Court to increase the damage amount awarded in its Findings of Fact and Conclusions of Law to account for these additional 322 units. Thus, the amended lost profit damage amount should be \$439,016, before triple damages and attorneys' fees. (See, Plaintiff's Exhibit 1).

## **II. Reduction of Damage Award Due to Returned Units**

This Court in its Findings of Fact and Conclusions of Law entered on August 9, 2002, found the Defendant to have literally, as well as through inducement and contributory infringement, infringed the "apparatus" claims of U.S. Patent No. 5,988,159 ("the '159 Patent"). The Court also found that the Defendant's acts constituted willful infringement, and accordingly awarded triple damages. Now, the Defendant comes before this Court asking for relief in the form of a reduction of damages due to the return of 802 ember flame burner units, even though the sale of those 802 ember flame burner units constituted a willful disregard of the Plaintiff's federally protected property rights. For the reasons set forth infra, the Plaintiff submits that such a reduction is improper.

In its response, the Defendant argues to this Court that its sale of the ember flame burner, by itself, does not infringe any claim of the Plaintiff's patent, since direct infringement only occurs when the ember flame burner is connected with a basic G4 burner system. Further, the Defendant argues

that the Federal Circuit has held that induced infringement and contributory infringement cannot be charged unless there is actual direct infringement. See the Defendant's Motion, p. 2, ¶ 3 (citing *Joy Technologies, Inc. v. Flakt, Inc.*, 6 F.3d 770, 28 U.S.P.Q.2d 1378 (Fed. Cir. 1993)). Because the Defendant was allegedly able to withdraw a number of its infringing ember flame burners that it had already sold to its distributors prior to their actual direct infringement, the Defendant argues that it cannot be liable for induced infringement or contributory infringement regarding those allegedly withdrawn ember flame burners. In essence, what the Defendant is attempting to persuade this Court, is that they can un-infringe the '159 Patent by simply withdrawing from the market the offending units that had already been sold to Defendant's distributors.

Accordingly, the Defendant's argument rests solely on the Federal Circuit's decision in *Joy Technologies*. The newly argued line of precedent set forth in *Joy Technologies* is clearly distinguishable from the facts presented in this case. *Joy Technologies* was concerned with infringement of only method claims, which are not present in this case. In *Joy Technologies*, the accused infringer was making an apparatus that could be used to infringe the method claim. In finding that no direct infringement had taken place, the Court stated that when a patent contains only method claims, such claims are directly infringed only when the process is performed. *Joy Technologies*, 6 F.3d at 773. Since the process had not been performed, there was no direct infringement, and thus no induced or contributory infringement. The present case suffers from no such bifurcation. To the contrary, only apparatus claims are present, and this Court has found that there were well over 3,000 individual instances of direct infringement, and that the Defendant had induced or contributorily infringed as well.

Even if the law advanced in *Joy Technologies* was applicable, the Defendant has mischaracterized its holding. The Defendant is attempting to convince the Court that *Joy Technologies* stands for the fact that each act of induced or contributory infringement requires a corresponding actual infringement. In other words, the Defendant is attempting to convince the Court that every induced sale must culminate in an actual direct infringement, for there to be induced infringement or contributory infringement.

This simply is not the holding in *Joy Technologies*. Further, the court in *Joy Technologies* never discussed that a one to one relationship need exist. In fact, *Joy Technologies* seems to suggest only an act of infringement is necessary to impose liability for induced or contributory infringement. *Joy Technologies* recites:

[a]lthough not direct infringement under section 271(a), a party's acts in connection with selling equipment may, however, constitute active inducement of infringement or contributory infringement of a method claim under 35 U.S.C. Section 271(b) and (c). Liability for either active inducement or infringement or for contributory infringement is dependent upon the existence of direct infringement . . . Thus, either form of "dependent infringement cannot occur without an act of direct infringement.

*Joy Technologies*, 6 F.3d at 1382 (emphasis added).

In the present case, not only did an act of direct and willful infringement occur, but this Court found well over 3,000 individual acts of direct and willful infringement. Recent Federal Circuit opinions also support the proposition that only an act of direct infringement is necessary to establish liability for induced or contributory infringement. For example, in *Epcon Gas Sys., Inc. v. Bauer Compressors, Inc.*, 279 F.3d 1022, 1033, 61 U.S.P.Q.2d 1470 (Fed. Cir. 2002), the Federal Circuit held that "it is well settled that there can be no inducement of infringement without direct infringement by some party." (Emphasis added). Peterson has extensively infringed, and should not



be heard to say that any more infringement is necessary to hold them liable for their inducement and contributory infringement.

In summary, the Defendant committed willful infringement of a number of claims in the '159 Patent. Only now that the Defendant has been found liable for willful infringement of the '159 Patent, does the Defendant attempt to recall 802 previously sold and shipped infringing ember burner units from its vendors, and only then, in an attempt to reduce the lost profit damages it must pay. The Defendant has, however, provided no relevant case law on point supporting its position as to the returned units. *Joy Technologies* clearly only applies to method claims, and not apparatus claims as exist in the '159 Patent.

Nonetheless, even if *Joy Technologies* were relevant, it stands for a different holding than the Defendant argues. In contrast to that asserted by the Defendant, *Joy Technologies*, as well as other case law, require that only a single act of direct infringement is needed to find induced infringement or contributory infringement. Accordingly, after a single act of direct infringement is established, each act of inducement then stands by itself. Clearly then, this Court's finding of greater than 3,000 acts of direct infringement, supports Plaintiff's claim to the 802 acts of inducement and contributory infringement. Consequently, Defendant is liable to Plaintiff for the 802 acts of induced infringement.

In the absence of case law to the contrary, which appears to be the case here, the courts are in agreement that any uncertainty as to damages from infringement should be resolved in favor of the patent owner. *H.B. Fuller Co. v. National Starch and Chemical Corp.*, 689 F.Supp 923, 948, 1 U.S.P.Q.2d 1753, 1772 (D. Minn. 1988). Here, if any uncertainty were to exist in the mind of this Court as to damages, this Court should rule in favor of the Plaintiff and refuse to subtract the returned

802 infringing units from that set forth in the Findings of Fact and Conclusions of Law rendered on August 9, 2002.

### III. Pre and Post-Judgment Interest

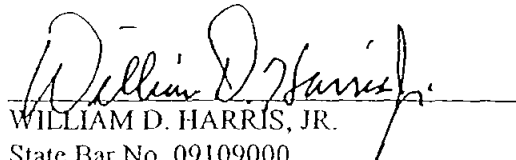
The Plaintiff shall not seek this Court to award prejudgment interest on any of the enhanced damages or attorneys' fees awarded. Further, the Defendant explicitly concedes prejudgment interest on the actual damages assessed. (See, Defendants Objection to Plaintiff's Motion for Updated Damages, p.3, ¶ 4). Accordingly, the prejudgment interest issue is settled between the parties. Hence, this Court should award the Plaintiff prejudgment interest on the actual damage amount set forth in Section A above, for the time period from December 16, 1999, to July 31, 2002, using the highest lawful rate.

Nevertheless, the Plaintiff is here seeking an award of post-judgment interest on all of the actual damages, as well as on any enhanced damages and attorneys' fees awarded. It appears that the Defendant does not contest post-judgment interest on the actual damages, nor the enhanced damages or attorneys' fees awarded. For example, the Defendant explicitly concedes post-judgment interest on the actual damages assessed. (See, Defendants Objection to Plaintiff's Motion for Updated Damages, p.3, ¶ 4). While the Defendant does not explicitly concede post-judgment interest on the enhanced damages and attorneys' fees awarded, the Defendant makes no objection to the Plaintiff's request for such post-judgment interest. Further, the Defendant fails to provide this Court any case law supporting a position of not providing post-judgment interest on the enhanced damages or attorneys' fees awarded.

Hence, this Court should also award the Plaintiff post-judgment interest on the actual damage amount set forth in Section I above, as well as post-judgment interest on any enhanced damages and attorneys' fees. Accrual of the post-judgment interest should commence on the date that this Court determined the Plaintiff's entitlement to such fees, i.e., August 9, 2002. Additionally, the post-judgment interest should be calculated at the highest lawful rate available.

Respectfully submitted,

For Plaintiff Golden Blount, Inc.



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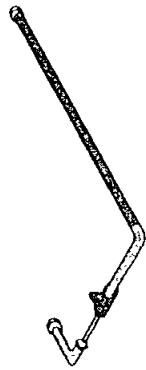


COMPONENT

SALES PRICE TO  
DISTRIBUTOR\*

GOLDEN BLOUNT,  
INC.'S COST\*

PROFIT

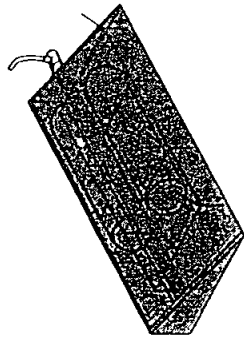


(Secondary Coals Burner Elongated  
Tube and Connector w/Valve Only)

\$20.23

\$6.14

\$14.09

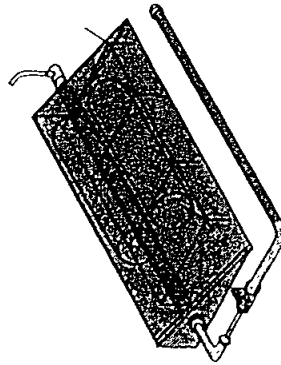


(Log Set Including Pan and Primary  
Burner)

\$168.50

\$64.67

\$103.83



(Combination Unit Including  
Components Sold to Distributor)

\$188.73

\$70.81

\$117.92

Number of Ember Boosters Sold by R.H. Peterson Co.\*\*

3723

**ACTUAL LOST PROFITS**

**\$439,016**

JT-APP 0832

\*Note: Costs provided are averages for 24" Burner Sets

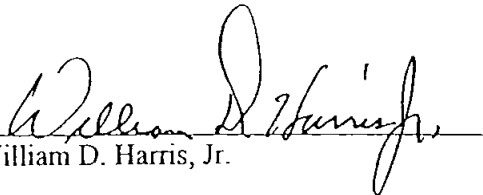
\*\*Note: Number takes into account the 288 units subtracted from the original amount of 3689, as well as the addition of the 322 units

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the enclosed Plaintiff, Golden Blount, Inc.'s Reply to Defendant, Peterson Company's Objection to Golden Blount Inc.'s Motion for Updated Damages was served on the following counsel of record on October 4, 2002, by hand delivery and Express Mail as indicated below:

Jerry R. Selinger (Hand delivery)  
Jenkins & Gilchrist  
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Dallas, Texas 75202  
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Chicago, IL 60611-2511  
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312/876-2020 (Facsimile)

  
William D. Harris, Jr.

JT-APP 0833

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

GOLDEN BLOUNT, INC.,

Plaintiff,

v.

ROBERT H. PETERSON CO.,

Defendant.

§  
§  
§  
§  
§  
§  
§  
§

Civil Action No.

3-01CV0127-R

**ORDER ON MOTION TO INCLUDE UPDATED DAMAGES  
AND PRE AND POST JUDGMENT INTEREST**

On this \_\_\_\_\_ day of October 2002 came on for consideration Plaintiff, Golden Blount, Inc.'s Motion to Include Updated Damages and Pre and Post Judgment Interest. The Court, having considered the motion, is of the opinion:

1) The number of units that damages are assessed are based upon the 3,689 units originally sold, minus the 288 units that were agreed to be subtracted, plus the 322 units sold between May 1, 2002 and September 18, 2002, without any correction for the 802 units that Defendant had already sold to its distributors and were subsequently returned at Defendant's request.

2) That Plaintiff is entitled to prejudgment interest on the actual damages from December 16, 1999 through July 31, 2002, and post-judgment interest on the actual damages, as well as enhanced damages and attorneys' fees, both of which are calculated using the highest lawful rate.

IT IS SO ORDERED.

SIGNED this the \_\_\_\_\_ day of \_\_\_\_\_, 2002.

UNITED STATES DISTRICT JUDGE  
NORTHERN DISTRICT OF TEXAS

JT-APP 0834

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

GOLDEN BLOUNT, INC.,	§	
	§	
Plaintiff,	§	
	§	Civil Action No.
v.	§	
	§	
ROBERT H. PETERSON CO.,	§	3-01CV0127-R
	§	
Defendant.	§	

PLAINTIFF GOLDEN BLOUNT, INC.'S REPLY TO DEFENDANT PETERSON  
COMPANY'S OBJECTION TO GOLDEN BLOUNT INC.'S CLAIM FOR  
ATTORNEYS' FEES

The Plaintiff Golden Blount, Inc. ("Plaintiff") respectfully submits this Reply to the Defendant Robert H. Peterson Co.'s ("Defendant's") Objection to Golden Blount, Inc.'s Claim for Attorneys' Fees.

I. INTRODUCTION

This Court in its Findings of Fact and Conclusions of Law entered on August 9, 2002, found the Defendant to have willfully infringed one or more claims of U.S. Patent No. 5,988,159 ("the '159 Patent"). This Court also found that the facts of the present case met those of an exceptional case, and in turn awarded the Plaintiff enhanced damages and attorneys' fees. The Plaintiff's claim for attorneys' fees, and thereafter the Defendant's objection to that claim, form the basis of this reply.

Presently, the Defendant comes before this Court asking that the Plaintiff's attorneys' fees be limited in amount, as well as type. The Court is well aware, however, that it was the Defendant's willful infringement of the '159 Patent from December 16, 1999, through August 1, 2002 that initiated all of such attorneys' fees. Only now that the Defendant has ultimately been found liable for willful infringement and required to pay the Plaintiff's attorneys' fees, does the Defendant come



before this Court requesting relief in the form of a finding that the Plaintiff's attorneys' fees are unjustified and unreasonable. Unquestionably, however, but for the Defendant's willful disregard for the Plaintiff's property rights, neither party would be here consuming this Court's valuable time.

As will be clearly shown in the text contained within each of the categories identified below, the Plaintiff's claims for attorneys' fees are neither unjustified nor unreasonable, and therefore, should be upheld.

## **II. OBJECTION TO FEES PRIOR TO REPRESENTATION OF THE PLAINTIFF GOLDEN BLOUNT**

The Defendant initially argues to this Court that a substantial amount of attorney time was spent on the Golden Blount, Inc. matter prior to William D. Harris, Jr. becoming lead counsel on the case. Specifically, the Defendant points to the fact that Mr. Harris, in his affidavit filed with the claim for attorneys' fees, asserted that he was lead counsel on the case only three weeks prior to the close of discovery. Accordingly, the Defendant suggests that any attorney time spent by Mr. Harris or the firm of Hitt, Gaines & Boisbrun prior to August 24, 2001, is unjustified.

The Defendant is correct that Mr. Harris was only retained by the Plaintiff as "lead" counsel three weeks prior to the close of discovery. However, the record indicates that Mr. Harris and the firm of Hitt Gaines & Boisbrun were acting as attorneys on behalf of the Plaintiff as early as August 6, 2001. For instance, the entries highlighted in the Plaintiff's Exhibit 1 clearly establish Mr. Harris' role (as well as an entry for attorney Charles W. Gaines of Hitt, Gaines & Boisbrun) as an attorney for the Plaintiff at this time. (See, Appendix in support of the Plaintiff's Application for Attorneys' Fees filed on August 23, 2002, pages A012 and A013, reproduced herein as Exhibit 1).

Clearly, each of the slip values highlighted in Exhibit 1 are in furtherance of the Plaintiff's case, and not just unjustified entries. Interestingly enough, many of the time entries were tied to negotiations, as well as phone conferences, with the Defendant's counsel, most likely of which were with the Defendant's attorney F. William McLaughlin. Nonetheless, each of the time entries listed above, including that of drafting the contingency agreement, was absolutely in furtherance of the Plaintiff's case, and therefore, justified and reasonable. Again, if the Defendant had not willfully infringed the '159 Patent, the attorneys for the Plaintiff would never had billed any time to the matter.

### III. OBJECTION TO FEES REQUESTED FOR SERVICES WHICH ARE REDACTED

The Defendant argues that the Plaintiff is not permitted to submit redacted versions of attorneys' time, as the redacted versions do not provide the Defendant the opportunity to object to inappropriate claims for fees. The Defendant further argues that the "reasonableness" of the Plaintiff's claim for attorney fees cannot be determined if entries are partially or totally redacted.

From the outset it should be noted that the Plaintiff's counsel contacted the Defendant's counsel in good faith on September 23, 2002, offering to send to Defendant a fully unredacted set of documents with attorneys' time, in return for an agreement that the attorney-client privilege would be retained with respect to those previously redacted portions. The next day (September 24, 2002), the Defendant's counsel declined the Plaintiff's offer, citing no more than an unwillingness to enter into the attorney-client privilege agreement.

The Plaintiff maintains its offer to the Defendant, as well as this Court, that it is very willing to enter into a confidentiality agreement regarding attorney-client privilege, such that the Defendant would have a reasonable opportunity to review those redacted entries for reasonableness. If the Defendant, however, were actually concerned with having a reasonable opportunity to review those redacted entries for reasonableness, as compared to globally reducing the damages caused by their willful infringement, the Defendant would accept the Plaintiff's offer. Nevertheless, the Defendant appears to be attempting to bootstrap their actual intent of globally reducing damages, to the lack of opportunity to review the redacted entries.

The Defendant offers case law from the District Court for the Eastern District of Virginia in support of its point that a party seeking attorneys' fees is not permitted to submit a redacted version of such claims to the court. In that Eastern District decision, the court limited the Plaintiffs' award to that portion that represented the work of three lead counsel, because the Plaintiffs' counsel submitted redacted records in support of the petition, making it impossible for the court to determine what work was actually done by whom. *Suntiger v. Scientific Research Funding Group*, 9 F.Supp 2d 601 (1998 E.D. Va.).

The facts of *Suntiger* are easily distinguished from the facts at hand. The Plaintiff's attorneys in *Suntiger*, as compared to the Plaintiff's attorneys in this matter, did not offer unredacted versions of the attorneys' time, just to have the Defendant's counsel reject them. The Defendant's opportunity

to review the unredacted portions of the Plaintiff's time entries rests solely within its own hands. Further in contrast to *Suntiger*, it is possible for this Court to determine what work was actually done. For example, the Plaintiff intends to file under seal for *in camera* review by this Court the time entries without any redaction so that the Court, at the Court's election, may have the opportunity to determine what work was actually done and by whom.

#### IV. OBJECTION TO FEES FOR PREPARATION OF JURY INSTRUCTIONS

The Defendant argues that any attorneys' fees related to the preparation of jury instructions and voir dire questions are improper, as the Plaintiff was the party to initially request and subsequently drop its jury demand. The Defendant is correct that the Plaintiff was the party who originally filed the jury demand requesting a trial by jury. In fact, it was the Plaintiff's first set of counsel, Locke Liddell & Sapp, who originally requested the trial by jury in its original complaint.

However, even though the Plaintiff was the party who initially requested a trial by jury, the Plaintiff alone, could not then expect to request and obtain a trial by the Court sitting without the jury. The law is well settled that both parties must agree to withdraw the jury demand, and but for a joint agreement between the parties, a jury trial would stand. Accordingly, as the first trial setting was approaching in mid March, and the parties had not reached an agreement concerning withdrawing the jury charge, both parties were obligated under their duty to their respective clients to prepare jury instructions. Actually, it was not until both parties had completed their jury instructions and had already filed them with this Court in accordance with the initial scheduling order, that they agreed "that the trial could be conducted much more quickly without a jury and without a massive infusion of instructions." (See, Ex. 1 in Peterson Company's Objections to Plaintiff's Claim for Attorneys' Fees, which is reproduced herein as Exhibit 2 for convenience). In fact, the jury instructions were filed with the Court on February 20, 2002, and the parties agreed to withdraw the jury demand on February 27, 2002. Accordingly, the Plaintiff's preparation of the jury instructions and voir dire were neither unjustified nor unreasonable.

Further, even if the jury instructions and voir dire questions were only prepared as a result of the Plaintiff filing the jury demand with the original complaint, the research and preparation undertaken in furtherance of them, was quite valuable in drafting the Findings of Fact and

Conclusions of Law submitted to this Court at a later time. Thus, whether the time spent was in furtherance of the jury instructions or the Findings of Fact and Conclusions of Law, it would have been undertaken either way. The Plaintiff's time entries for the jury instructions and voir dire, are therefore, justified and reasonable.

V. OBJECTION TO TRIAL PREPARATION CONDUCTED IN APRIL 2002

The Defendant argues a number of points in this section, each of which are advanced in an effort to reduce any attorneys' fees that accumulated by the Plaintiff in the month of April 2002 in furtherance of trial. Foremost, the Defendant suggests that the Plaintiff's counsel attempted to "ambush" the Defendant when it appeared at the pretrial conference on May 3, 2002, already prepared for trial. It appears the Defendant is arguing that the parties had agreed to come to the pretrial conference unprepared for trial.

