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8 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
9 AT TACOMA

10 OAK AVENUE ENGINEERING, LLC,

11 Plaintiff,

12 v.

13 DENVER OUTFITTERS, INC,

14 Defendant.

No. C _____

COMPLAINT FOR DECLARATORY
JUDGMENT OF
NONINFRINGEMENT OF PATENT

JURY DEMAND

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18 Plaintiff, Oak Avenue Engineering, LLC, (“Oak Avenue” or “Plaintiff”) brings this action
19 against Defendant Denver Outfitters, Inc (“Denver Outfitters” or “Defendant”), a Colorado
20 corporation, and for its cause of action alleges:

21 **NATURE OF THE CASE**

22 1. This is a civil action to stop Defendant’s attempt to monopolize the market for
23 vehicle-mounted fishing rod storage devices by bad faith assertion of a U.S. design patent.

1 2. Plaintiff Oak Avenue seeks a declaratory judgment that it does not infringe U.S.
2 Design Patent No. 653,446 (the '446 patent) and that the '446 patent is invalid and unenforceable,
3 and seeks a remedy for damages under Washington's statute prohibiting bad faith assertions of
4 patent infringement.

5 **THE PARTIES**

6 3. Oak Avenue Engineering, LLC is a Washington limited liability company doing
7 business in Olympia, Washington and having a business address at PO Box 2384 Olympia,
8 Washington 98506.

9 4. On information and belief, Denver Outfitters is a corporation organized and
10 existing under the laws of the State of Colorado and has a place of business at 1250 Simms Street,
11 Unit #105, Lakewood, Colorado 80401, a mailing address of 7830 W. Alameda Avenue, #332,
12 Lakewood, Colorado 80226, and a registered agent at 901 Harrison Street, Denver, Colorado
13 80226.

14 **JURISDICTION AND VENUE**

15 5. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331 and 1338
16 because there are Federal questions arising under the patent laws of the United States, and
17 supplemental jurisdiction under 28 U.S.C. § 1367 over the court for violation of Washington state
18 law prohibiting unfair business practices and bad faith assertion of patent infringement.

19 6. This Court also has jurisdiction over this matter pursuant to 28 U.S.C. § 1332
20 because the parties are citizens of different states and the amount in controversy exceeds \$75,000,
21 exclusive of interests and costs.

22 7. This Court also has personal jurisdiction over Defendants and venue is proper under
23 at least 28 U.S.C. § 1391(c).

1 8. Plaintiff Oak Avenue seeks declaratory relief based on 28 U.S.C. §§2201 and 2202
2 because Defendant has asserted that Oak Avenue infringes a U.S. Patent, demanded that Oak
3 Avenue cease production and sales, and threatened to initiate litigation, creating substantial
4 controversy between the parties having adverse legal interests of sufficient immediacy and reality
5 to warrant the issuance of a declaratory judgment.

6 **FACTS**

7 9. Plaintiff Oak Avenue is a firm providing mechanical design and integration services
8 to others and also has invented innovative new vehicle-mounting systems for storing fishing rods
9 and reels in sheltered and secure compartments, the innovations of which include a telescoping
10 feature for storing rods of different lengths.

11 10. The portion of Oak Avenue's business devoted to the systems for storing rods and
12 reels is known as Trxstle (pronounced 'trestle'), and Oak Avenue operates a website at
13 www.trxstle.com advertising and offering for sale the systems.

14 11. Plaintiff filed in October 2017 a provisional patent application directed to the
15 innovative structural and functional features of its systems for storing rods and reels in the US
16 Patent and Trademark Office (USPTO).

17 12. Plaintiff has made two versions of its storage system: The Olympian, which
18 provides telescoping storage for a single rod and reel, and the CRC System, similar to The
19 Olympian but providing for storage of two rods and reels.

20 13. Counsel for Defendant on January 8, 2018 sent a letter, attached as Exhibit A,
21 addressed to Trxstle at Oak Avenue's PO Box address alleging patent infringement.

22 14. Defendant, instead of engaging in a good faith analysis of whether any Oak Avenue
23 product infringes the '446 patent, alleged in bad faith that Oak Avenue's "product, The Olympian
24 fishing rod storage device, **infringes on this design patent because it is a fishing rod storage**

1 **device that mounts on top of a vehicle.”** Exhibit A, Letter from counsel for Defendant of January
2 8, 2018 (emphasis added).

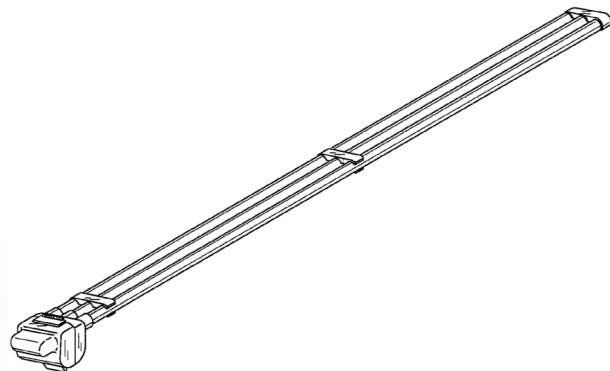
3 15. Defendant’s allegation that Oak Avenue’s product infringes a design patent, which
4 can only cover certain ornamental features of a product, just because the product functions as a
5 vehicle-mounted fishing rod storage device, is evidence of a bad faith assertion of patent
6 infringement.

7 16. An allegation of design patent infringement requires the patent owner to engage in
8 a dual-requirement conjunctive analysis, where infringement can be alleged only if in good faith
9 the patent owner finds both of the requirements met: (1) the claimed and accused designs appear
10 substantially the same to an ordinary observer; and (2) the ordinary observer would consider the
11 two designs to be substantially the same in view of a comparison of the claimed and accused
12 designs with the prior art.

13 17. The claimed design of the ‘446 patent and the design of Oak Avenue’s products are
14 plainly dissimilar as an ordinary observer can see below, and thus fail the first requirement of
15 patent infringement, obviating the need for consideration of the second requirement.