This is simply not the case. Actually, this Court's judicial clerk informed the Plaintiff's counsel that the parties must be prepared for trial any time throughout the four-week docket beginning Monday, May 6, 2002. This Court's judicial clerk further informed the Plaintiff's counsel that the Courts judicial calendar supported a three-day trial setting beginning on Monday, May 6, 2002. Accordingly, the Plaintiff's counsel attended the final pretrial conference on Friday, May 3, 2002, informing this Court that Plaintiff was prepared for trial.

In actuality, it was the Defendant's counsel that informed this Court that they were not prepared for trial (as required by this Court's final scheduling order), as they would be unable to get their third party out-of-state witnesses to Dallas in time for trial the following Monday. If any duplicitive trial preparation did exist, which the Plaintiff argues did not, it was only as a result of the Defendant's counsel not being prepared for trial on Monday, May 6, 2002, as the final scheduling order rendered on February 27, 2002, required.

The Defendant also implies that there was a clear understanding between the parties regarding whether the trial would proceed the first week of May. This is also not accurate. At best, there was confusion between the parties about the trial setting. The Plaintiff's counsel, however, chose to be prepared, rather than risk the client's interest in being unprepared. In fact, even though the Plaintiff also had out of town witnesses, the Plaintiff prepared the witnesses to appear at trial the following

Monday, if the Court so ruled. In any event, the Plaintiff's counsel's time and effort spent preparing for trial on May 6, 2002, was reasonable.

Notwithstanding the timing of the Plaintiff's trial preparation, the trial preparation conducted in preparation for the May 2002 trial setting was not duplicative. Actually, the time and effort expended on the part of the Plaintiff's counsel in preparation of the May 2002 trial setting, represents that much less time that had to be spent on the part of the Plaintiff's counsel in preparation of the July 2002 trial setting. This is supported by the relatively small amount of attorney time spent on this case by the Plaintiff's counsel in the first part of July 2002. (See, Appendix in support of the Plaintiff's Application for Attorneys' Fees filed on August 23, 2002, pages A047 and A048, reproduced herein as Exhibit 3).

In addition, the Defendant has also suggested to this Court that the trial of the case was originally set for March 2002, but that the Plaintiff's counsel requested a 60-day continuation so that Mr. Golden Blount could attend an important business meeting in China. The Defendant's contend that any trial preparation for the March 2002 trial setting was for naught. Because the Plaintiff requested the continuation, the Defendant suggests that it should not have to pay for the trial preparation.

As discussed above, none of the trial preparation, whether it is for the March, May or July trial setting, was duplicative. As this Court is well aware, conducting a patent trial from start to finish is an expensive proposition. (See Appendix in support of the Plaintiff's Application for Attorneys' Fees filed on August 23, 2002, pages A001 thru A011, reproduced herein as Exhibit 4 for convenience). However, but for the Defendant's willful infringement, the Plaintiff would not have been required to spend any monies on attorneys' fees.

#### **VI. OBJECTION TO ATTORNEYS' FEES SUBMITTED FOR JAMES ORTEGA**

The Defendant erroneously suggests to this Court that the efforts expended by the Plaintiff's attorney Mr. James Ortega are duplicative of the efforts expended by the Plaintiff's attorney Mr. Greg Parker. Such is clearly not the case. Mr. Ortega and Mr. Parker were involved in very different aspects of the trial preparation. For example, Mr. Ortega was originally tasked with providing a

detailed review and synopsis of the prosecution history. As reflected by the time sheets, this is the only time Mr. Ortega spent on the matter.

Contrary to the Defendant's assertions, Mr. Parker never duplicated Mr. Ortega's efforts with respect to the prosecution history. However, Mr. Parker did use Mr. Ortega's analysis to prepare various trial exhibits. Furthermore, Mr. Ortega's review and synopsis of the prosecution history was time and time again used by other of the Plaintiff's counsel, including Mr. William D. Harris, Jr. and Mr. Charles W. Gaines. Never once did any of the Plaintiff's other counsel duplicate Mr. Ortega's efforts.

The Plaintiff's reasons for failing to use Mr. Ortega in furtherance of any other aspects of the lawsuit, are irrelevant. Accordingly, the removal of any attorney's fees associated with the efforts of Mr. Ortega, is improper.

#### **VII. OBJECTION TO ATTORNEYS' FEES FOR LOCKE, LIDDELL & SAPP**

The Defendant further attempts to persuade this Court that any and all fees associated with the firm of Locke, Liddell & Sapp should be disallowed, as such efforts were duplicated by the firm of Hitt, Gaines & Boisbrun. Clearly, each of the firms represented the Plaintiff during a different phase of the suit. For example, the firm of Locke, Liddell & Sapp was involved in drafting and filing the complaint, as well as many of the initial aspects related to preparing, filing and responding to discovery. In contrast, the firm of Hitt, Gaines & Boisbrun, was involved in all of the aspects of preparing and conducting the trial, but was not involved with drafting and filing the complaint and only involved during the discovery to a limited extent. Accordingly, each of the firms played an important role in obtaining the decision that this Court provided the Plaintiff, however, each at different stages of the lawsuit. More important, their respective efforts were not duplicative to any substantial extent. The fees accumulated through the time spent by the attorneys of Locke, Liddell & Sapp should, therefore, not be denied.

#### **VIII. OBJECTION TO PHOTO COPYING CHARGES**

The Defendant is attempting to persuade this Court that a number of the photocopying charges submitted by the Plaintiff are excessive. Specifically, the Defendant objects to six separate

instances where copies were made, stating that each of them is excessive. Justification for each of the copying charge instances complained of by the Defendant, is established in the Plaintiff's Exhibit 5.

As established in the Plaintiff's Exhibit 5, none of the photocopying charges complained of by the Defendant are excessive nor unreasonable. Further, as none of these copy charges were for the production of charts, models and/or photography, the *Kohle* case that the Defendant relies upon does not apply. Accordingly, as these six instances are the only photocopying charges that the Defendant takes issue with, and the Plaintiff has supplied an accurate and detailed justification for each, the Defendant's objection is not sound.

**IX. OBJECTION TO CERTAIN POINTS RAISED IN BLOUNT, INC.'S MEMORANDUM IN SUPPORT OF ITS PETITION FOR ATTORNEYS' FEES**

At the end of its brief the Defendant submitted various immaterial objections to certain points raised in the Plaintiff's Memorandum in Support for its Application for Attorneys' Fees. Because these immaterial objections form a part of the Defendant's other arguments, the Plaintiff is going to forego a written response in an effort to save this Court the time and effort required to read such a written response. If, however, something is included within this section that this Court deems relevant, the Plaintiff believes that it has already addressed it in one of the eight sections discussed above.

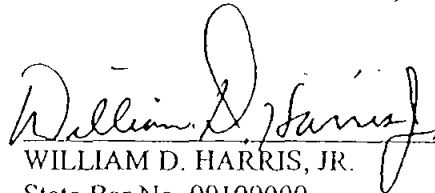
**X. CONCLUSION**

In view of the foregoing, the Plaintiff's attorneys' fees are reasonable. Accordingly, the Plaintiff is entitled to collect those fees as determined by this Court. Equity particularly demands

payment of these fees in view of the Defendant's willful conduct, as was found by this Court.

Respectfully submitted,

For the Plaintiff Golden Blount, Inc.



WILLIAM D. HARRIS, JR.

State Bar No. 09109000

CHARLES W. GAINES

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JT-APP 0844

8/22/02  
10:34 AM

HITT GAINES & BOISBRUN, P.C.  
Slip Listing

Page 1

Selection Criteria

Client (hand select) Include: BLNT-0001LT  
Slip Classification Open  
Slip Date Earliest - Latest  
Slip Transaction Ty 1 - 1

Rate Info - identifies rate source and level

Slip ID	Dates and Time	Attorney Activity Client File	Units DNB Time Est. Time Variance	Rate Rate Info Bill Status	Slip Value
77992	TIME	WDH	2.50	350.00	875.00
8/6/01		Misc	0.00	T@1	
WIP		BLNT-0001LT	0.00		
Meeting with Mr. Golden Blount. Telecons with Roy Hardin. Interoffice meeting. Follow-up. Not to Elizabeth. Hold this time.					
77993	TIME	WDH	2.00	350.00	700.00
8/7/01		Draft	0.00	T@1	
WIP		BLNT-0001LT	0.00		
Draft contingency fee agreement.					
77994	TIME	WDH	0.00	350.00	0.00
8/9/01		Draft	0.00	T@1	
WIP		BLNT-0001LT	0.00		
Draft cover letter and further work on contingency agreement.					
77995	TIME	WDH	1.00	350.00	350.00
8/13/01		Misc	0.00	T@1	
WIP		BLNT-0001LT	0.00		
Initial preparatory time by WDH.					
77996	TIME	WDH	1.75	350.00	612.50
8/14/01		Misc	0.00	T@1	
WIP		BLNT-0001LT	0.00		
Initial survey of invention potential. Negotiations with opposing counsel and reviewing understanding for 30 day extension on discovery issues.					
77997	TIME	WDH	0.50	350.00	175.00
8/15/01		Misc	0.00	T@1	
WIP		BLNT-0001LT	0.00		
Further review on faxing the Golden matter.					
78505	TIME	CWG	12.30	290.00	3567.00
8/15/01	8/31/01	Review	0.00	T@1	
WIP		BLNT-0001LT	0.00		
Review files and pleadings; office conference with client.					

EXHIBIT

2

JT-APP 0845

A012

8/22/02  
10:34 AM

HITT GAINES & BOISBRUN, P.C.  
Slip Listing

Page 2

Slip ID	Dates and Time Posting Status Description	Attorney Activity Client File	Units DNB Time Est. Time Variance	Rate Rate Info Bill Status	Slip Value
77998	TIME	WDH	0.75	350.00	262.50
	8/17/01	Misc	0.00	T@1	
	WIP	BLNT-0001LT	0.00		
	Finalize motion to extend time and forwarding same to opposing counsel for execution.		0.00		
77999	TIME	WDH	1.00	350.00	350.00
	8/21/01	Review	0.00	T@1	
	WIP	BLNT-0001LT	0.00		
	Review of papers and pleadings. Interoffice conference.		0.00		
78000	TIME	WDH	2.50	350.00	875.00
	8/23/01	Misc	0.00	T@1	
	WIP	BLNT-0001LT	0.00		
	Working on formulating Golden Blount case. Entry of appearance.		0.00		
78001	TIME	WDH	3.50	350.00	1225.00
	8/29/01	Misc	0.00	T@1	
	WIP	BLNT-0001LT	0.00		
	Planning and work on documents.		0.00		
78002	TIME	WDH	1.00	350.00	350.00
	8/30/01	Misc	0.00	T@1	
	WIP	BLNT-0001LT	0.00		
	Planning discovery and document responses.		0.00		
77655	TIME	CAG	1.00	75.00	75.00
	8/30/01	Prepare	0.00	T	
	WIP	BLNT-0001LT	0.00		
	Prepare correspondence to and telephone conference with Optipat requesting certified file wrapper histories on three patent applications; office conference with Liz regarding same.		0.00		
78003	TIME	WDH	0.50	350.00	175.00
	8/31/01	Misc	0.00	T@1	
	WIP	BLNT-0001LT	0.00		
	Study of documents.		0.00		
79834	TIME	JHO	7.70	175.00	1347.50
	9/4/01	Misc	0.00	T@1	
	WIP	BLNT-0001LT	0.00		
	Determine prosecution history and claim interpretation.		0.00		
79473	TIME	WDH	4.00	350.00	1400.00
	9/4/01	Misc	0.00	T@1	
	WIP	BLNT-0001LT	0.00		
	Study of case and preparation for meeting. Meeting with client on		0.00		

JT-APP 0846

A013

JT-APP 0847

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

GOLDEN BLOUNT, INC.,

Plaintiff,

v.

ROBERT H. PETERSON CO.,

Defendant.

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§  
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§  
§  
§

Civil Action No.

3-01CV0127-R

JOINT AGREED TO MOTION  
FOR TRIAL BY THE COURT SITTING WITHOUT A JURY

In accordance with F.R.C.P. 39(a)(2), Plaintiff, Golden Blount, Inc. ("Golden Blount"), by its attorneys, jointly with Defendant, Robert H. Peterson Co. ("Peterson"), by its attorneys, move the Court to withdraw the jury demand made by Golden Blount, and proceed to trial by the Court sitting without a jury. The parties have come to appreciate that the issues are such that the trial could be conducted much more quickly without a jury and without a massive infusion of instructions. Accordingly, the parties request the present case be tried by the Court sitting without a jury.

If the Court graciously allows the withdrawal of the jury demand, thus agreeing to a bench trial, the parties further move the Court to kindly consent to an agreed to date upon which a series of related events may occur. Namely, the parties move the Court to set a schedule for briefing and upon which a Markman Hearing to construe the patent claims at issue occurs, a period to allow a settlement conference, and lastly, if still required, a date for a bench trial. Both parties believe that such a format substantially reduces the burden placed upon the Court, as well as provides an environment upon which an agreed to settlement may ultimately occur. We assure the Court we believe this action to be in the interest of justice, and certainly not for delay.

JT-APP 0848



8/22/02  
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HITT GAINES & BOISBRUN, P.C.  
Slip Listing

Page 36

Slip ID	Dates and Time	Attorney Activity	Units	Rate	Slip Value
Posting Status		Client	DNB Time	Rate Info	
Description		File	Est. Time	Bill Status	
			Variance		
		Discussions with William D. Harris, Jr. and Charles W. Gaines regarding [REDACTED]	0.00		
98942	TIME	WDH	1.20	350.00	420.00
6/27/02		Review	0.00	T@1	
WIP		BLNT-0001LT	0.00		
		Review of materials needed and further preparation and the start of deposition summaries of Leslie Bortz and Bill McLaughlin.	0.00		
98218	TIME	GHP	1.40	175.00	245.00
6/27/02		Misc	0.00	T@1	
WIP		BLNT-0001LT	0.00		
		Reingage for Trial Preparation.	0.00		
98943	TIME	WDH	0.30	350.00	105.00
6/28/02		Review	0.00	T@1	
WIP		BLNT-0001LT	0.00		
		Review of defendant's statutory notice of prior art under 35 USC Section 282.	0.00		
101143	TIME	WDH	4.00	350.00	1400.00
7/5/02		Prepare	0.00	T@1	
WIP		BLNT-0001LT	0.00		
		Preparation for and work on forthcoming trial.	0.00		
99991	TIME	TAM	0.20	65.00	13.00
7/12/02		Misc	0.00	T@1	
WIP		BLNT-0001LT	0.00		
		Update pleadings index.	0.00		
100070	TIME	GHP	4.10	175.00	717.50
7/16/02		Misc	0.00	T@1	
WIP		BLNT-0001LT	0.00		
		Trial Preparation -- Exhibits.	0.00		
99994	TIME	TAM	1.00	65.00	65.00
7/16/02		Prepare	0.00	T@1	
WIP		BLNT-0001LT	0.00		
		Prepare submission of exhibits, update exhibits list and notebooks.	0.00		
100073	TIME	GHP	6.10	175.00	1067.50
7/17/02		Misc	0.00	T@1	
WIP		BLNT-0001LT	0.00		
		Trial Preparation -- Review exhibits, finding of facts and conclusions of law, and defendant's exhibits.	0.00		
99995	TIME	TAM	1.00	65.00	65.00
7/17/02		Prepare	0.00	T@1	
WIP		BLNT-0001LT	0.00		

JT-APP 0850

A047

8/22/02  
10:34 AM

HITT GAINES & BOISBRUN, P.C.  
Slip Listing

Page 37

Slip ID	Dates and Time	Attorney Activity	Units	Rate	Slip Value
Posting Status		Client	DNB Time	Rate Info	
Description		File	Est. Time	Bill Status	
			Variance		
	Finalize exhibit notebooks and arrange for filing.		0.00		
100080	TIME	GHP	3.10	175.00	542.50
7/19/02		Misc	0.00	T@1	
WIP		BLNT-0001LT	0.00		
Trial Preparation.			0.00		
100081	TIME	GHP	2.90	175.00	507.50
7/21/02		Research	0.00	T@1	
WIP		BLNT-0001LT	0.00		
Research regarding damages.			0.00		
101144	TIME	WDH	6.50	350.00	2275.00
7/22/02		Misc	0.00	T@1	
WIP		BLNT-0001LT	0.00		
Study of the McLaughlin and Leslie Bortz depositions [REDACTED]			0.00		
[REDACTED]					
100083	TIME	GHP	11.30	175.00	1977.50
7/22/02		Misc	0.00	T@1	
WIP		BLNT-0001LT	0.00		
Trial Preparation.			0.00		
99844	TIME	CWG	2.00	290.00	580.00
7/23/02		Misc	0.00	T@1	
WIP		BLNT-0001LT	0.00		
Discuss case strategy with Greg H. Parker.			0.00		
100084	TIME	GHP	12.70	175.00	2222.50
7/23/02		Misc	0.00	T@1	
WIP		BLNT-0001LT	0.00		
Trial Preparation.			0.00		
101145	TIME	WDH	5.00	350.00	1750.00
7/23/02		Misc	0.00	T@1	
WIP		BLNT-0001LT	0.00		
[REDACTED]			0.00		
[REDACTED]					
order to draft an opening statement in the lawsuit.					
99849	TIME	CWG	2.50	290.00	725.00
7/24/02		Misc	0.00	T@1	
WIP		BLNT-0001LT	0.00		
Discuss case strategy with Greg H. Parker and Bill Harris.			0.00		
101146	TIME	WDH	5.00	350.00	1750.00
7/24/02		Misc	0.00	T@1	
WIP		BLNT-0001LT	0.00		
Intense trial preparations.			0.00		

JT-APP 0851

A048



JT-APP 0852

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

GOLDEN BLOUNT, INC.,

Plaintiff,

v.

ROBERT H. PETERSON CO.,

Defendant.

§  
§  
§  
§  
§  
§  
§

Civil Action No.

3-01CV0127-R

AFFIDAVIT OF WILLIAM D. HARRIS, JR. ON ATTORNEYS' FEES

STATE OF TEXAS §

§

COUNTY OF DALLAS §

1. I, William D. Harris, Jr., am in excess of twenty-one (21) years of age and legally competent to take this affidavit, which I believe to be true and correct of my personal knowledge.
2. I have legally been licensed to practice law in the State of Texas since 1958 and for District Court of the Northern District of Texas continuously since 1963. During the period from June 1997 until June 15, 2001, I was an attorney and partner in the firm now known as Locke Liddell & Sapp LLP. On June 15, 2001, I became Of counsel to the firm of Hitt Gaines & Boisbrun, P.C., 275 West Campbell Road, Richardson, Texas 75080. The firm of Hitt Gaines & Boisbrun presently includes 11 attorneys. My practice has been predominately in intellectual property matters, including patents, trademarks, copyrights, unfair competition, trade secrets and related matters particularly contested and litigated. I have participated in numerous trials with the

A001

JT-APP 0853

many of these appearances being made before the Northern District of Texas. A resume is attached as Exhibit 1.

3. I was not involved in the present case until a few weeks after leaving Locke Liddell Sapp, LLP, at which time Locke Liddell released its role as counsel for Golden Blount Inc. and I became substituted in this role. Since then I have been lead counsel for Plaintiff in this case. I became lead counsel only 3 weeks before the close of discovery. This is the first matter that I have handled for Golden Blount.
4. The case is a patent infringement case that presented numerous substantial issues, i.e. claim interpretation, infringement (both literal and by equivalence), wilfulness, questions of propriety of attorney's fees, validity, and file wrapper analysis and study.
5. The case involved a deposition in Chicago and two here in Dallas. Two contested matters were thoroughly briefed and argued before the Magistrate. The parties exchanged interrogatories and document request and document inspection followed.
6. The parties each submitted to the Court extensive Markman briefs.
7. This case was just set for trial in March, 2002 on a four week docket. Despite allowing Golden Blount to spend time preparing for trial, counsel for Defendant announced to this Court that they were not adequately prepared to proceed to trial. The Court was kind enough to grant a continuance, but the result on Golden Blount is it was forced to refresh to prepare for trial a second time in July.
8. The trial took 2 ½ days, but of course preparation was extensive. The Plaintiff submitted several demonstrative exhibits and the Defendant submitted some. Preparation on Plaintiff's part was extensive for preparing the demonstrative evidence as well as marshaling the evidence, facts and subject matter and researching the pertinent law.
9. Attached hereto as Exhibit 2 is a genuine, true and correct copy of the time records of the law firm of Hitt Gaines & Boisbrun with regard to the case at hand. As can be seen on the attached records, I spent 437 hours representing my client in its prosecution of the case. My billing rates during the time of this representation was

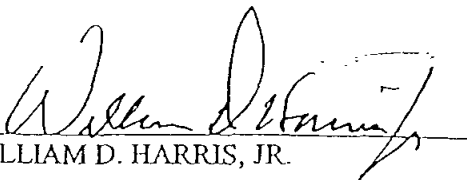
\$350.00 per hour. Additionally, members of the firm billed necessary hours to the case. These individuals include attorneys who encompass a number of years of experience in patent litigation involving matters before both State and Federal Courts, as well as, the International Trade Commission. All of these individual's combined experience in patent matters was utilized in performing the various tasks associated with this case. The number of hours billed and their hourly rates are listed below:

<u>Name</u>	<u>Hours</u>	<u>Hourly Rate</u>
William D. Harris, Jr.	437.00	\$350.00
Charles Gaines	202.8	\$290.00
Greg Parker	492.30	\$175.00
James Ortega	67.50	\$175.00
Carol Garland (Paralegal)	21.60	\$ 75.00
Trudy Magruder (Paralegal)	31.30	\$ 65.00

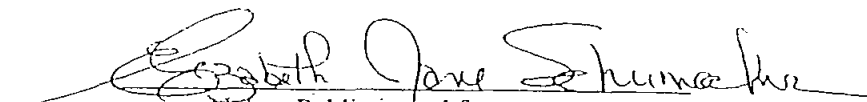
10. I am familiar with the customary fees of this type in Dallas County, Texas. In my opinion, the hours billed by myself and the other members of this firm listed above were reasonable and necessary for proper prosecution of the case. I further believe that the hourly rates for the members of the firm are reasonable in relation to similar services performed at comparable levels of competence by attorneys and paralegals in the Northern District of Texas. Attached hereto as Exhibit 3 is a true and correct copy of the AIPLA Report of Economic Survey, which shows the cost of litigation of this type is customarily more than charged in this case.
11. I have further reviewed the bills and do not believe that there was significant duplication of effort among the members of the firm. In fact, the members of the firm who worked on the case worked as a team who supported each other. Effort was

made to place the most appropriate attorney and/or paralegal on each project so as to maximize the result at minimum cost.

12. During the trial preparation, it was often necessary for counsel to work on the case after hours and on weekends. Due to my representation of Golden Blount, especially during the month of trial, my ability to take on new work or do work for existing clients was impaired, as was the ability of other members of my firm.
13. The results obtained were favorable for my client. The Court assessed damages in the amount of \$435,007.00. The Court also found that the damages should be trebled under 35 U.S.C. § 284. The Court also found that this is an exceptional case under 35 U.S.C. § 285.
14. Therefore, in my opinion, the total value of time and effort expended by the law firm of Hitt, Gaines & Boisbrun of \$313,381.50 was reasonable and necessary for proper prosecution of this case.

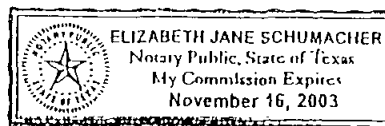
  
WILLIAM D. HARRIS, JR.

BEFORE ME, the undersigned authority, on this 23rd day of August, 2002, personally appeared WILLIAM D. HARRIS, JR., who is personally known to me and who upon his sworn oath, did depose and state the above and subscribed his signature hereto.

  
Notary Public in and for  
The State of Texas

Commission expiration and name:

November 16, 2003



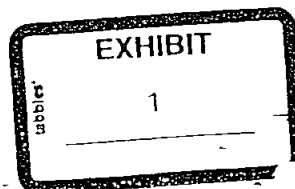
William D. Harris, Jr. ("Bill") (Dallas), quite recently a partner with the firm of Locke Liddell & Sapp LLP, is now of Counsel to the firm of Hitt Gaines & Boisbrun PC. He has been a practicing intellectual property litigator and counsel for almost his entire career. He is a member of the state bars of Texas and Oklahoma. He has represented clients in state and federal courts including the Court of Appeals for the Federal Circuit, as well as the International Trade Commission. Harris is admitted to practice before many district courts, 4 circuit courts, and the U.S. Supreme Court. He started practice in Houston, Texas in 1957 and has been continuously active since then. (The prior year Harris had served briefly as a Patent Examiner.) He received his LL.B in 1957 from the University of Oklahoma, where he was Order of the Coif and Tau Beta Pi. He was Editor-in-Chief of the Oklahoma Law Review, 1956-57. His undergraduate degree is in Chemical Engineering

Recently the Dallas Fort Worth Intellectual Property Law Association presented the Lifetime Achievement Award to Harris. This is the first of these awards the Association has ever given.

He counsels clients in the fields of patent and other intellectual property matters, has advised extensively on questions of infringement, validity and enforceability of patents. He has served as trial counsel in numerous intellectual property lawsuits, mainly involving patents, trademarks, unfair competition and trade secrets. Bill has lectured at various Intellectual Property Institutes and on various occasions as a visiting lecturer for SMU's intellectual property courses. For 4 years he was a member of the Grievance Committee for Dallas, and for 2 years just preceding that he was a member of the first Fee Dispute Committee in Dallas. On the Grievance Committee and the Fee Dispute Committee many questions of ethics and the reasonableness of fees and fee structures were at issue.

In addition, Bill has served as mediator in numerous intellectual property disputes. Also, he has been a court appointed Arbitrator. Additionally, Bill has been an expert witness on several occasions.

Bill is a member of the Litigation and Intellectual Property Law Sections of the American Bar Association and a member of the American Intellectual Property Law Association. He has served as Chairman of the Intellectual Property Law Section of the State Bar of Texas. Bill has lectured at various patent seminars and authored and co-authored several publications, including, *Contracting With Corporate Inventors and Key Personnel*, Proceedings of Southwestern Legal Foundation (November 1997); *Patentee Trial Strategy*, Advanced Intellectual Property Law, State Bar of Texas Professional Development Manual (July 1995); *The ITC As Patent Infringement Forum*, Proceedings of Southwestern Legal Foundation, December 6-7, 1990; *The New Reissue: Reexamination of Patent Claims in Light of New Art*, Patent Law Annual, Southwestern Legal Foundation (1978); and *Justice For Patents*, Patent Law Annual, Southwestern Legal Foundation, (1972).



A006

JT-APP 0858

# AIPLA

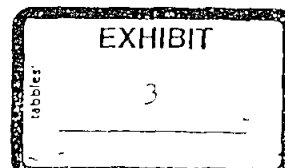
## Report of Economic Survey

# 2001

PREPARED UNDER DIRECTION OF  
LAW PRACTICE MANAGEMENT COMMITTEE

American Intellectual Property Law Association

2001 Jefferson Davis Highway, Suite 203  
Arlington, Virginia 22202  
[www.aipla.org](http://www.aipla.org)



JT-APP 0859

A007



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Copies of this Report are available from  
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and \$300 per copy for non-members.

American Intellectual Property Law Association  
2001 Jefferson Davis Highway, Suite 203  
Arlington, Virginia 22202-3694  
(703) 415-0780  
[www.aipla.org](http://www.aipla.org)

JT-APP 0860

A008

Table 15b: Average Hourly Billing Rate by Type Of Practice and Location of Primary Place of Work

	Total Survey	Location of Respondent's Primary Place of Work												
		Boston Area	NYC Area	Philadelphia- Washington	Washington DC Area	Other East	Metro Southeast	Other Southeast	Chicago Area	Minneapolis- St. Paul	Other Central	Texas	California	Other West
ALL PRIVATE PRACTICE														
Number Reporting % of total	1088	40 4%	51 6%	36 3%	221 20%	75 7%	41 4%	14 1%	79 7%	50 5%	192 18%	83 8%	107 10%	88 8%
75th percentile	\$300	\$390	\$375	\$280	\$316	\$280	\$275	\$245	\$300	\$270	\$230	\$300	\$350	\$275
Median	\$240	\$325	\$320	\$255	\$255	\$220	\$220	\$193	\$250	\$218	\$195	\$240	\$275	\$230
25th percentile	\$198	\$245	\$265	\$213	\$215	\$180	\$165	\$170	\$205	\$180	\$160	\$200	\$225	\$200
Average	\$252	\$321	\$331	\$252	\$269	\$230	\$232	\$216	\$256	\$223	\$202	\$253	\$284	\$239
PARTNERS														
Number Reporting % of total	522	21 4%	33 6%	22 4%	92 18%	36 7%	20 4%	6 1%	46 9%	22 4%	102 20%	29 6%	40 8%	53 10%
75th percentile	\$340	\$440	\$440	\$325	\$358	\$292	\$325	\$200	\$320	\$300	\$250	\$350	\$385	\$290
Median	\$280	\$385	\$370	\$270	\$316	\$250	\$250	\$200	\$290	\$273	\$225	\$300	\$350	\$250
25th percentile	\$230	\$350	\$320	\$250	\$270	\$200	\$222	\$180	\$260	\$230	\$195	\$260	\$295	\$220
Average	\$290	\$366	\$395	\$281	\$317	\$255	\$269	\$201	\$294	\$267	\$229	\$307	\$342	\$259
ASSOCIATES														
Number Reporting % of total	391	14 4%	25 6%	9 2%	95 24%	18 5%	14 4%	3 1%	26 7%	24 6%	69 18%	35 9%	39 10%	19 5%
75th percentile	\$240	\$275	\$300	\$210	\$250	\$215	\$210	\$170	\$220	\$220	\$180	\$250	\$260	\$235
Median	\$200	\$238	\$250	\$210	\$215	\$178	\$165	\$170	\$200	\$188	\$160	\$215	\$235	\$200
25th percentile	\$168	\$225	\$220	\$170	\$185	\$155	\$150	\$158	\$175	\$160	\$145	\$190	\$200	\$160
Average	\$206	\$242	\$257	\$195	\$219	\$185	\$173	\$168	\$198	\$191	\$166	\$216	\$232	\$209
OF COUNSEL														
Number Reporting % of total	66	1 2%	3 5%	2 3%	20 30%	8 12%	3 5%	1 2%	3 5%	1 2%	8 12%	5 8%	7 11%	4 6%
75th percentile	\$325				\$320	\$325					\$235	\$326	\$374	
Median	\$278		\$325		\$278	\$290	\$276		\$240		\$214	\$280	\$335	\$270
25th percentile	\$240				\$250	\$230					\$160	\$240	\$301	
Average	\$277		\$252	\$250	\$287	\$268	\$283		\$235		\$207	\$283	\$339	\$278
SOLO PRACTITIONERS														
Number Reporting % of total	109	4 4%	0 -	3 3%	14 13%	13 12%	4 4%	4 4%	4 4%	3 3%	13 12%	14 13%	21 19%	12 11%
75th percentile	\$250				\$300	\$210			\$200		\$200	\$275	\$300	\$230
Median	\$200	\$240		\$225	\$240	\$180	\$175	\$200	\$200	\$150	\$180	\$200	\$225	\$195
25th percentile	\$165				\$225	\$165					\$150	\$185	\$200	\$150
Average	\$220	\$241		\$212	\$265	\$200	\$210	\$230	\$206	\$163	\$178	\$223	\$250	\$190

Table 15. Hourly Billing Rate by Type of Practice and Years of Experience

		RESPONDENT'S YEARS OF INTELLECTUAL PROPERTY LAW EXPERIENCE									
		Less than 5	5-6	7-9	10-14	15-19	20-24	25-29	30-34	35-39	40 or More
ALL PRIVATE PRACTICE											
Number Reporting	1088	176	140	133	164	107	92	74	60	62	72
% of total		16%	13%	12%	15%	10%	8%	7%	6%	6%	7%
75th percentile		\$215	\$240	\$280	\$300	\$340	\$315	\$365	\$365	\$350	\$368
Median	\$300	\$180	\$210	\$235	\$240	\$290	\$275	\$288	\$284	\$300	\$300
25th percentile	\$198	\$150	\$175	\$200	\$210	\$240	\$223	\$225	\$250	\$230	\$228
Average	\$252	\$188	\$214	\$236	\$256	\$292	\$275	\$296	\$297	\$301	\$294
PARTNERS											
Number Reporting	522	6	17	60	106	88	66	55	46	38	40
% of total		1%	3%	11%	20%	17%	13%	11%	9%	7%	8%
75th percentile		\$205	\$250	\$270	\$310	\$350	\$325	\$375	\$375	\$380	\$380
Median	\$280	\$173	\$220	\$238	\$250	\$300	\$280	\$305	\$313	\$300	\$325
25th percentile	\$230	\$135	\$200	\$200	\$210	\$255	\$250	\$245	\$260	\$275	\$250
Average	\$290	\$182	\$236	\$237	\$267	\$305	\$291	\$320	\$319	\$329	\$322
ASSOCIATES											
Number Reporting	391	165	115	59	33	5	5	0	1	1	0
% of total		42%	29%	15%	8%	1%	1%	-	0%	0%	-
75th percentile		\$215	\$240	\$260	\$270	\$250	\$210	-	\$210	-	-
Median	\$200	\$180	\$210	\$225	\$240	\$235	\$205	-	\$235	-	-
25th percentile	\$168	\$150	\$175	\$195	\$215	\$200	\$165	-	\$165	-	-
Average	\$206	\$189	\$211	\$227	\$242	\$230	\$193	-	\$230	-	-
OF COUNSEL											
Number Reporting	66	0	3	7	8	7	6	4	7	11	12
% of total		-	5%	11%	12%	11%	9%	6%	11%	17%	18%
75th percentile		-	-	\$320	\$273	\$350	\$327	-	\$280	\$375	\$325
Median	\$278	-	\$220	\$300	\$250	\$275	\$310	\$224	\$251	\$325	\$300
25th percentile	\$240	-	-	\$290	\$240	\$216	\$250	-	\$231	\$250	\$240
Average	\$277	-	\$238	\$304	\$259	\$275	\$298	\$222	\$263	\$316	\$278
SOLO PRACTITIONERS											
Number Reporting	109	5	5	7	17	7	15	15	6	12	20
% of total		5%	5%	6%	16%	6%	14%	14%	6%	11%	18%
75th percentile		\$175	\$190	\$280	\$250	\$225	\$250	\$300	\$235	\$275	\$295
Median	\$200	\$150	\$180	\$225	\$200	\$195	\$200	\$225	\$200	\$188	\$235
25th percentile	\$165	\$150	\$165	\$185	\$165	\$150	\$185	\$195	\$165	\$150	\$183
Average	\$220	\$165	\$185	\$225	\$200	\$195	\$200	\$225	\$165	\$208	\$250

JT-APP 0862

Table 22. Estimated Costs of Litigation, by Location of Primary Place of Work

	Total Survey	Location of Respondent's Primary Place of Work												
		Boston Area	NYC Area	Philadelphia- Wilmington	Washington DC Area	Other East	Metro Southeast	Other Southeast	Chicago Area	Minneapolis- St. Paul	Other Central	Texas	California	Other West
THOUSANDS OF DOLLARS														
ESTIMATE OF TOTAL COST, THROUGH END OF DISCOVERY AND INCLUSIVE, IN A PATENT INFRINGEMENT SUIT LESS THAN \$1 MILLION AT RISK														
End of discovery														
Number Reporting	250	13	13	7	30	27	15	7	21	8	55	16	24	14
% of total		5%	5%	3%	12%	11%	6%	3%	8%	3%	22%	6%	10%	6%
75th percentile	\$451	\$601	\$499	\$399	\$499	\$500	\$449	\$249	\$501	\$700	\$298	\$375	\$450	\$400
Median	\$250	\$499	\$251	\$301	\$299	\$299	\$250	\$150	\$350	\$275	\$201	\$251	\$225	\$213
25th percentile	\$151	\$249	\$199	\$176	\$198	\$151	\$126	\$52	\$250	\$163	\$148	\$201	\$102	\$75
Inclusive, all costs														
Number Reporting	242	12	13	7	30	27	15	7	21	7	51	16	22	14
% of total		5%	5%	3%	12%	11%	6%	3%	9%	3%	21%	7%	9%	6%
75th percentile	\$750	\$1,050	\$752	\$749	\$800	\$999	\$599	\$398	\$1,001	\$1,499	\$501	\$600	\$700	\$900
Median	\$499	\$750	\$501	\$451	\$502	\$600	\$498	\$251	\$600	\$400	\$400	\$500	\$450	\$325
25th percentile	\$301	\$450	\$301	\$376	\$398	\$399	\$252	\$101	\$451	\$202	\$252	\$400	\$350	\$150
\$1-\$25 MILLION AT RISK														
End of discovery														
Number Reporting	299	17	15	10	40	33	16	7	23	7	61	22	31	16
% of total		6%	5%	3%	13%	11%	5%	2%	8%	2%	20%	7%	10%	5%
75th percentile	\$1,495	\$1,703	\$1,496	\$1,400	\$1,500	\$1,499	\$1,000	\$998	\$1,503	\$998	\$755	\$1,498	\$1,504	\$1,500
Median	\$797	\$1,497	\$996	\$900	\$900	\$793	\$625	\$500	\$1,001	\$500	\$505	\$850	\$998	\$1,000
25th percentile	\$496	\$698	\$504	\$450	\$550	\$348	\$265	\$203	\$504	\$299	\$400	\$498	\$453	\$390
Inclusive, all costs														
Number Reporting	295	15	15	10	40	33	17	7	23	6	61	21	28	18
% of total		5%	5%	3%	14%	11%	6%	2%	8%	2%	21%	7%	9%	6%
75th percentile	\$2,497	\$2,503	\$2,598	\$2,500	\$2,750	\$3,000	\$1,499	\$1,793	\$2,999	\$2,000	\$1,502	\$2,004	\$3,003	\$2,500
Median	\$1,499	\$2,003	\$1,999	\$1,350	\$1,752	\$1,503	\$1,253	\$700	\$1,753	\$1,150	\$1,001	\$1,499	\$1,750	\$1,750
25th percentile	\$802	\$1,498	\$1,203	\$700	\$1,200	\$793	\$1,001	\$349	\$1,253	\$550	\$748	\$749	\$850	\$600

JT-APP 0863

A011



Date	Slip Value (\$)	Justification
09/24/2001	587.41	Fee includes third party copying charge associated with obtaining copies of both Plaintiff's and Defendant's discovery documents.
12/13/2001	7.9	Fee includes third party copying charge.
05/06/2002	625.27	Fee includes third party copying charge associated with obtaining the requisite number of copies of Plaintiff's exhibits for use in the trial that was supposed to begin May 6, 2002.
05/17/2002	247.33	Fee includes third party copying charge associated with obtaining the requisite number of copies of Plaintiff's exhibits for use in the trial that was supposed to begin May 6, 2002. (The May 17, 2002, date reflects the actual date upon which it was entered into the system, and not the date of the copies)
07/27/2002	182.31	Fee includes third party copying charge associated with obtaining the requisite number of copies of depositions for use in the trial that began July 29, 2002.
07/25/2002	2.48	Fee includes third party copying charge associated with obtaining color copies for use in the trial that began July 29, 2002.

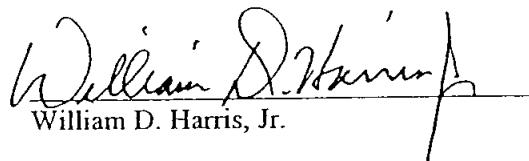
JT-APP 0865

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the enclosed Plaintiff Golden Blount, Inc.'s Reply to the Defendant Peterson Company's Objection to Golden Blount, Inc.'s Claim for Attorneys' Fees was served on the following counsel of record on October 4, 2002, by hand delivery and Express Mail as indicated below:

Jerry R. Selinger (Hand delivery)  
Jenkins & Gilchrist  
1445 Ross Avenue, Suite 3200  
Dallas, Texas 75202  
214/855-4500 (Telephone)  
214/855-4300 (Facsimile)

Dean A. Monco (Express Mail)  
F. William McLaughlin  
Wood, Phillips, VanSanten,  
Clark & Mortimer  
500 W. Madison Street, Suite 3800  
Chicago, IL 60611-2511  
312/876-1800 (Telephone)  
312/876-2020 (Facsimile)

  
William D. Harris, Jr.

JT-APP 0866

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

GOLDEN BLOUNT, INC.,

Plaintiff,

v.

ROBERT H. PETERSON CO.,

Defendant.

§  
§  
§  
§  
§  
§  
§  
§

Civil Action No. .

3-01CV0127-R

ORDER ON PLAINTIFF'S  
APPLICATION FOR ATTORNEYS' FEES

On this \_\_\_\_ day of \_\_\_\_\_, 2002 came on for consideration Plaintiff, Golden Blount, Inc.'s Application for Attorneys' Fees. The Court, having considered the Application, is of the opinion that the Plaintiff is entitled to reasonable attorneys' fees in the amount of \$332,349.00. This Court is also of the opinion that the Plaintiff is entitled to post-judgment interest on such fees at the highest lawful rate from August 9, 2002.

IT IS SO ORDERED.

SIGNED this the \_\_\_\_ day of \_\_\_\_\_, 2002.

UNITED STATES DISTRICT JUDGE  
NORTHERN DISTRICT OF TEXAS

JT-APP 0867



IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

GOLDEN BLOUNT, INC., )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
ROBERT H. PETERSON CO., )  
 )  
Defendant. )

Civil Action No.: 3:01-CV-0127-R

**PETERSON COMPANY'S REPLY BRIEF IN SUPPORT OF ITS  
SECOND MOTION TO AMEND FINDINGS OF FACT, CONCLUSIONS  
OF LAW, AND JUDGMENT UNDER RULE 52(b) Or, FOR A NEW  
TRIAL UNDER RULE 59(a), FEDERAL RULES OF CIVIL PROCEDURE**

**I. Introduction**

BLOUNT, INC.'s response acknowledges that Messrs. Blount and Hanft were not experts, and that therefore expert reports were not required. However, over the strong and repeated objections of the defendant, Messrs. Blount and Hanft were permitted to speculate about the manner that PETERSON CO.'s accused Ember Flame Booster products were sold as if they were experts, even though both Messrs. Blount and Hanft admitted that they had no personal knowledge of how PETERSON CO. sells its products. Their separate admissions are simply not discussed in BLOUNT, INC.'s response for a very simple reason – to do so would expose the completely baseless nature of BLOUNT, INC.'s claim for loss profits.

BLOUNT, INC. fails to cite any case law to support its argument that the testimony of Messrs. Blount and Hanft is admissible and reliable. Furthermore, BLOUNT, INC. does not even

bother to address the legal position recited in the case law set forth in PETERSON CO.'s memorandum in support of the present motion. BLOUNT, INC.'s "rebuttal" amounts to nothing more than conclusory statements having no bases in fact or law.

**II. The Testimony of Messrs. Blount and Hanft is Incompetent as a Matter of Fact and Law**

In its Response, BLOUNT, INC. admits that Messrs. Blount and Hanft were not providing expert testimony, but rather factual testimony. BLOUNT, INC. states:

The testimony of both Mr. Blount and Mr. Hanft do not purport to be expert testimony, but is factual.

Their testimony was based on facts which they had personal knowledge, most of which was obtained during their regularly conducted business. (BLOUNT, INC.'s Response, P. 2-3).

BLOUNT, INC. does not address the testimony cited in PETERSON CO.'s supporting memorandum that Messrs. Blount and Hanft do not have any factual knowledge regarding how PETERSON CO. markets and sells its accused Ember Flame Boosters. (Memo in Support, p. 2-3). Messrs. Blount and Hanft have no firsthand knowledge on which to render factual testimony regarding its claim for lost profits are "convoy" sales of fireplace units and logs. Their "factual testimony" is nothing more than speculation and wishful thinking used to form BLOUNT, INC.'s damages claim for lost profits.

Furthermore, Rule 701 of the Federal Rules of Evidence permits lay witness opinion testimony if it is based on a foundation of facts of firsthand knowledge. *Hurd v. Williams*, 755 F.2d 306, 308 (3rd Cir. 1985). Opinion testimony without a factual basis in the record is inadmissible as a matter of law. *Gray v. Shell Oil Co.*, 469 F.2d 742, 750 (9<sup>th</sup> Cir. 1972).

The testimony of Messrs. Blount and Hanft is unreliable and inadmissible as a matter of fact and law.

### III. BLOUNT, INC.'s Reliance on Mr. Hanft's Testimony is Misplaced

Regarding Point 2 of BLOUNT, INC.'s Response, PETERSON CO. initially notes that BLOUNT, INC. is now apparently abandoning any reliance on the testimony of Mr. Blount regarding how PETERSON CO. markets its accused Ember Flame Booster product. PETERSON CO.'s citation to Mr. Blount's admission in his cross-examination that he had no actual knowledge of how PETERSON CO. markets its accused Ember Flame Booster now stands un rebutted.

Instead, BLOUNT, INC. attempts to rely on the combined testimony of Mr. Hanft with PETERSON CO.'s Vice President, Tod Corrin to try to establish that BLOUNT, INC. and PETERSON CO. market their patented and accused products, respectively, in the same way. (BLOUNT, INC.'s Response, p. 3-4). The testimony cited by BLOUNT, INC. proves nothing. The issue on Point 2 is damages stemming from convoyed sales, and, on this issue, BLOUNT, INC. fails to meet its burden of proof.

Initially, BLOUNT, INC. cites the fact that Plaintiff and Defendant market their devices through distributor/dealers to the ultimate customer. Furthermore, BLOUNT, INC. asserts that the companies are in competition, selling both artificial logs and related fireplace equipment (Response, p. 3). PETERSON CO. admits these facts and says - so what? It is BLOUNT, INC.'s burden of proof to establish to a reasonable probability that the accused Ember Flame Boosters sold by PETERSON CO. are sold together with G-4 burner systems and artificial logs. *Uniroyal, Inc. v. Rudkin-Riley Corp.* 939 F. 2d 1540, 1544 (Fed. Cir. 1991) Mr. Hanft testified that he has absolutely no knowledge as to how PETERSON CO.'s accused products are marketed and sold. (Memorandum in Support, Ex. 1, p. 164). PETERSON CO. began marketing the accused Ember Flame Booster in

1996. The Ember Flame Booster first appeared in PETERSON CO.'s catalogue in 1997. (Ex. 4, P.75-76, attached). Yet Mr. Hanft testified that he first heard about the Ember Flame Booster in 2000. (Ex. 5, P.154-55, Attached.

BLOUNT, INC. then asserts the following in its Response:

There was also testimony by Mr. Hanft that illustrated competition within the business. In actuality, Mr. Hanft made a product selection as between competitive products, and discontinued selling defendant's artificial log products a few years ago. That point is that it is obviously a situation where the parties market in the same way and that it is a competitive market. (Response, p. 3)

This statement is a complete *non sequitur*. The fact that Mr. Hanft changed suppliers prior to the introduction of the accused Ember Flame Booster product proves nothing. BLOUNT, INC. has provided no evidence whatsoever to support its claim for convoyed sales as part of its damages. BLOUNT, INC. simply fails to address the fact that Mr. Hanft has no knowledge as to how PETERSON CO.'s accused Ember Flame Booster is marketed (Supporting Memo, Ex. 1, p. 164).

BLOUNT, INC. then quotes Mr. Hanft's testimony that he communicates with other shops selling fireplace equipment in Georgia and that he "feel[s] like their experiences parallel mine." (Response, p. 3). Not only are Mr. Hanft's "feelings" unsupported by any documentary evidence or firsthand knowledge, his testimony is another back door attempt to introduce hearsay expert testimony through a non expert witness. While Federal Rule of Evidence 702 permits expert witnesses to rely on hearsay evidence in forming an opinion, Rule 701 expressly forbids such use. *Gray v. Shell Oil Co.*, supra. Since Mr. Hanft is admittedly not an expert, his "feelings" constitute lay opinions expressly prohibited by Rule 701, Federal Rules of Evidence, and, in any event, are of no evidentiary value.

Having completely failed to meet its burden of proof for convoyed sales damages through the testimony of Messrs. Blount and Hanft, BLOUNT, INC. turns to the testimony of Tod Corrin, PETERSON CO.'s Vice President, and states that Mr. Corrin testimony is not credible regarding retrofit sales because PETERSON CO. does not have sales figures establishing how many retrofit Ember Flame Boosters were sold. (Response, p. 4). BLOUNT, INC. ignores three important facts.

First, as BLOUNT, INC. readily acknowledges, PETERSON CO. sells its accused Ember Flame Booster as well as its other fireplace products to distributors. The distributors in turn sell the products to dealers. The dealers, in turn, sell to the purchasing public. It was the independent dealers of PETERSON CO. products that marketed and sold the Ember Flame Booster as a market accessory (Supporting Memo, Ex. 3, P. 176-78). It is the dealers, not PETERSON CO., that would have sales figures regarding retrofit Ember Flame Boosters. BLOUNT, INC. failed to take any discovery and present any testimony at trial regarding dealers marketing practices.

Second, BLOUNT, INC. completely ignored the testimony of Darryl Dworkin, a distributor and retailer of PETERSON CO. fireplace products since 1980. Mr. Dworkin testified that the primary reasons why customer purchase PETERSON CO. fireplace units is because of the aesthetic beauty of the PETERSON CO. logs, both when the fireplace is on and off (Memo in Support, Ex. 3, P. 176-78). BLOUNT, INC. failed to address this testimony in its Response, and failed to present any testimony at trial to rebut this evidence.

The importance of Mr. Dworkin's unrebutted testimony is difficult to overstate as it impacts the issue of damages. The accused Ember Flame Booster is sold as an accessory by PETERSON CO. (Memo in Support, Ex. 2, 176-78). BLOUNT, INC. customers may buy the Plaintiff's fireplace units because of the patented front flame booster (Ex. 5, P. 160-62; Ex. 6, P.36, attached). These

are two separate markets. BLOUNT, INC.'s failure to present any expert testimony to explain this difference means that BLOUNT, INC. has failed to prove any entitlement to lost profits for the Ember Flame Booster sales or convoyed sales.

Third, BLOUNT, INC. continues to ignore the fact that it is BLOUNT, INC.'s burden to establish lost profits of convoyed sales. *Bic Leisure Products v. Windsurfing Int'l, Inc.*, 1 F.3d 1214, 1218 (Fed. Cir. 1993). It is BLOUNT, INC.'s obligation to establish by a reasonable probability that in the absence of infringement, BLOUNT, INC. would have made the sales of the accused Ember Flame Booster and convoyed sales. *Water Technologies Corp. v. Calco Limited*, 850 F.2d 660, 671 (Fed. Cir. 1988) *cert. denied*, 488 U.S. 968, 109 S.Ct. 498, 102 L.Ed.2d 534 (1988).

BLOUNT, INC.'s failure to adequately establish its damages claims is its own fault. It is undisputed that PETERSON CO. sells its accused Ember Flame Booster products as an accessory which is separately boxed and priced. (Support Memo, Ex. 3, P. 176-77) Lost profits for convoyed sales cannot be proven by "feelings". As set forth in the above cited case law, speculative damages have been consistently and repeatedly rejected by the Federal Circuit. BLOUNT, INC.'s evidence regarding lost profits from convoyed sales in this case is nonexistent, and it's claim must be rejected.

#### **IV. No Lost Profits Have Been Established**

BLOUNT, INC. then asserts that the testimony of Mr. Blount established that "95% of the market is served by Golden Blount, Inc. and Peterson. . . . On the other hand, defendant had no testimony to show any other infringement or substitutes by third parties. From the foregoing, it follows that basically a two company market exists with respect to the subject product." (Response, p. 4-5) Several questions leap to mind.

First, BLOUNT, INC. is again offering expert testimony through Mr. Blount without meeting the reporting requirements of Rule 26, Federal Rules of Civil Procedure. Mr. Blount identified no basis whatsoever for his opinion regarding "95% of the market is served by Golden Blount, Inc. and Peterson." This is speculation which has expressly been prohibited by the Federal Circuit as forming a basis for a claim of lost profits. *Water Technologies Corp. v. Calco Ltd.* 850 F. 2d 660, 671 (Fed. Cir. 1988).

Second, Mr. Hanft acknowledged that non-infringing substitutes exist. Specifically Mr. Hanft testified as follows:

Q Have you ever seen any other ember burners other than Peterson's that provides the same result a non-CEBB does from [a] 1991 up to the time that you first heard about Peterson burner?

A No, not to see them.

Q Okay. Have you ever seen any existing?

A No. I have heard that some exist.

Q Okay.

A And it's important to know that I have no incentive to go to try to find them  
(Ex. 5, P.162, attached).

The theme of Mr. Hanft's testimony is—I know non-infringing alternatives exist, I just don't want to know what they are. This is not the type of testimony that will sustain a claim for lost profits and convoy sales.

Third, as far as noninfringing substitutes, PETERSON CO. identified the Eiklor patented product (Ex. D-8) cited as prior art during the prosecution of the '714 patent-in-suit, which shows an artificial gas log fireplace unit comprises a front and rear burner oriented in the identical

Third, as far as noninfringing substitutes, PETERSON CO. identified the Eiklor patented product (Ex. D-8) cited as prior art during the prosecution of the '714 patent-in-suit, which shows an artificial gas log fireplace unit comprises a front and rear burner oriented in the identical fashion to that described in the BLOUNT, INC. patent-in-suit (Ex. 7, attached). The only difference between the BLOUNT, INC. commercial product and the Eiklor patented product is the use of a secondary valve. This is clearly a noninfringing alternative to the patented product which is available in the marketplace. No admissible testimony was presented at trial that customers would not and did not purchase the Eiklor patented product as a substitute for either the BLOUNT, INC. commercial product or the PETERSON CO. accused Ember Flame Burner Unit.

BLOUNT, INC. then argues that PETERSON CO. failed to provide figures regarding the sale of retrofit Ember Flame Burner units to prior purchasers of standard G-4 fireplace units. (Response, p. 5) BLOUNT, INC.'s argument misses the point.

The burden is on BLOUNT, INC. to prove lost profits, not PETERSON CO. Moreover, as stated previously, PETERSON CO. sells to distributors who then sell to dealers who in turn sell to the retail markets. The dealers, not PETERSON CO., have that information. BLOUNT, INC. failed to obtain the necessary information during discovery, and further failed to present any admissible evidence at trial on this issue.

BLOUNT, INC. next cites Mr. Bortz's testimony that the accused Ember Flame Burner unit is intended to be put together with a G-4 burner unit. (Response, p. 5) BLOUNT, INC.'s argument simply begs the questions, which are: 1), how many of the accused Ember Flame Burner units are retrofitted with G-4 burner units previously sold by PETERSON CO. dealers; and 2) would BLOUNT, INC. have made the sales of the accused Ember Flame Boosters and the convoy sales



Finally, BLOUNT, INC. cites Mr. Hanft's testimony that, in his experience, 39 out of 40 purchasers buy the auxiliary burner at the same time they buy the fireplace unit. (Response, p. 5). Mr. Hanft's experience with the sale of BLOUNT, INC.'s product is completely irrelevant to the issue, which is, how does PETERSON CO. sell its accused Ember Flame Burner unit? On that issue, Mr. Hanft has no knowledge whatsoever (Supporting Memo, Ex. 1, p. 164).

BLOUNT, INC. presented no evidence in the record regarding the following:

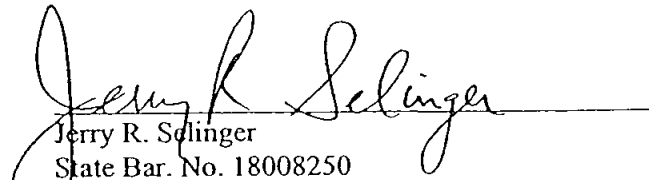
- (1) location of BLOUNT, INC. dealers with respect to PETERSON CO. dealers to establish direct competition between the products;
- (2) how far will customers drive to purchase fireplace products if the patented item is not available at one particular store; and
- (3) the significance in the purchasers mind of the handpainted features of the PETERSON CO. log sets versus the attractiveness of the front flame burner feature of the BLOUNT, Inc. commercial products in making the customers purchases.

All of these basic issues should have been addressed by an independent expert in accordance with Rule 702, Federal Rules of Evidence and Rule 26, Federal Rules of Civil Procedure. Instead, BLOUNT, INC. ignored the requirements for proving lost profits and instead offered conclusory opinions from non-expert witnesses regarding issues about which they have no factual knowledge whatsoever in direct violation of Rules 701 and 702, Federal Rules of Evidence. Such "proofs" have been consistently rejected by the Court of Appeals for the Federal Circuit, and should be rejected by this Court.

CONCLUSIONS

For the above-stated reasons, PETERSON CO. respectfully moves this Court to grant its Motion Under Rule 52(b) Federal Rules of Civil Procedure, and amend its Judgment Order of August 9, 2002, striking BLOUNT, INC.'s award of lost profits on both the accused product and for convoyed sales.

Respectfully submitted,

  
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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

GOLDEN BLOUNT, INC.	(	CIVIL ACTION NUMBER
Plaintiff,	(	
	(	
VERSUS	(	3:01-CV-127-R
	(	
ROBERT H. PETERSON CO.	(	
Defendant.	(	July 30, 2002

VOLUME 2 of 3  
TRANSCRIPT OF TRIAL  
BEFORE THE HONORABLE JERRY BUCKMEYER  
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

For the Plaintiff:	MR. WILLIAM D. HARRIS, JR. MR. CHARLES W. GAINES MR. GREG H. PARKER HITT, GAINES & BOISBRUN 275 W. Campbell Road Suite 225 Richardson, Texas 7575080 972/480-8800
For the Defendant:	MR. DEAN A. MONCO MR. F. WILLIAM McLAUGHLIN Wood, Phillips, Katz, Clark and Mortimer 500 West Madison Street Suite 3800 Chicago, Illinois 60661-2511 312/876-1800  MR. JERRY SELINGER Jenkins & Gilchrist 1445 Ross Avenue Suite 3200 Dallas, Texas 75202-2799 214/855-4776

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1 Q How about the dealer, though?

2 A The dealer might. It would depend on whether the dealer

3 was an installer or had installers.

4 Q The dealer could hire a crew, right?

5 A Right.

6 Q And as a matter of fact, do you know whether or not the

7 EMB is normally assembled by John Doe who's buying for his

8 own fireplace or whether it's assembled as the result of a

9 purchase at the dealer?

10 A No, I don't know.

11 Q Do you promote or encourage the use of your flame

12 booster with a gas log set?

13 A Do we promote it?

14 Q Yeah, do you promote or encourage the use of your flame

15 booster with a gas log set?

16 A I don't know what we do specifically to promote it. We

17 encourage the use of our products, of course.

18 Q That being one of them?

19 A That is one of our products.

20 Q Now the ember flame booster does get connected to the

21 pan sooner or later if it is used for its intended purpose

22 for the primary dual main gas source and is finally put in

23 use along with a grate and a log set, true?

24 A Yes.

25 Q Sir, when was it that you began to market the EMB

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1 burner system?

2 A I believe we began to market it in season of '96.

3 Q Did you put it in a catalog at that time?

4 A I believe we put it in the catalog the next time we had  
5 that catalog produced, which would have been, I believe,  
6 March of '97.

7 Q So '96, '97, that framework right?

8 A Yes, sir.

9 Q On the other hand, the way you look at it, you had  
10 already had it 20 years, right?

11 A Actually now I look at it, that we've had it for over 30  
12 years.

13 Q Why did you put in it the catalog and start selling it  
14 for the first time, then, when you just told me?

15 A Well, as a part of our normal way of doing business, we  
16 have different products that we put in the catalog, that we  
17 take out of the catalog. It's our -- our distribution, and  
18 customers like to see different things.

19 Q As a matter of fact, those things that you referred to  
20 20 or 30 years ago have likenesses, but they're not really  
21 the same, exactly the same, are they, as the EMB booster?

22 A The items that I'm referring from 30 years ago are not  
23 the same as the EMB booster in terms of -- they're not the  
24 exact same product as the EMB booster.

25 Q And what happened is most of these old things just fell



IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

GOLDEN BLOUNT, INC.	(	CIVIL ACTION NUMBER
Plaintiff,	(	
	(	
VERSUS	(	3:01-CV-127-R
	(	
ROBERT H. PETERSON CO.	(	
Defendant.	(	July 29, 2002

VOLUME 1 of 3  
TRANSCRIPT OF TRIAL  
BEFORE THE HONORABLE JERRY BUCKMEYER  
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

For the Plaintiff:	MR. WILLIAM D. HARRIS, JR. MR. CHARLES W. GAINES MR. GREG H. PARKER HITT, GAINES & BOISBRUN 275 W. Campbell Road Suite 225 Richardson, Texas 7575080 972/480-8800
For the Defendant:	MR. DEAN A. MONCO MR. F. WILLIAM McLAUGHLIN Wood, Phillips, Katz, Clark and Mortimer 500 West Madison Street Suite 3800 Chicago, Illinois 60661-2511 312/876-1800  MR. JERRY SELINGER Jenkins & Gilchrist 1445 Ross Avenue Suite 3200 Dallas, Texas 75202-2799 214/855-4776

JT-APP 0883

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1 seen over these 11 years that has basically not changed in  
2 terms of its physical nature.

3 Q Okay.

4 A But the products inside, of course, all have changed as  
5 time goes on.

6 Q All right. Mr. Hanft, I would like to direct your  
7 attention to Plaintiff's Exhibit 4 A and 4 B again or  
8 actually 4 A. If you need to come up a little closer, feel  
9 free to do so.

10 This is the Peterson ember burner. Have you ever  
11 seen this before? This product.

12 A No, I have never seen that.

13 Q You have never seen that for sale before?

14 A No.

15 Q All right. Did you see it for sale in '91?

16 A No.

17 Q How about '92?

18 A No.

19 Q What about '93?

20 A No.

21 Q '94, '95, '96?

22 A I would answer no.

23 Q Okay. What about '97?

24 A No.

25 Q Well, if you've never seen it for sale before, did you

1 hear about it along the way?

2 A Yes.

3 Q Okay. And when did you hear about it?

4 A Well, two years ago. I heard that it existed.

5 Q Okay. And how do you hear that?

6 A Through either another seller of the product or a rep  
7 that knew of it. A rep or a seller of it.

8 Q So you never saw Peterson introduce this at any of their  
9 conventions?

10 A No, I didn't see it.

11 Q You did not see it in any of their brochures, their  
12 sales product brochures?

13 A No.

14 Q But you did hear about it. Did you hear about it from  
15 '91 to '99?

16 A No.

17 Q Okay. So the first time you heard about it, then, was  
18 in the year 2000?

19 A Yes.

20 Q Okay. Do you -- just knowing the industry as you said  
21 that you do, do you believe that you would have heard of it  
22 sooner if it had been available?

23 A I think I would have heard of that sooner.

24 Q Why is that?

25 A It's not an insignificant product.

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1 could.

2 Q Okay. We've heard a lot of testimony and dialogue from  
3 counsel regarding the way in which this burner is sold,  
4 whether it's auxiliary or whether it's sold more times than  
5 not by itself or with log sets. I would like for you to just  
6 share with us your experience when you sell or how you sell  
7 the burner.

8 A Thinking back over the years in terms of how they were  
9 sold, if I sold 40 more CEBBs from this day forward, 39 would  
10 go with a log set.

11 Q Wait, wait, wait. Hold on. 39 out of 40 would go with  
12 logs?

13 A Yes. I'm giving you two and a half percent. Yes. In  
14 other words, we will retrofit one. We can. We don't even  
15 promote that.

16 Q Now wait a minute. So you don't have -- your experience  
17 is that you don't have that many customers coming in and just  
18 asking for the CEBB burner by itself?

19 A No, they're coming in shopping for a gas log, and when  
20 they do that, they'll need a gas log as well. So that's one  
21 of the reasons why that happens. They go with the front  
22 burner.

23 Q Okay. I put the math to that, and that's about 90  
24 percent of the time, then, you sell a set of logs with a  
25 burner.

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1 A Maybe 97 and a half.

2 Q Well, your math is better than mine.

3 A With the 142 is two and a half percent.

4 Q How do you install your burners when a customer comes  
5 in and says, yes, I like that? Do you just box it up for  
6 them, say, congratulations, you've got a great little set of  
7 logs and send them on their way or what?

8 A Three out of four will want installation managed by us.

9 Q So if somebody was coming in looking for, you know,  
10 just a burner, I guess, what would be some of the impediments  
11 just buying -- you know, I like that burner, I like the look  
12 of this. I think I'll take it home and put it on my  
13 fireplace. Would that necessarily work or what kind of  
14 problems could I run into?

15 A Installation, directing, removing things that were put  
16 on the original single burner set. It's doable and has been  
17 done in a rare case. But of those that do that, they ask  
18 us.

19 Q Are there different size fire boxes, Mr. Hanft?

20 A Yes.

21 Q Will that burner fit in all fire boxes?

22 A Prefab fireplaces are often not commercial. Some of  
23 them, especially older ones, we go back and put logs in all  
24 kinds of fireplaces. Some of them don't have the depth for a  
25 front burner.

1 Q So if I'm all excited after being in your show room, and  
2 I get all excited and grab one up and run out of the door  
3 with it. I would be the one, let's see, two and a half  
4 persons I guess in your experience, and I get home, it may  
5 not even work in my fireplace, mightn't it?

6 A There's a chance it wouldn't.

7 Q Thank you. Have you ever seen any other ember burners  
8 other than Peterson's that provides the same result a  
9 non-CEBB does from a 1991 up to the time that you first heard  
10 about Peterson burner?

11 A No, not to see them.

12 Q Okay. Have you ever seen any existing?

13 A No. I have heard that some exist.

14 Q Okay.

15 A And it's important to know that I have no incentive to  
16 go to try to find them. There are only --

17 Q Okay. Thank you. How would you characterize, then,  
18 just kind of wrapping up. How would you characterize the  
19 demand for the CEBB burner in your own experience?

20 A Steadily increasing.

21 Q Steadily increasing. So ever since you first introduced  
22 the burner, which was in 1994, the curve has been gradually  
23 increasing, I guess taking into account, as counsel pointed  
24 out, for sometimes warm years or what have you and that sort  
25 of thing.

6

JT-APP 0889

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

GOLDEN BLOUNT, INC.	(	CIVIL ACTION NUMBER
Plaintiff,	(	
	(	
VERSUS	(	3:01-CV-127-R
	(	
ROBERT H. PETERSON CO.	(	
Defendant.	(	July 29, 2002

VOLUME 1 of 3  
TRANSCRIPT OF TRIAL  
BEFORE THE HONORABLE JERRY BUCKMEYER  
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

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For the Defendant:	MR. DEAN A. MONCO MR. F. WILLIAM McLAUGHLIN Wood, Phillips, Katz, Clark and Mortimer 500 West Madison Street Suite 3800 Chicago, Illinois 60661-2511 312/876-1800  MR. JERRY SELINGER Jenkins & Gilchrist 1445 Ross Avenue Suite 3200 Dallas, Texas 75202-2799 214/855-4776

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1 Q Could you give us perhaps -- an outline will be  
2 sufficient, let us see -- of the history of the success, if  
3 there was one, of your invention?

4 A Well, there's no question about the success because the  
5 sales have been just wonderful. We have a lot of comments  
6 from all of our customers. It's helped them sell more  
7 product. It's helped us get additional customers away from  
8 you know who and others who do not, haven't had it before.  
9 It's just been one of the best things we could have done in  
10 our business.

11 Q Let me press you to be a little more definite than that.

12 A Yes, sir.

13 Q Would you?

14 A I'll try to.

15 Q I mean, like there was a time you sold none, correct?

16 A Correct.

17 Q There was a time you sold at least one or more, wasn't  
18 there?

19 A Absolutely.

20 Q Okay. So between now and then might be a way to present  
21 it.

22 A Well, we moved to the category of 10,000 units a year,  
23 which is a lot of burners, and it's still growing. It's  
24 getting more popular all the time, it seems, based on what  
25 customers tell us and based on the orders we receive from

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# United States Patent [19]

Eiklor et al.

[11] Patent Number: 5,033,455

[45] Date of Patent: Jul. 23, 1991

## [54] GAS-FIRED ARTIFICIAL LOG BURNERS

[76] Inventors: Scott F. Eiklor, 11711 Kenneth, Box 861; Steve F. Eiklor, 10809 N. Church, Box 804, both of Huntley, Ill. 60142

[21] Appl. No.: 605,973

[22] Filed: Oct. 30, 1990

### Related U.S. Application Data

[63] Continuation-in-part of Ser. No. 488,321, Mar. 5, 1990, abandoned.

[51] Int. Cl.<sup>3</sup> ..... F23C 3/00

[52] U.S. Cl. .... 126/512; 239/553;  
126/500; 126/540

[58] Field of Search ..... 431/125; 126/92 R, 92 AC,  
126/500, 512, 524, 540; 239/553

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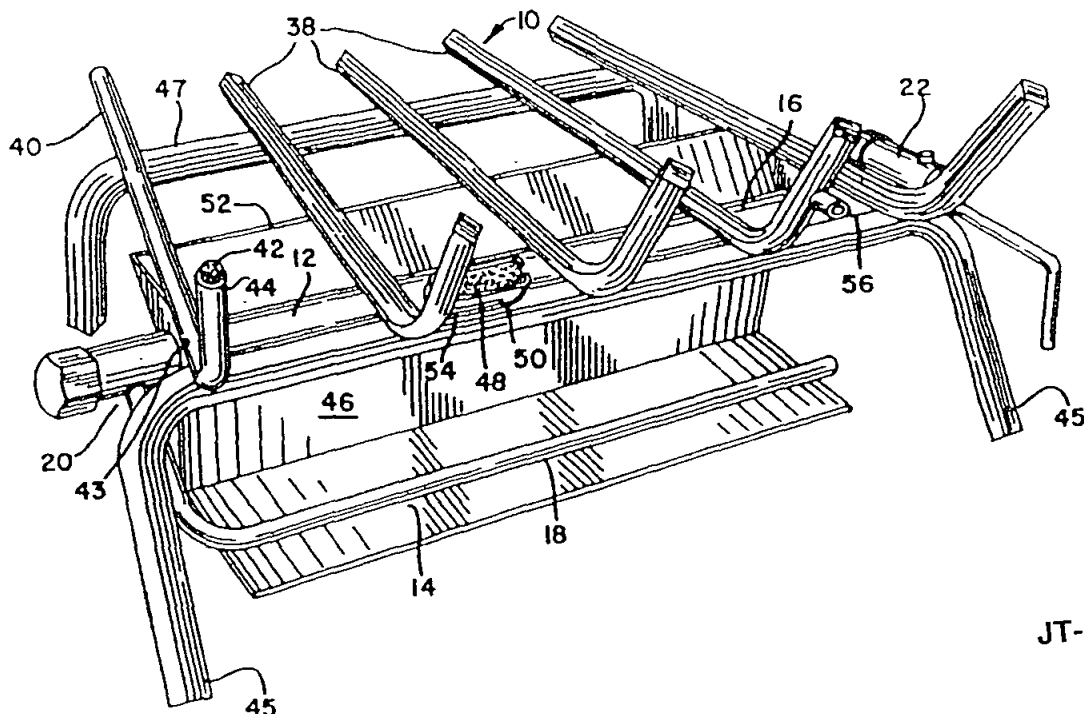
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Primary Examiner—Carroll B. Dority  
Attorney, Agent, or Firm—Wallenstein, Wagner & Hattis, Ltd.

### [57] ABSTRACT

The invention is a gas-fired burner for a fireplace, including an upper burner comprised of an upper tubular gas pipe and a lower burner comprised of a lower tubular gas pipe. The upper and lower tubular gas pipes meet at a junction, where gas to the lower tubular gas pipe is fed through the upper tubular gas pipe. Each of the tubular gas pipes has downwardly-facing, in-line orifices along their lengths. The improvement comprises a metallic strip having a width approximately equal to the inner diameter of the lower tubular gas pipe. This metallic strip is secured at its lateral ends to the interior of the lower pipe, and extends from a point adjacent the junction to a point beyond approximately the first twenty-five to thirty-three percent (25-33%) of the in-line orifices in the lower tubular gas pipe.

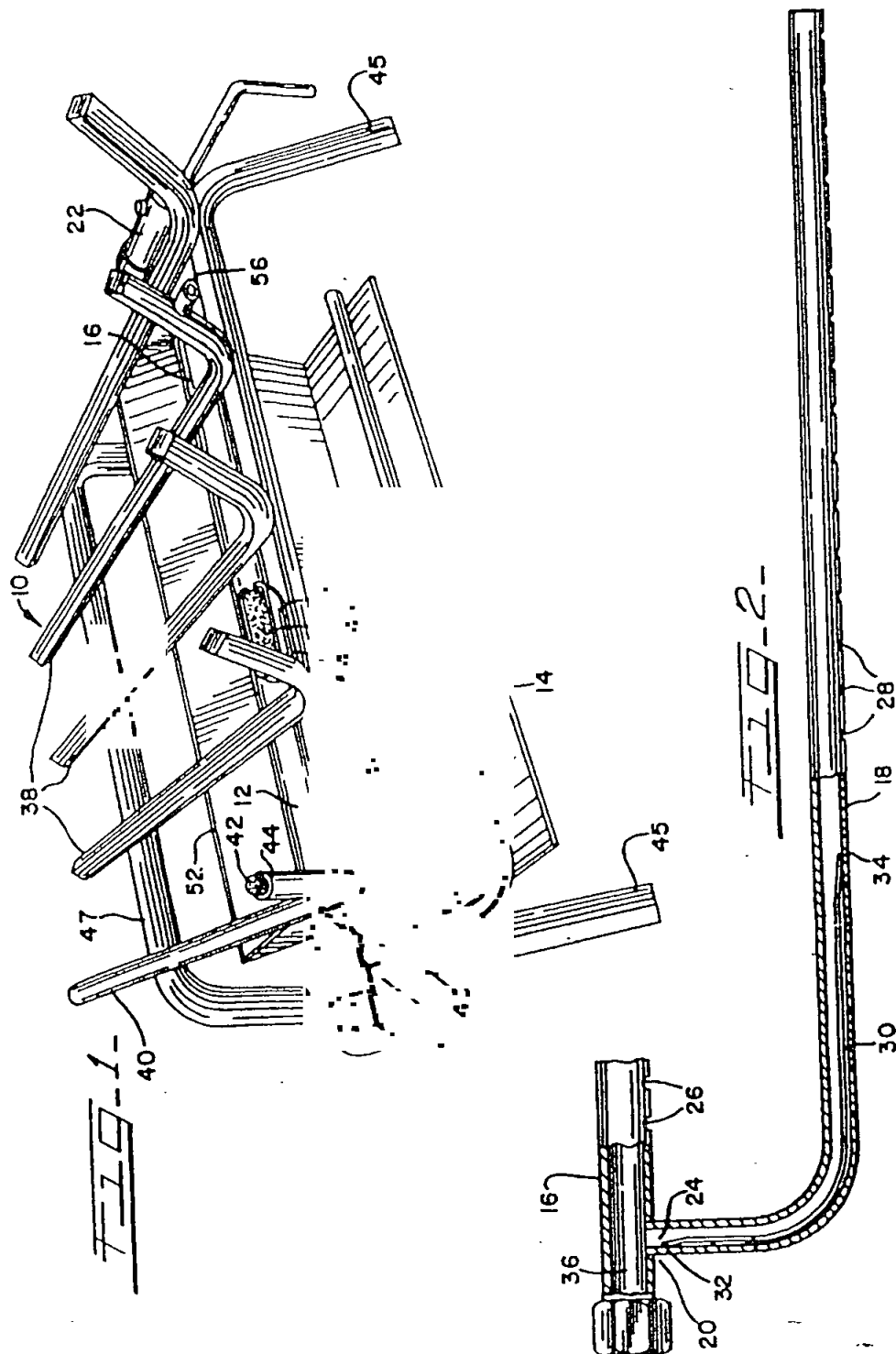
11 Claims, 2 Drawing Sheets

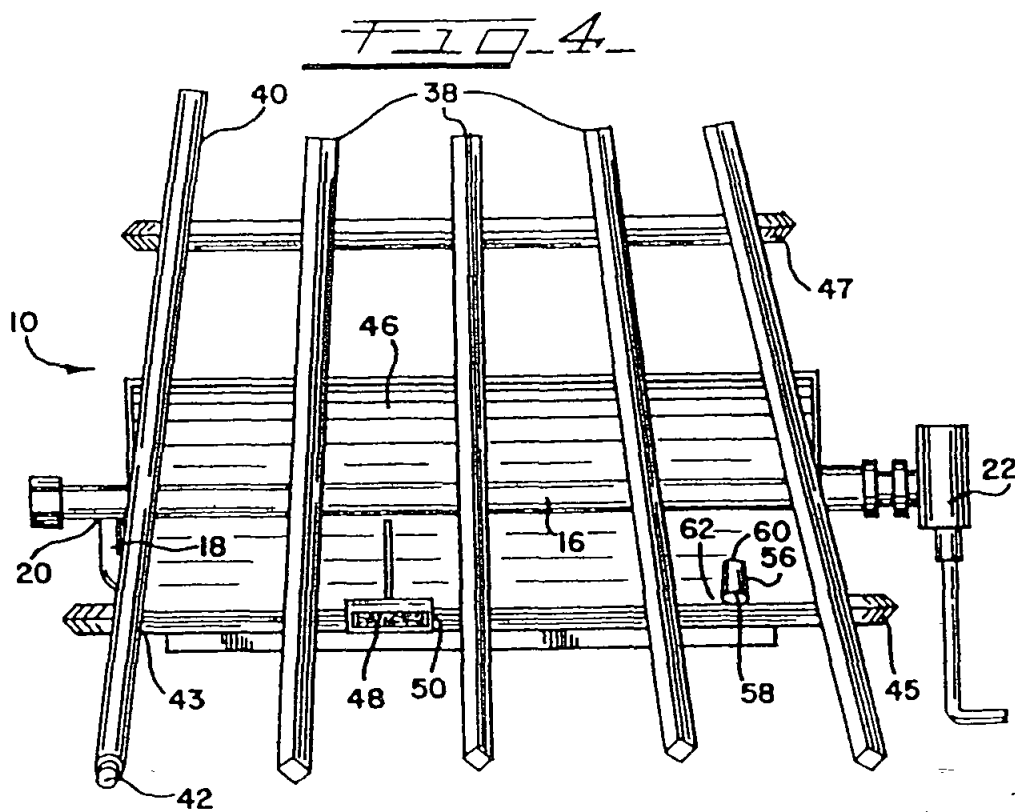
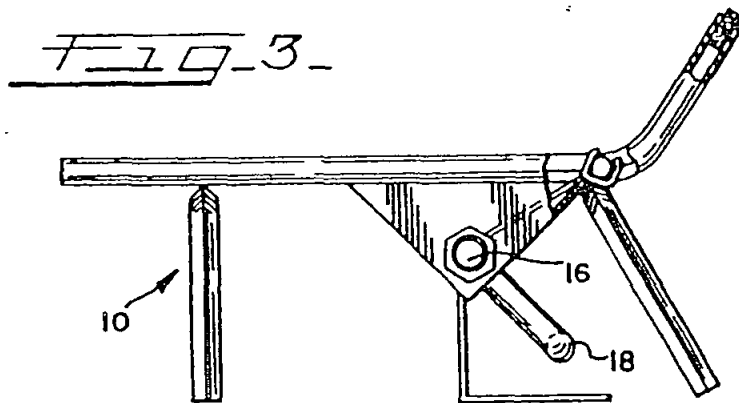


JT-APP 0893

EXHIBIT

D-8





## GAS-FIRED ARTIFICIAL LOG BURNERS

## RELATED APPLICATIONS

This application is a continuation-in-part application of Ser. No. 07/488,321, filed on Mar. 5, 1990, and abandoned as of the Oct. 30, 1990, filing date of this application.

## DESCRIPTION

## Technical Field

This invention relates to improvements in gas-fired burners for fireplaces. In particular, the invention relates to improvements in gas distribution in a lower burner tubular gas pipe, and to improvements in distributing the aromatic smoke products of scented sticks.

## BACKGROUND OF THE INVENTION

Gas-fired burners for fireplaces are well-known. In a typical gas-fired burner, the device comprises an upper burner including an upper tubular gas pipe and a lower burner including a lower tubular gas pipe. One such prior art device is disclosed in our now abandoned U.S. patent application Ser. No. 221,680, filed in 1988. In this device, the upper and lower tubular gas pipes meet at a junction. Gas to the lower tubular gas pipe is fed through the upper tubular gas pipe and then through a regulatory orifice at this junction. This regulatory orifice is most preferably a #53 orifice, but can also be a #56 orifice. Both of these tubular gas pipes have a plurality of downwardly-facing, in-line orifices along their lengths.

The lower tubular gas pipe generally runs horizontally above and along the length of a fireplace grate. Silica sand is placed on that grate in amounts sufficient to completely cover the lower tubular gas pipe. As the pressurized gas is discharged from the lower pipe, it moves upwardly through channels in the sand created by the gas. After the gas is ignited, the resulting flames create, with the aid of artificial logs and other visual aids, the illusion of a conventional, wood-burning fireplace with glowing embers on the sand.

In the prior art device disclosed in our now abandoned application, the lower gas pipe includes approximately twenty-six (26) of these downwardly-facing, in-line orifices. Because these orifices are spaced on  $\frac{1}{4}$  inch centers and are of approximately the same size, i.e., preferably #32, a disproportionately large amount of the gas entering the lower tubular gas pipe is discharged through the first  $\frac{1}{4}$  or about seven (7) of these orifices. As a result, the amount of gas discharged through the remaining nineteen orifices is disproportionately low. Thus, the flames in the areas of the fireplace adjacent the downstream regions of the lower gas pipe are not as intense as those adjacent the upstream regions of that pipe. This imbalance in gas distributors detracts from the realism of the gas-fired fireplace.

Because it uses artificial logs, such gas-fired fireplaces do not emit the pleasing scents inherent in the burning of wood logs. Scented sticks that emit the aroma of burning wood upon heating are known in the art. However, there are no known suitable means for effectively circulating the odors from such scented sticks which may be used in conjunction with gas-fired fireplaces. As will become apparent, the present invention also solves this problem.

## SUMMARY OF THE INVENTION

The present invention is an improvement in gas-fired burners for use with an artificial, gas-burning fireplace.

The invention includes an upper burner comprised of an upper tubular gas pipe, and a lower burner comprised of a lower tubular gas pipe. The upper and lower tubular gas pipes meet at a junction. At this junction, gas to the lower tubular gas pipe is fed from the upper tubular gas pipe. Each of these tubular gas pipes has downwardly-facing, in-line orifices distributed along their lengths. For improvement in gas distribution and more realistic flames simulating a wood burning fireplace, a metallic strip having a width approximately equal to the inner diameter is placed in the first lower tubular gas pipe. The metallic strip is secured at its lateral ends to the interior of the lower pipe, and extends from a point adjacent the junction to a point beyond approximately the first twenty-five to thirty-three percent (25-33%) of the in-line orifices in the lower tubular gas pipe.

In yet another embodiment, the gas burner includes a deflector band secured within the upper tubular gas pipe and adjacent to the junction. The deflector band curves upwardly to non-turbulently deflect gas within the upper tubular gas pipe into the lower tubular gas pipe for improved gas distribution.

In still another embodiment, the gas-fired burner further comprises a plurality of crossbars along its upper end. These crossbars are heated during use of the burner, and at least one of the crossbars is hollow. A scented stick is inserted into a open end of the hollow crossbar. Upon heating of the crossbar, the scented stick releases its aroma. Air within the hollow crossbar expands and escapes from the crossbar through its open end upon heating, thereby circulating the aromatic components of the scented stick.

Alternatively, the gas-fired burner may include a conventional and known V-shaped trough. Attached to this trough, however, for release of the aromatic elements of the scented stick is a novel and generally C-shaped carrier. Preferably, this carrier is secured adjacent the upper end of that trough where heat will cause it to smolder and smoke.

Accordingly, an object of the present invention is a device for ensuring more even release and distribution of natural gas or propane gas in gas-fired fireplaces. A further object is a means for more thorough circulation of the aromatic elements from a heat-actuated, scented stick.

## BRIEF DESCRIPTION OF THE DRAWINGS

FIGURE 1 is a perspective view of a gas-fired burner for a fireplace in accordance with the invention;

FIG. 2 is a partial sectional view of a portion of an upper burner and the entire lower burner of the gas-fired burner of the present invention;

FIG. 3 is a side view, partially in section, of the gas-fired burner of FIG. 1; and

FIG. 4 is a top, perspective view of the gas-fired burner of FIG. 1.

## DETAILED DESCRIPTION OF THE PREFERRED EMBODIMENT

The present invention relates to an improvement in a gas-fired burner for a fireplace. Although it may be best seen in FIG. 1, at least a portion of the gas-fired burner 10 of the present invention is shown in each of the figures. Referring now to FIG. 1, the gas-fired burner 10

comprises an upper burner 12 and a lower burner 14. The upper burner 12 includes an upper tubular gas pipe 16, and the lower burner 14 includes a lower tubular gas pipe 18. In a preferred embodiment, this upper tubular gas pipe 16 has an inner diameter of approximately  $\frac{1}{2}$  inch and the lower tubular gas pipe 18 has an approximate inner diameter of  $\frac{1}{4}$  inch.

Referring now to FIG. 2, the upper 16 and lower tubular gas pipes 18 meet at a junction 20. A source of natural or propane gas is supplied to the gas-fired burner 10 through a conventional gas supply valve 22. When opened, this gas supply valve 22 feeds the upper tubular gas pipe 16. Gas which is not discharged from the upper tubular gas pipe 16 moves towards junction 20, where it passes through a regulatory orifice 24. This regulatory orifice 24 controls the volume and pressure of gas being fed into the lower tubular gas pipe 18. In the present embodiment, this regulatory orifice 24 is either a #53 or a #56 orifice, and is most preferably a size #53 orifice.

Each of the tubular gas pipes 16 and 18 has downwardly-facing, in-line orifices along their lengths. In particular, upper tubular gas pipe 16 has at least five (5) orifices 26 spaced along centers of approximately 3 inches, and each of these orifices 26 is sized between #30 and #34, preferably #32. Similarly, lower tubular gas pipe 18 has twenty-six (26) orifices 28 spaced along centers of approximately  $\frac{3}{4}$  inch, and each orifice 28 is also sized at between #30 and #34, preferably #32.

The improvement in the present invention comprises a metallic strip 30 having a width of approximately  $\frac{1}{2}$  inch, i.e., a width approximately equal to or somewhat less than the inner diameter of the lower tubular gas pipe 18. In the embodiment shown in FIG. 2, the metallic strip 30 is secured within the lower tubular gas pipe 18, but substantially offset from its axial center. For this reason, the metallic strip 30 can have a width that is less than the inner diameter of gas pipe 18.

In the FIG. 2 embodiment, the sides of the metallic strip 30 along the entire length of that strip 30 but against the adjacent inner walls of the pipe 18. In addition, the lateral ends 32 and 34 of this metallic strip 30 are secured to the inner walls of that lower pipe 18. The metallic strip 30 itself extends from a point adjacent the junction 20 to a point beyond approximately the first twenty-five to thirty-three percent (25-33%) of the in-line orifices 26 in the lower tubular gas pipe 18. In the FIG. 2 embodiment, lateral end 34 of this metallic strip 30 is secured to the inner wall of lower pipe 18 at a point just beyond the seventh in-line orifice 26.

With this arrangement of metallic strip 30 along the inner walls of the lower pipe 18, most of the gas entering the lower pipe 18 through the regulatory orifice 24 will flow above that strip 30, moving beyond these first seven (7) orifices 26 to the remaining nineteen (19) downstream orifices. However, even though the edges of the strip 30 closely abut the pipe 18, gaps between the strip 30 and pipe 18 result from the imperfections in their surfaces and shapes. An amount of gas sufficient to fuel the first seven (7) orifices 26 of the lower gas pipe 18 passes through these gaps. In fact, it has been found in practice that the gaps between the typical flat metallic strip 30 and the typical  $\frac{1}{4}$  inch pipe, when oriented as shown in FIG. 2, result in a much more proportionally correct gas distribution as compared to gas-fired burners without such a metallic strip 30. It will be understood by those skilled in the art, however, that there are variations in the interior surfaces of pipes, and in the

trueness of edges of metallic strips. For this reason, it will also be understood by those skilled in the art that the metallic strip 30 may also be placed closer to the axial center of the lower pipe 18, if such placement should improve distribution in a given circumstance.

It has also been discovered by the inventors that a deflector band 36 made of the same material as metallic strip 3 is useful in reducing turbulence and directs the gas from upper tubular gas pipe 16 to lower tubular gas pipe 18. This reduction in turbulence and redistribution in the upper tubular gas pipe 16 is believed to result in a smoother, more controlled emission of gas from the orifices 28 of lower tubular gas pipe 18. The deflector band 36 is secured within the upper tubular gas pipe 16, and adjacent the junction 20. The deflector band 36 curves upwardly, and non-turbulently deflects gas within the upper tubular gas pipe 16 into the lower tubular gas pipe 18.

The burner also has a plurality of crossbars 38 along its upper end, including at least one hollow crossbar 40. These crossbars 38 and 40 are heated during use of the burner. A scented stick 42 may be inserted into an open end 44 of the hollow crossbar 40. Where the burner pan, containing simulated wood and ashes, is welded to front 45 or rear support elements 47, a horizontally-disposed orifice 43 of  $\frac{5}{16}$  inch in diameter is drilled through the hollow crossbar 40, at the approximate position shown in FIG. 4. The center of this orifice 43 is about  $\frac{1}{4}$  inch forward of the front of a V-shaped trough 46, which will be described in more detail below. In this way, flames from the burner rise past the orifice 43 to ignite the scented stick 42, a portion of which is typically adjacent this orifice 43. As the scented stick 42 is heated to a smoldering temperature, it releases its aromatic components. Typically, these aromatic components smell like hardwoods or other aromatic woods used in conventional wood burning fireplaces.

Where the burner pan, containing simulated wood or ashes, is not secured to the support elements 45 and 47 or grate, then three (3)  $\frac{5}{16}$  inch horizontal orifices (not shown) are provided, rather than one orifice. These orifices are located in the crossbar 40 between the front 45 and rear support elements 47. They are positioned 1 inch, 2 inches, and 3 inches inward of the intersection of the crossbar 40 and the front support element 45.

As air within this hollow crossbar 40 is heated, it expands and exits through the open end 44 of that crossbar 40. That expanding, exiting air circulates the aromatic components of the scented stick 42 throughout the room.

The gas-fired burner of the invention may also include a conventional V-shaped trough 46. As yet another means of circulating the aromatic components of a scented stick 48, this V-shaped trough may include a generally C-shaped carrier 50 adjacent its upper end 52. The scented stick 48 may be inserted into this C-shaped carrier by bending one of its arms 54 outwardly. This bending increases the effective diameter of the C-shaped carrier 50, permitting easy insertion of the scented stick 48. After insertion of the scented stick 48, the arm 54 may be released so that it may reassume its original position and securely grip scented stick 48.

A further aspect of the invention is a generally elongated igniter 56. In this embodiment, the igniter 56 is secured near the upper end of one side of the V-shaped trough 46. In the most preferred embodiment, this igniter is made from a generally flat piece of metal that is rolled into an elongated shape having two generally

oval-shaped ends 58 and 60. A gap 62 having a width of  $\frac{1}{4}$  inch extends along the length of this igniter 56. In the preferred embodiment, the first oval-shaped end 58 extends out from the sand which typically covers the gas-fired burner 10.

In lighting a conventional gas-fired burner, one generally must use a long match and stand well away from the burner itself. The head of the match would be placed near the orifices 26 of the upper tubular gas pipe 16. As a result, the ignition of the gas in such conventional burners could be sudden and startling. With the present igniter, the need to use such a long match is eliminated. Rather, a conventional match may be placed adjacent the first end 58 of the igniter 56. Gas being released from orifices 26 diffuses through the sand and towards the second end 60. Shortly after reaching this second end 60, the gas is ignited by the flame from the conventional match. This ignition takes place in a more controlled manner than with prior gas-fired burners.

In another embodiment, the first end of the igniter may be circular in shape, and the second end may be oval-shaped. In this second embodiment, the igniter does not utilize a gap.

While the specific embodiments have been illustrated and described, numerous modifications come to mind without markedly departing from the spirit of the invention. The scope of protection is thus only intended to be limited by the scope of the accompanying claims.

What I claim is:

1. In a gas-fired burner for a fireplace, an upper burner comprised of an upper tubular gas pipe and a lower burner comprised of a lower tubular gas pipe, said upper and lower tubular gas pipes meeting at a junction, wherein gas to said lower tubular gas pipe is fed through said upper tubular gas pipe, and wherein each of said tubular gas pipes has downwardly-facing, in-line orifices along their lengths, the improvement comprising a metallic strip having a width approximately equal to the inner diameter of said lower tubular gas pipe, said metallic strip secured at its ends across its width to the interior of said lower pipe, and extending from a point adjacent said junction to a point beyond approximately the first twenty-five to thirty-three percent (25-33%) of said in-line orifices in said lower tubular gas pipe, said metallic strip thereby causing a substantial portion of said gas to said lower tubular gas pipe to avoid said first 25-33% of said in-line orifices.

2. The gas-fired burner of claim 1, further comprising a deflector band secured within said upper tubular gas pipe and adjacent said junction, said deflector band curving upwardly to non-turbulently deflect gas within said upper tubular gas pipe into said lower tubular gas pipe.

3. The gas-fired burner of claim 1, further comprising a plurality of crossbars along its upper end, whereby said crossbars are heated during use of said burner, at least one of said crossbars being hollow to permit the insertion therein of a scented stick, whereby said scented stick releases its aroma upon heating, and whereby said aroma is circulated by air that is heated within said hollow crossbar, and exiting from an open end of said hollow crossbar.

4. The gas-fired burner of claim 1, further comprising a V-shaped trough, said V-shaped trough having a generally C-shaped carrier adjacent its upper end for the insertion of a scented stick.

5. In a gas-fired burner for use in a fireplace, said burner having a plurality of crossbars along its upper end, said crossbars being heated during use of said

burner, the improvement comprising at least one of said crossbars being hollow to permit the insertion therein of a scented stick, whereby said scented stick releases its aroma upon heating, and whereby said aroma is circulated by air that is heated within said hollow crossbar, and exiting from an open end of said hollow crossbar.

6. In a gas-fired burner for use in a fireplace, said burner having a V-shaped trough, the improvement comprising a generally C-shaped carrier secured to the upper end of said V-shaped trough for the insertion of a scented stick.

7. In a gas-fired burner for a fireplace, an upper burner comprised of an upper tubular gas pipe and a lower burner comprised of a lower tubular gas pipe, said upper and lower tubular gas pipes meeting at a junction, wherein gas to said lower tubular gas pipe is fed through said upper tubular gas pipe, and wherein each of said tubular gas pipes has downwardly-facing, in-line orifices along their lengths, the improvement comprising a metallic strip having a width approximately equal to the inner diameter of said lower tubular gas pipe, said metallic strip secured at its ends across its width to the interior of said lower pipe, and extending from a point adjacent said junction to a point beyond approximately the first twenty-five to thirty-three percent (25-33%) of said in-line orifices in said lower tubular gas pipe, and further comprising a deflector band secured within said upper tubular gas pipe and adjacent said junction, said deflector band curving upwardly to non-turbulently deflect gas within said upper tubular gas pipe into said lower tubular gas pipe.

8. In a gas-fired burner for a fireplace, an upper burner comprised of an upper tubular gas pipe and a lower burner comprised of a lower tubular gas pipe, said upper and lower tubular gas pipes meeting at a junction, wherein gas to said lower tubular gas pipe is fed through said upper tubular gas pipe, and wherein each of said tubular gas pipes has downwardly-facing, in-line orifices along their lengths, the improvement comprising a metallic strip having a width approximately equal to the inner diameter of said lower tubular gas pipe, said metallic strip secured at its ends across its width to the interior of said lower pipe, and extending from a point adjacent said junction to a point beyond approximately the first twenty-five to thirty-three percent (25-33%) of said in-line orifices in said lower tubular gas pipe, and further comprising a V-shaped trough, said V-shaped trough having a generally C-shaped carrier adjacent its upper end for the insertion of a scented stick.

9. A combination grate and burner including a scent holder for holding a scented stick, said scent holder comprising at least one hollow crossbar forming part of said grate, said crossbar having at least one orifice, said hollow crossbar being heated during use of said burner, whereby flames from said burner rise past said orifice to ignite said scented stick.

10. The scent holder of claim 9, wherein said hollow crossbar is secured to front, and rear support elements of said combination grate and burner, and wherein said hollow crossbar includes one orifice adjacent said front support element.

11. The scent holder of claim 9, wherein said hollow crossbar is secured to front and rear support elements of said combination grate and burner, and wherein said hollow crossbar includes a plurality of orifices between said front and rear support elements of said combination grate and burner.

CERTIFICATE OF SERVICE

This certifies that a copy of the foregoing document was served by first-class mail, postage prepaid, to counsel for Plaintiff, William D. Harris, Jr., Hitt Gaines Boisbrun, P.C., 225 University Plaza, 275 West Campbell Road, Richardson, Texas 75080, this 4<sup>th</sup> day of October, 2002.

Glenn Parker



FEB 2 2003

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

CLERK, U.S. DISTRICT COURT

By

Deputy

GOLDEN BLOUNT, INC.,

*Plaintiff,*

v.

ROBERT H. PETERSON CO.,

*Defendant.*

CIVIL ACTION NO. 3-01-CV-0127-R

**DEFENDANT'S RESPONSE TO**  
**ORDER OF FEBRUARY 6, 2003**

Defendant Robert H. Peterson Co. ("Peterson Co.") respectfully submits this response to Paragraph 5 of the Court's Order of February 6, 2003.

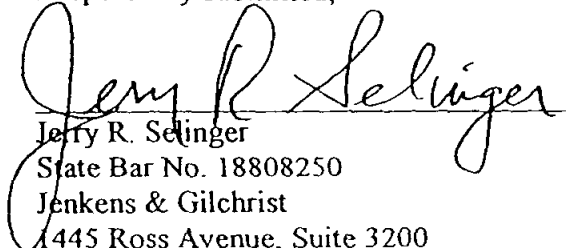
The Court's Order required Peterson Co. to provide the Court with sales figures for the ember flame booster for the period from May 1, 2002, to August 9, 2002. The Court noted that the Defendant had previously provided sales figures for the period from May 1, 2002, to September 18, 2002. As a point of clarification, the previously-provided sales figures of 322 ember flame boosters comprised the sales figures for the ember flame booster for the period from May 1, 2002, to August 9, 2002.

Peterson Co. also notes the Court's statement that the updated figures should not take into account any returns. Peterson Co. requests that the Court reconsider this issue because returned ember flame boosters - - never sold to end users - - would not have resulted in lost-profit damage to Blount

The returns are all from Peterson Co. dealers. After the Court's decision on August 9, 2002, Peterson Co. proactively contacted its distributors to recall unsold ember flame boosters. Peterson Co. paid its distributors for, and obtained returns of, 802 unsold ember flame booster units.

These are units as to which Plaintiff could not have suffered any lost profit damages since end users never purchased the ember flame booster units in lieu of Plaintiff's system. Peterson Co. asks that the Court offset the additional sales of 322 ember flame booster units that were sold against the 802 ember flame booster units taken off the market by Peterson Co. via the return process described above. Consequently, Peterson Co. asks that no further damages be awarded.

Respectfully submitted,



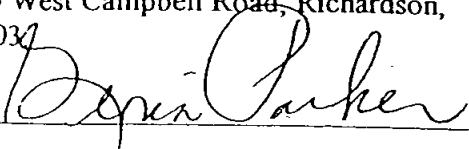
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FOR DEFENDANT  
ROBERT H. PETERSON CO.

CERTIFICATE OF SERVICE

This certifies that a copy of the foregoing document was served by facsimile and first class mail, postage prepaid, to counsel for Plaintiff, William D. Harris, Jr., Hitt Gaines Boisbrun, P.C., 225 University Plaza, 275 West Campbell Road, Richardson, Texas 75080, this 24th day of February, 2003.

  
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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

GOLDEN BLOUNT, INC.,

Plaintiff,

v.

ROBERT H. PETERSON CO.,

Defendant.

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Civil Action No.

3-01CV0127-R

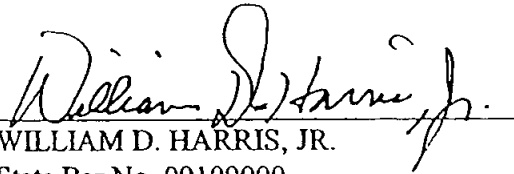
**PLAINTIFF GOLDEN BLOUNT, INC.'S NOTICE TO THE COURT THAT  
DEFENDANT PETERSON COMPANY'S RESPONSE  
TO THE COURT'S ORDER OF FEBRUARY 6, 2003 CONTAINS VOLUNTEERED  
AND NON-RESPONSIVE INFORMATION**

The Plaintiff Golden Blount, Inc. ("Plaintiff") respectfully submits this notice to the Court that Defendant Robert H. Peterson Co.'s ("Defendant's") Response to the Court's Order of February 6, 2003 contains volunteered and non-responsive information. This notice is not considered a response or an argument. It is only proffered to point out that superfluous and non-responsive information was provided in the Defendant's response. Indeed, one sentence in the response enumerates all that the Court ordered, to wit "[a]s a point of clarification, the previously-provided sales figures of 322 ember flame boosters comprised the sales figures for the ember flame booster for the period from May 1, 2002, to August 9, 2002." This quoted sentence is a proper response and we believe it is all that should receive attention. In the case that the Defendant's response raises an issue allowing a responsive pleading, we request that we be allowed to file one. Frankly, however, we do not believe one is required, or even perhaps permissible, as this Court has already ruled upon the issue that the

Defendant is asking the Court to reconsider.

Respectfully submitted,

For the Plaintiff Golden Blount, Inc.



WILLIAM D. HARRIS, JR.

State Bar No. 09109000

CHARLES W. GAINES

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Hitt Gaines & Boisbrun, P.C.

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972/480-8800 (Telephone)

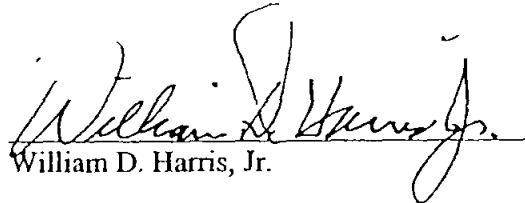
972/480-8865 (Facsimile)

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the enclosed Plaintiff Golden Blount, Inc.'s Notice to the Court that Defendant Peterson Company's Response to the Court's Order of February 6, 2003 Contains Volunteered and Non-Responsive Information, was served on the following counsel of record on February 28, 2003, by hand delivery and Express Mail as indicated below:

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William D. Harris, Jr.

IT-APP-0905

**COPY**

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

U.S. DISTRICT COURT NORTHERN DISTRICT OF TEXAS FILED <b>MAR - 6 2003</b> CLERK, U.S. DISTRICT COURT By _____ Deputy
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GOLDEN BLOUNT, INC., )  
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Plaintiff, )  
 )  
v. )  
 )  
ROBERT H. PETERSON CO., )  
 )  
Defendant. )

Civil Action No.: 3:01-CV-0127-R

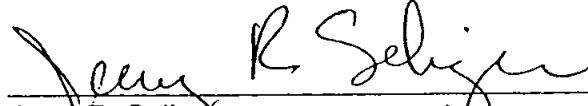
**NOTICE OF APPEAL**

Notice is hereby given that the Robert H. Peterson Co., Defendant in the above-identified action, hereby appeals to the United States Court of Appeals for the Federal Circuit from the following:

- 1) Order entered February 7, 2003, denying Defendant's Motion to Amend Findings of Fact, Conclusion of Law and Judgment Under Rule 52(b) or for a New Trial under Rule 59(a), and further granting an award of reasonable attorney's fees in the amount of \$332,349.00, and granting plaintiff's Motion for Updated Damages and Pre and Post Judgment Interest (Paragraphs 3, 4 and 5) (Attachment 1);
- 2) Judgment entered August 9, 2002, entering Judgment for Plaintiffs, and awarding damages and reasonable attorney's fees based on the Findings of Fact and Conclusions of Law entered the same date (Attachment 2);  
and

- 3) Findings of Facts and Conclusions of Laws dated August 9, 2002, including Order Granting Injunction. (Attachment 3)

Respectfully submitted,



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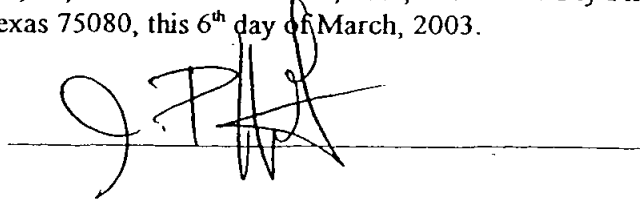
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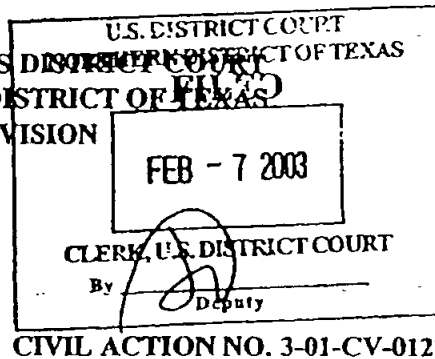


CERTIFICATE OF SERVICE

This certifies that a copy of the foregoing document was served by fax and regular mail to counsel for Plaintiff, William D. Harris, Jr., Hitt Gaines Boisbrun, P.C., 225 University Plaza, 275 West Campbell Road, Richardson, Texas 75080, this 6<sup>th</sup> day of March, 2003.

A handwritten signature, appearing to be "J. P. Harris", is written over a horizontal line.

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION



GOLDEN BLOUNT, INC.,

*Plaintiff,*

v.

ROBERT H. PETERSON CO.,

*Defendant.*

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**ORDER**

On August 9, 2002, this Court entered its Findings of Fact and Conclusions of Law, as well as the Final Judgment, in this case. The Court now makes the following rulings with regard to Plaintiff and Defendant's Post-Trial motions:

1. Plaintiff's Motion to Disregard the Testimony of John Palaski (filed July 31, 2002) is hereby **DENIED**.
2. Defendant's First Motion to Amend Findings of Fact, Conclusions of Law and Judgment in Accordance with Rule 52(b) (received August 23, 2002)<sup>1</sup> is hereby **GRANTED**. As discussed *infra*, a subsequent Order will specify the revised amount of damages.
3. Defendant's Second Motion to Amend Findings of Fact, Conclusions of Law and Judgment under Rule 52(b) or for New Trial under Rule 59(a) (filed August 23, 2002) is hereby **DENIED**.

---

<sup>1</sup>It appears that this Court has not yet issued an Order regarding Defendant's Motion for Leave to File Under Seal its First Motion to Amend the Findings and Judgment. Defendant's Motion for Leave to File Under Seal is hereby **GRANTED**.


AO

JT-APP 0909

4. Plaintiff's Application for Attorney's Fees (filed August 23, 2002) is hereby **GRANTED**. Plaintiff is awarded reasonable attorney's fees in the amount of \$332,349.00.
5. Plaintiff's Motion for Updated Damages and Pre and Post Judgment Interest (filed August 23, 2002) is hereby **GRANTED** to the extent that the award of damages is updated to cover the period between May 1st and August 9, 2002. Defendant is hereby **ORDERED** to provide this Court, within 10 calendar days of the date of this Order, with sales figures for the ember flame burn unit for the period from May 1, 2002 to August 9, 2002.<sup>2</sup> The figures will not take into account any returns. After receipt of the sales figures, this Court will issue an order setting forth the amount of actual damages and awarding prejudgment and postjudgment interest. Costs shall be taxed against Defendant.

It is so **ORDERED**.

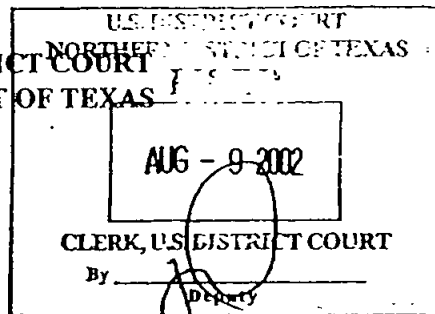
SIGNED: February 6, 2003.

  
JUDGE JERRY BUCHMEYER  
UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS

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<sup>2</sup>The Court notes that Defendant has previously provided sales figures for the period from May 1, 2002 to September 18, 2002; however, that period extends beyond the date of the Final Judgment. See Defendant's Objection to Plaintiff's Motion for Updated Damages (filed September 19, 2002), Exhibit 2. Of course, Defendant shall also serve a copy of the sales figures to Plaintiff, and Plaintiff will have 10 calendar days to respond to those figures.

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION



GOLDEN BLOUNT, INC.,

Plaintiff,

v.

ROBERT H. PETERSON CO.,

Defendant.

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Civil Action No.

3-01-CV-0127-R

AS-9202  
"S.D.C."

FINAL JUDGMENT

Pursuant to Rule 58 of the Federal Rules of Civil Procedure and the Court's Findings of Fact and Conclusions of Law, entered August 9, 2002, it is hereby **ORDERED** that judgment is entered for Plaintiffs. It is further **ORDERED** that Plaintiff recover damages and reasonable attorneys fees as set forth in the Court's Findings of Fact and Conclusions of Law.

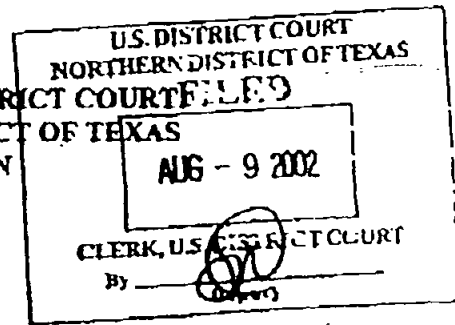
Signed the 9th of August, 2002.

[Signature: Jerry Buchmeyer]  
JUDGE JERRY BUCHMEYER  
UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS

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JT-APP 0911

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION



GOLDEN BLOUNT, INC.,

Plaintiff,

v.

ROBERT H. PETERSON CO.,

Defendant.

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Civil Action No.

3-01-CV-0127-R

15-902  
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**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Plaintiff Golden Blount, Inc. ("Plaintiff" or "the Plaintiff") brought suit against Defendant Robert H. Peterson Co. ("Defendant" or "the Defendant") for patent infringement. A bench trial was held July 29-31, 2002. Pursuant to Rule 52(a) of the Federal Rules of Civil Procedure, the Court makes its findings of fact and conclusions of law as follows:

**I. FINDINGS OF FACT**

1. The Plaintiff Golden Blount, Inc. is the owner of U.S. Patent 5,988,159, assigned it by Mr. Golden Blount, the named inventor for the patent (hereinafter "the patent," "the patent in suit," or the "Blount patent"). The Plaintiff sued Defendant for patent infringement.
2. The field of the invention is fireplace burners and associated equipment.
3. The Defendant alleges that the patent is invalid under 35 U.S.C. 102 (1994) and 35 U.S.C. 103 (1994). The Defendant also alleges that its accused structure does not infringe.
4. At the time the patent issued, the Plaintiff's commercial structure under the patent had been marketed for approximately six years, i.e., from about the time Plaintiff originally filed its patent application. Its sales grew significantly and it is a commercial success.

5. Defendant is unable to establish when it commenced design of its accused structure, but it was long after the Plaintiff placed its device on the market. There is a lack of explanation of why the first marketed accused structures were not fabricated and placed on the market until after Plaintiff's device had established a market. Also there is no showing that the Defendant's device went through any significant design or development. The Defendant's structure is very similar to Plaintiff's. The foregoing gives inference of copying.
6. There had been a need for a burner device to give the appearance of the burning of natural logs by creating an area of subdued flames out front of the artificial logs, and to create the appearance of fiery hot embers out front, as would be present with the burning of real logs. The need for such a burner device to enhance the artificial fireplace's operation had existed for long before the invention occurred. The patented device met the aforementioned need.
7. The prior art relied on by the Defendant does not show the same concepts that the Plaintiff's claims include, and proof of the actual existence and/or sales of the prior art relied upon is lacking, as noted below.
8. A recent sketch, made long after the patent was filed, was made to illustrate that which Defendant is trying to establish was prior art in the eighties. Defendant says it went off the market long ago. The sketch was made long after the fact, to illustrate a device allegedly made public or sold by a third party in the eighties. The recent sketch was made with the inputs and assistance of the Defendant's personnel.
9. The alleged prior art, shown in the sketch, was not sufficiently proved to consider it as meeting the standard of being shown "by clear and convincing evidence." Even if it did, it was for quite a different purpose than the patented device, and further, the end use has not been shown.
10. Turning to the evidence of burner configurations of Production No. 33 and Production No. 34, again their existence, their use, and their actual sale or marketing is vague. The Defendants say the alleged structures were not marketed (or not further sold) since around 1990. The only evidence offered were sketches of uncertain

origin. Also, if these devices were viable prior art, it would seem that Defendant would have used them to compete with Plaintiff, rather than market the copycat structure presently sold.

11. The main tube and the auxiliary tube of Production Nos. 33 and 34 are of the same diameter and on a vertical level. No support means is provided or suggested.
12. For the foregoing reasons, this Court finds that the evidence pertaining to the alleged prior art of Production Nos. 33 and 34 fails to establish by clear and convincing evidence their prior use or sale. Furthermore, this Court finds that there are substantial differences between the alleged devices of Production Nos. 33 and 34 and the Plaintiff's device, particularly in the level of skill in the art.
13. The other alleged art offered by Defendant is not nearly as similar as Production Nos. 33 and 34, and each fail to show significant pertinence.
14. There are 12 claims in issue. They are claims 1, 2, 5, 7-9, 11-13 and 15-17. Claims 1 and 17 are independent claims. All other claims at issue are dependent on Claim 1, that is, they refer to another claim as a beginning point of the structure they claim.
15. As a matter of law, the Court must construe the claims before literal infringement of the accused structure may be addressed. Claims construction is addressed in the Conclusions of Law section infra.
16. Applying the claim construction referred to in the Conclusions of Law, this Court finds there is: (1) literal infringement of independent Claim 1; (2) literal infringement of Claim 17; and (3) literal infringement of dependent Claims 2, 5, 7-9, 11-13, and 15-16.
17. This Court notes that an independent valve, such as each residential fireplace has, is absent from the structure sold. However, the parties previously stipulated in effect that the Defendant's structure is used in the environment of the valve already being used in the standard fireplace setup. Everything else is provided by Defendant (and by Plaintiff) to the ultimate customer, normally through a distributor. The evidence is that there is no other use for the patented structure. It is sold with knowledge that it will be used as per its intended use in a gas fireplace with artificial logs. It is not

a staple article of commerce. Certainly it is a most significant part of the patented product, in fact, essentially all of it. Hence if there is not element by element literal infringement, there is contributory infringement. 35 U.S.C. 271(d) (1994).

18. This Court further finds that the Defendant advertises and provides instructions, such that the installer or the ultimate customer following the advertising and instructions provided by Defendant will constitute infringement. It is further found that demonstrations and sales meetings are held where distributors are shown how to practice the patented invention with Defendant's equipment. The distributors pass this on to customers and to installers. By this conduct, Defendant induces infringement pursuant to 35 U.S.C. 271(c) (1994).
19. In the alternative to literal direct infringement, elements of the claims in suit are present in the accused structure. In each instance, element by element, and also considering the accused structure as a whole, there is insubstantial differences from the Defendant's accused structure and the claims at issue. Moreover, element by element, and as a whole, the accused structure does the same thing (the same function) in the same way to give the same result, constituting infringement under the doctrine of equivalent.
20. After the Defendant received a cease and desist letter, an attorney ("Mr. McLaughlin" or "attorney McLaughlin") was called by phone to seek some advice. Mr. McLaughlin was provided only the letter and some advertising brochures or papers. Mr. McLaughlin was not asked for an opinion in the real sense of the word, but was told by Mr. Bortz ("the Defendant's executive" or "Mr. Bortz") that things very similar to the patented structure had existed in the past as early as the eighties. The only advice given by the attorney was that, if that were so, some of the claims would be invalid, depending on just what the prior art devices were, and that he would not have to be concerned about those claims.
21. Attorney McLaughlin was not even provided with the Defendant's accused device at that time, nor any alleged prior art. He was never provided the accused device until long after his oral opinion was given and after suit was filed.



22. In the final analysis, the only opinion given was oral and it was based on some sketches provided that did not include information or details of when they were sold or made available to the public, nor any aspect of their authenticity, detail or history. The art provided to the attorney clearly did not render the patent claims invalid.
23. The oral opinion, rendered more than a year after the first cease and desist letter and even after suit was filed, did not inform the client that there was no estoppel during prosecution and that the doctrine of equivalents would have to be dealt with. It is uncertain how far the oral opinion went, but it was meager.
24. The Defendant's executive did get what he asked for, a statement that there was no infringement. The Defendant's apparent desire was to avoid paying attorneys fees or increased damages, and this appears to have been the sole reason for consultation with counsel, as shown both by his testimony on why he consulted Mr. McLaughlin by phone and also by Mr. McLaughlin's testimony as to the stated reason for the consultation. Note that at no time before his deposition was taken, did the Defendant's executive Mr. Bortz ever have a face-to-face meeting with Mr. McLaughlin concerning the cease and desist letter, even though he and Mr. McLaughlin were both in Chicago and had offices only a short distance apart. Never before Mr. Bortz's deposition was there an accused structure shown to Mr. McLaughlin. While some advertisements of Defendant's structure were shown, detailed drawings were not provided to attorney McLaughlin. Thus, he never had a full picture of the accused structure. For example, his testimony as to whether or not his auxiliary burner was below the main burner shows that, even then, he had not been able to understand pertinent points of the accused structure.
25. This Court finds that the Defendant merely went through the motion of obtaining an opinion to protect itself and that it did not acquire a timely, well-considered opinion. This Court also finds that the Defendant knew it was being very casual or cursory concerning the opinion and that the Defendant surely knew that its opinion was insufficient.
26. As a finding of fact, it is found that the conduct above is wilful.

27. It is found that the following factors exist in the present case: (1) demand for the patented product; (2) absence of acceptable non-infringing substitutes; (3) manufacturing and marketing capability to exploit the demand; and (4) the amount of the profit it would have made. These are the factors that are referred to in the case of *Panduit Corp. v. Stahlin Bros. Fibre Works, Inc.*, 575 F.2d 1152, 1156, 197 U.S.P.Q. (BNA) 726 (6th Cir. 1978).
28. Log sets and grate support means are included in the computation of lost profits. This takes into consideration Claim 15 as well as considering the convoy of the log sets together with each auxiliary burner unit. The individual burner units are often sold alone to distributors, but the distributors ultimately sell these with a log set.

## II. CONCLUSIONS OF LAW

1. The Plaintiff owns all right, title and interest in U.S. Patent No. 5,988,159, including the right to sue and recover for past infringement.
2. Claim interpretation applied by the Court is focused on a paragraph by paragraph analysis of each claim in suit, with those paragraphs not believed to require any comment for interpretation being marked such:

### CLAIM 1:

- a) The preamble requires a gas environment as opposed to a wood burning environment;
- b) The terms used herein are self-explanatory;
- c) The word coals is meant to cover the secondary coals burner elongated tube that is designed or adapted to make the coals or embers enhanced in appearance;
- d) The elongated primary burner tube is held up by the side of the pan through which the elongated primary burner tube extends. The elongated primary burner tube is at a raised level with respect to the secondary coals burner elongated tube (e.g., with respect to the centerline).
- e) The terms used herein are self-explanatory;
- f) The terms used herein are self-explanatory;
- g) The valve is located between the connection to the elongated primary burner tube and the connection to the secondary coals burner elongated tube;
- h) The gas flow control means is the common valve in every gas fed fire place.

- CLAIM 2: The terms used herein are self-explanatory.
- CLAIM 5: The terms used herein are self-explanatory.
- CLAIM 7: The terms used herein are self-explanatory.
- CLAIM 8: The terms used herein are self-explanatory.
- CLAIM 9: The terms used herein are self-explanatory.
- CLAIM 11: The terms used herein are self-explanatory.
- CLAIM 12: The terms used herein are self-explanatory.
- CLAIM 13: The valve is located between the connection to the elongated primary burner tube and the connection to the secondary coals burner elongated tube;
- CLAIM 15: The terms used herein are self-explanatory.
- CLAIM 16: The terms used herein are self-explanatory.
- CLAIM 17: Away from includes any direction that does not include a horizontal component pointed toward the vertical plane of the fireplace opening, with the exception that the plurality of gas discharge ports should not point substantially vertically upward because sand and embers may fall therein.


3. U.S. Patent No. 5,988,159 is infringed literally, and, in the alternative, through inducement and contributory infringement by Defendant. 35 U.S.C. 271(b)-(c) (1994). Any one of these makes Defendant liable as an infringer.
4. There is no prosecution history estoppel, per the admission of the Defendant's counsel when under oath.
5. The infringement occurs through the doctrine of equivalents if not directly and/or literally, based on the facts found relating to equivalence.
6. The alleged prior uses, sales, and other art do not render any of the claims in suit invalid as anticipated under 35 U.S.C. 102 (1994), nor make any in suit obvious under 35 U.S.C. 103 (1994).
7. The claims of the patent are valid.

8. Damages are awarded to Plaintiff from Defendant, from the time Defendant received notice under the law through its receipt of Plaintiff's notice letter on December 10, 1999.
9. The *Panduit* factors are met. Thus, compensatory damages include lost profits, which include convoyed items that interact and are essential to the operation of the patented subject matter. *Panduit Corp. v. Stahl Bros. Fibre Works, Inc.*, 575 F.2d 1152, 197 U.S.P.Q. (BNA) 726 (6th Cir. 1978). See also, *State Industries v. Mor-Flo Industries, Inc.*, 883 F.2d 1573, 12 U.S.P.Q.2D (BNA) 1026 (1989) or *Rite-Hite Corp. v. Kelley Co.*, 56 F.3d 1538 (Fed. Cir. 1995). The total damages are \$435,007.
10. This Court finds that the infringement of Defendant was willful. Therefore, damages are tripled under 35 U.S.C. 284 (1994).
11. This is an exceptional case under 35 U.S.C. 285 (1994), and reasonable attorneys fees are awarded Plaintiff.
12. All of the findings of fact and conclusions of law stated above are hereby incorporated together with the usual rule in patent infringement cases, that infringement causes irreparable harm and will be abated. Therefore, an injunction is granted against Defendant.

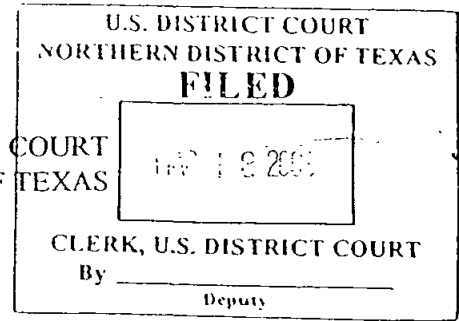
### III. CONCLUSION

Based on the foregoing Findings of Fact and Conclusions of Law, this Court finds for the Plaintiff. Plaintiff's request for injunctive relief is **GRANTED**.

**IT IS SO ORDERED.**

  
**JERRY BUCHMEYER**  
 UNITED STATES DISTRICT COURT JUDGE  
 NORTHERN DISTRICT OF TEXAS

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION



GOLDEN BLOUNT, INC.,

Plaintiff,

v.

ROBERT H. PETERSON CO.,

Defendant.

Civil Action No. 3:01-CV-0127-R


AMENDED NOTICE OF APPEAL

Notice is hereby given that the Robert H. Peterson Co., Defendant in the above-identified action, amends its previously submitted Notice of Appeal filed March 6, 2003 and hereby appeals to the United States Court of Appeals for the Federal Circuit from the following:

- 1) Order entered February 7, 2003, denying Defendant's Motion to Amend Findings of Fact, Conclusion of Law and Judgment Under Rule 52(b) or for a New Trial under Rule 59(a), and further granting an award of reasonable attorney's fees in the amount of \$332,349.00, and granting plaintiff's Motion for Updated Damages and Pre and Post Judgment Interest (Paragraphs 3, 4 and 5) (Attachment 1);
- 2) Judgment entered August 9, 2002, entering Judgment for Plaintiffs, and awarding damages and reasonable attorney's fees based on the Findings of Fact and Conclusions of Law entered the same date (Attachment 2);
- 3) Findings of Facts and Conclusions of Law dated August 9, 2002, including Order Granting Injunction (Attachment 3); and
- 4) Order entered March 10, 2003 amending the Final Judgment entered August 9,

2002 to award actual damages of \$439,016.00, which were trebled to \$1,317,048.00, plus pre-judgment and post-judgment interest (Attachment 4).

Respectfully submitted,

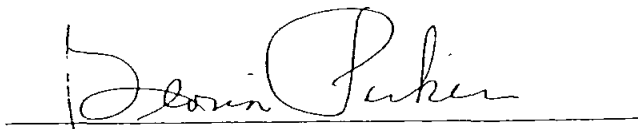


Jerry R. Selinger  
JENKENS & GILCHRIST  
1445 Ross Avenue  
Suite 3200  
Dallas, Texas 75202  
Telephone: (214) 855-4500  
Facsimile: (214) 855-4300  
**ATTORNEY FOR DEFENDANT  
ROBERT H. PETERSON CO.**

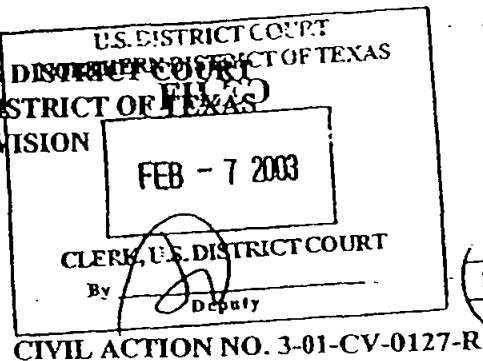
OF COUNSEL  
Dean A. Monco  
F. William McLaughlin  
WOOD, PHILLIPS, KATZ,  
CLARK & MORTIMER  
500 West Madison Street, Suite 3800  
Chicago, Illinois 60661  
Telephone: (312) 876-1800  
Facsimile: (312) 876-2020

CERTIFICATE OF SERVICE

This certifies that a copy of the foregoing document was served by first-class mail and facsimile to counsel for Plaintiff, William D. Harris, Jr., Hitt Gaines Boisbrun, P.C., 225 University Plaza, 275 West Campbell Road, Richardson, Texas 75080, this 18<sup>th</sup> day of March, 2003.



IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION



GOLDEN BLOUNT, INC.,

*Plaintiff,*

v.

ROBERT H. PETERSON CO.,

*Defendant.*

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ORDER

On August 9, 2002, this Court entered its Findings of Fact and Conclusions of Law, as well as the Final Judgment, in this case. The Court now makes the following rulings with regard to Plaintiff and Defendant's Post-Trial motions:

1. Plaintiff's Motion to Disregard the Testimony of John Palaski (filed July 31, 2002) is hereby **DENIED**.
2. Defendant's First Motion to Amend Findings of Fact, Conclusions of Law and Judgment in Accordance with Rule 52(b) (received August 23, 2002)<sup>1</sup> is hereby **GRANTED**. As discussed *infra*, a subsequent Order will specify the revised amount of damages.
3. Defendant's Second Motion to Amend Findings of Fact, Conclusions of Law and Judgment under Rule 52(b) or for New Trial under Rule 59(a) (filed August 23, 2002) is hereby **DENIED**.

<sup>1</sup>It appears that this Court has not yet issued an Order regarding Defendant's Motion for Leave to File Under Seal its First Motion to Amend the Findings and Judgment. Defendant's Motion for Leave to File Under Seal is hereby **GRANTED**.


AO

JT-APP 0922

4. Plaintiff's Application for Attorney's Fees (filed August 23, 2002) is hereby **GRANTED**. Plaintiff is awarded reasonable attorney's fees in the amount of \$332,349.00.
5. Plaintiff's Motion for Updated Damages and Pre and Post Judgment Interest (filed August 23, 2002) is hereby **GRANTED** to the extent that the award of damages is updated to cover the period between May 1st and August 9, 2002. Defendant is hereby **ORDERED** to provide this Court, within 10 calendar days of the date of this Order, with sales figures for the ember flame burn unit for the period from May 1, 2002 to August 9, 2002.<sup>2</sup> The figures will not take into account any returns. After receipt of the sales figures, this Court will issue an order setting forth the amount of actual damages and awarding prejudgment and postjudgment interest. Costs shall be taxed against Defendant.

It is so ORDERED.

SIGNED: February 6, 2003.

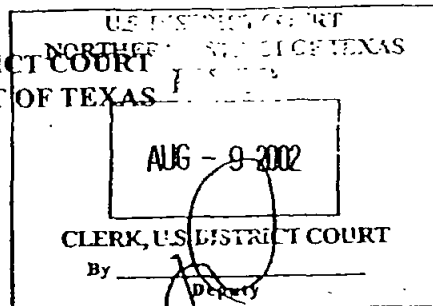
  
JUDGE JERRY BUCHMEYER  
UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS

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<sup>2</sup>The Court notes that Defendant has previously provided sales figures for the period from May 1, 2002 to September 18, 2002; however, that period extends beyond the date of the Final Judgment. See Defendant's Objection to Plaintiff's Motion for Updated Damages (filed September 19, 2002), Exhibit 2. Of course, Defendant shall also serve a copy of the sales figures to Plaintiff, and Plaintiff will have 10 calendar days to respond to those figures.



IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION



GOLDEN BLOUNT, INC.,

Plaintiff,

v.

ROBERT H. PETERSON CO.,

Defendant.

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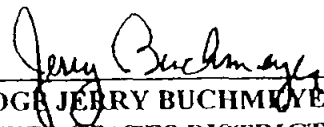
Civil Action No.

3-01-CV-0127-R

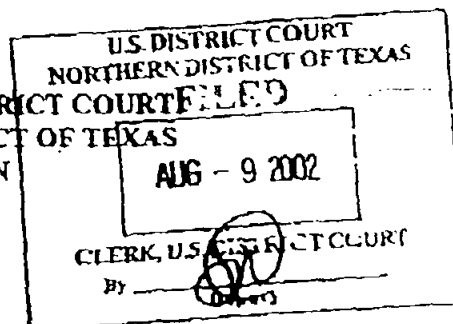
FINAL JUDGMENT

Pursuant to Rule 58 of the Federal Rules of Civil Procedure and the Court's Findings of Fact and Conclusions of Law, entered August 9, 2002, it is hereby **ORDERED** that judgment is entered for Plaintiffs. It is further **ORDERED** that Plaintiff recover damages and reasonable attorneys fees as set forth in the Court's Findings of Fact and Conclusions of Law.

Signed the 9th of August, 2002.

  
JUDGE JERRY BUCHMEYER  
UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION



GOLDEN BLOUNT, INC.,

Plaintiff,

v.

ROBERT H. PETERSON CO.,

Defendant.

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Civil Action No.

3-01-CV-0127-R

15-9-2002  
ESDC

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Plaintiff Golden Blount, Inc. ("Plaintiff" or "the Plaintiff") brought suit against Defendant Robert H. Peterson Co. ("Defendant" or "the Defendant") for patent infringement. A bench trial was held July 29-31, 2002. Pursuant to Rule 52(a) of the Federal Rules of Civil Procedure, the Court makes its findings of fact and conclusions of law as follows:

**I. FINDINGS OF FACT**

1. The Plaintiff Golden Blount, Inc. is the owner of U.S. Patent 5,988,159, assigned to it by Mr. Golden Blount, the named inventor for the patent (hereinafter "the patent," "the patent in suit," or the "Blount patent"). The Plaintiff sued Defendant for patent infringement.
2. The field of the invention is fireplace burners and associated equipment.
3. The Defendant alleges that the patent is invalid under 35 U.S.C. 102 (1994) and 35 U.S.C. 103 (1994). The Defendant also alleges that its accused structure does not infringe.
4. At the time the patent issued, the Plaintiff's commercial structure under the patent had been marketed for approximately six years, i.e., from about the time Plaintiff originally filed its patent application. Its sales grew significantly and it is a commercial success.

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5. Defendant is unable to establish when it commenced design of its accused structure, but it was long after the Plaintiff placed its device on the market. There is a lack of explanation of why the first marketed accused structures were not fabricated and placed on the market until after Plaintiff's device had established a market. Also there is no showing that the Defendant's device went through any significant design or development. The Defendant's structure is very similar to Plaintiff's. The foregoing gives inference of copying.
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7. The prior art relied on by the Defendant does not show the same concepts that the Plaintiff's claims include, and proof of the actual existence and/or sales of the prior art relied upon is lacking, as noted below.
8. A recent sketch, made long after the patent was filed, was made to illustrate that which Defendant is trying to establish was prior art in the eighties. Defendant says it went off the market long ago. The sketch was made long after the fact, to illustrate a device allegedly made public or sold by a third party in the eighties. The recent sketch was made with the inputs and assistance of the Defendant's personnel.
9. The alleged prior art, shown in the sketch, was not sufficiently proved to consider it as meeting the standard of being shown "by clear and convincing evidence." Even if it did, it was for quite a different purpose than the patented device, and further, the end use has not been shown.
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origin. Also, if these devices were viable prior art, it would seem that Defendant would have used them to compete with Plaintiff, rather than market the copycat structure presently sold.

11. The main tube and the auxiliary tube of Production Nos. 33 and 34 are of the same diameter and on a vertical level. No support means is provided or suggested.
12. For the foregoing reasons, this Court finds that the evidence pertaining to the alleged prior art of Production Nos. 33 and 34 fails to establish by clear and convincing evidence their prior use or sale. Furthermore, this Court finds that there are substantial differences between the alleged devices of Production Nos. 33 and 34 and the Plaintiff's device, particularly in the level of skill in the art.
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17. This Court notes that an independent valve, such as each residential fireplace has, is absent from the structure sold. However, the parties previously stipulated in effect that the Defendant's structure is used in the environment of the valve already being used in the standard fireplace setup. Everything else is provided by Defendant (and by Plaintiff) to the ultimate customer, normally through a distributor. The evidence is that there is no other use for the patented structure. It is sold with knowledge that it will be used as per its intended use in a gas fireplace with artificial logs. It is not

a staple article of commerce. Certainly it is a most significant part of the patented product, in fact, essentially all of it. Hence if there is not element by element literal infringement, there is contributory infringement. 35 U.S.C. 271(d) (1994).

18. This Court further finds that the Defendant advertises and provides instructions, such that the installer or the ultimate customer following the advertising and instructions provided by Defendant will constitute infringement. It is further found that demonstrations and sales meetings are held where distributors are shown how to practice the patented invention with Defendant's equipment. The distributors pass this on to customers and to installers. By this conduct, Defendant induces infringement pursuant to 35 U.S.C. 271(c) (1994).
19. In the alternative to literal direct infringement, elements of the claims in suit are present in the accused structure. In each instance, element by element, and also considering the accused structure as a whole, there is insubstantial differences from the Defendant's accused structure and the claims at issue. Moreover, element by element, and as a whole, the accused structure does the same thing (the same function) in the same way to give the same result, constituting infringement under the doctrine of equivalent.
20. After the Defendant received a cease and desist letter, an attorney ("Mr. McLaughlin" or "attorney McLaughlin") was called by phone to seek some advice. Mr. McLaughlin was provided only the letter and some advertising brochures or papers. Mr. McLaughlin was not asked for an opinion in the real sense of the word, but was told by Mr. Bortz ("the Defendant's executive" or "Mr. Bortz") that things very similar to the patented structure had existed in the past as early as the eighties. The only advice given by the attorney was that, if that were so, some of the claims would be invalid, depending on just what the prior art devices were, and that he would not have to be concerned about those claims.
21. Attorney McLaughlin was not even provided with the Defendant's accused device at that time, nor any alleged prior art. He was never provided the accused device until long after his oral opinion was given and after suit was filed.

22. In the final analysis, the only opinion given was oral and it was based on some sketches provided that did not include information or details of when they were sold or made available to the public, nor any aspect of their authenticity, detail or history. The art provided to the attorney clearly did not render the patent claims invalid.
23. The oral opinion, rendered more than a year after the first cease and desist letter and even after suit was filed, did not inform the client that there was no estoppel during prosecution and that the doctrine of equivalents would have to be dealt with. It is uncertain how far the oral opinion went, but it was meager.
24. The Defendant's executive did get what he asked for, a statement that there was no infringement. The Defendant's apparent desire was to avoid paying attorneys fees or increased damages, and this appears to have been the sole reason for consultation with counsel, as shown both by his testimony on why he consulted Mr. McLaughlin by phone and also by Mr. McLaughlin's testimony as to the stated reason for the consultation. Note that at no time before his deposition was taken, did the Defendant's executive Mr. Bortz ever have a face-to-face meeting with Mr. McLaughlin concerning the cease and desist letter, even though he and Mr. McLaughlin were both in Chicago and had offices only a short distance apart. Never before Mr. Bortz's deposition was there an accused structure shown to Mr. McLaughlin. While some advertisements of Defendant's structure were shown, detailed drawings were not provided to attorney McLaughlin. Thus, he never had a full picture of the accused structure. For example, his testimony as to whether or not his auxiliary burner was below the main burner shows that, even then, he had not been able to understand pertinent points of the accused structure.
25. This Court finds that the Defendant merely went through the motion of obtaining an opinion to protect itself and that it did not acquire a timely, well-considered opinion. This Court also finds that the Defendant knew it was being very casual or cursory concerning the opinion and that the Defendant surely knew that its opinion was insufficient.
26. As a finding of fact, it is found that the conduct above is wilful.

27. It is found that the following factors exist in the present case: (1) demand for the patented product; (2) absence of acceptable non-infringing substitutes; (3) manufacturing and marketing capability to exploit the demand; and (4) the amount of the profit it would have made. These are the factors that are referred to in the case of *Panduit Corp. v. Stahl Bros. Fibre Works, Inc.*, 575 F.2d 1152, 1156, 197 U.S.P.Q. (BNA) 726 (6th Cir. 1978).
28. Log sets and grate support means are included in the computation of lost profits. This takes into consideration Claim 15 as well as considering the convoy of the log sets together with each auxiliary burner unit. The individual burner units are often sold alone to distributors, but the distributors ultimately sell these with a log set.

## II. CONCLUSIONS OF LAW

1. The Plaintiff owns all right, title and interest in U.S. Patent No. 5,988,159, including the right to sue and recover for past infringement.
2. Claim interpretation applied by the Court is focused on a paragraph by paragraph analysis of each claim in suit, with those paragraphs not believed to require any comment for interpretation being marked such:

### CLAIM 1:

- a) The preamble requires a gas environment as opposed to a wood burning environment;
- b) The terms used herein are self-explanatory;
- c) The word coals is meant to cover the secondary coals burner elongated tube that is designed or adapted to make the coals or embers enhanced in appearance;
- d) The elongated primary burner tube is held up by the side of the pan through which the elongated primary burner tube extends. The elongated primary burner tube is at a raised level with respect to the secondary coals burner elongated tube (e.g., with respect to the centerline).
- e) The terms used herein are self-explanatory;
- f) The terms used herein are self-explanatory;
- g) The valve is located between the connection to the elongated primary burner tube and the connection to the secondary coals burner elongated tube;
- h) The gas flow control means is the common valve in every gas fed fire place.

CLAIM 2: The terms used herein are self-explanatory.

CLAIM 5: The terms used herein are self-explanatory.

CLAIM 7: The terms used herein are self-explanatory.

CLAIM 8: The terms used herein are self-explanatory.

CLAIM 9: The terms used herein are self-explanatory.

CLAIM 11: The terms used herein are self-explanatory.

CLAIM 12: The terms used herein are self-explanatory.

CLAIM 13: The valve is located between the connection to the elongated primary burner tube and the connection to the secondary coals burner elongated tube;

CLAIM 15: The terms used herein are self-explanatory.

CLAIM 16: The terms used herein are self-explanatory.

CLAIM 17: Away from includes any direction that does not include a horizontal component pointed toward the vertical plane of the fireplace opening, with the exception that the plurality of gas discharge ports should not point substantially vertically upward because sand and embers may fall therein.

3. U.S. Patent No. 5,988,159 is infringed literally, and, in the alternative, through inducement and contributory infringement by Defendant. 35 U.S.C. 271(b)-(c) (1994). Any one of these makes Defendant liable as an infringer.
4. There is no prosecution history estoppel, per the admission of the Defendant's counsel when under oath.
5. The infringement occurs through the doctrine of equivalents if not directly and/or literally, based on the facts found relating to equivalence.
6. The alleged prior uses, sales, and other art do not render any of the claims in suit invalid as anticipated under 35 U.S.C. 102 (1994), nor make any in suit obvious under 35 U.S.C. 103 (1994).
7. The claims of the patent are valid.




8. Damages are awarded to Plaintiff from Defendant, from the time Defendant received notice under the law through its receipt of Plaintiff's notice letter on December 10, 1999.
9. The *Panduit* factors are met. Thus, compensatory damages include lost profits, which include convoyed items that interact and are essential to the operation of the patented subject matter *Panduit Corp. v. Stahl Bros. Fibre Works, Inc.*, 575 F.2d 1152, 197 U.S.P.Q. (BNA) 726 (6th Cir. 1978). See also, *State Industries v. Mor-Flo Industries, Inc.*, 883 F.2d 1573, 12 U.S.P.Q.2D (BNA) 1026 (1989) or *Rite-Hite Corp. v. Kelley Co.*, 56 F.3d 1538 (Fed. Cir. 1995). The total damages are \$435,007.
10. This Court finds that the infringement of Defendant was willful. Therefore, damages are tripled under 35 U.S.C. 284 (1994).
11. This is an exceptional case under 35 U.S.C. 285 (1994), and reasonable attorneys fees are awarded Plaintiff.
12. All of the findings of fact and conclusions of law stated above are hereby incorporated together with the usual rule in patent infringement cases, that infringement causes irreparable harm and will be abated. Therefore, an injunction is granted against Defendant.

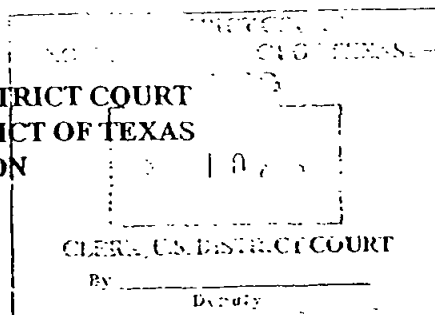
### III. CONCLUSION

Based on the foregoing Findings of Fact and Conclusions of Law, this Court finds for the Plaintiff. Plaintiff's request for injunctive relief is **GRANTED**.

**IT IS SO ORDERED.**

  
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**JERRY BUCHMEYER**  
UNITED STATES DISTRICT COURT JUDGE  
NORTHERN DISTRICT OF TEXAS

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION



GOLDEN BLOUNT, INC.,

*Plaintiff,*

v.

ROBERT H. PETERSON CO.,

*Defendant.*

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CIVIL ACTION NO. 3-01-CV-0127-R

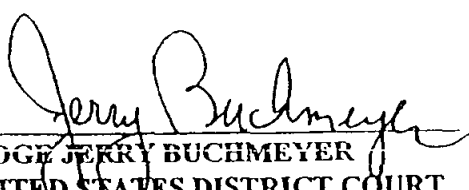
ORDER

Pursuant to this Court's post-trial Order (entered February 7, 2003), the Final Judgment (entered August 9, 2002) is hereby AMENDED as follows:

Plaintiff is awarded actual damages in the amount of \$439,016, and the actual damages are trebled, totaling \$1,317,048. Plaintiff is awarded prejudgment interest, which shall be calculated on a simple rather than compound basis, on the actual damages of \$439,016<sup>1</sup> at the rate of 5.0% for the period from December 10, 1999 to August 9, 2002.<sup>2</sup> Plaintiff is awarded reasonable attorney's fees in the amount of \$332,349. Plaintiff is awarded postjudgment interest, calculated pursuant to 28 U.S.C. §1961, on the sum of the trebled damages and attorney's fees at the rate of 1.88% from the date of the Final Judgment. Costs shall be taxed against Defendant.

It is so ORDERED.

SIGNED: March 7, 2003.

  
JUDGE JERRY BUCHMEYER  
UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS

<sup>1</sup>Paragraph 9 of this Court's Findings of Fact and Conclusions of Law (entered August 9, 2002) is hereby AMENDED to include this amount as the award of "total damages."

<sup>2</sup>See, e.g., *Gyromat Corporation v. Champion Spark Plug Co.*, 735 F.2d 549, 556-7 (Fed. Cir. 1984) (in patent cases, the district court has discretion to determine the interest rate and whether the interest shall be calculated on a simple or compound basis).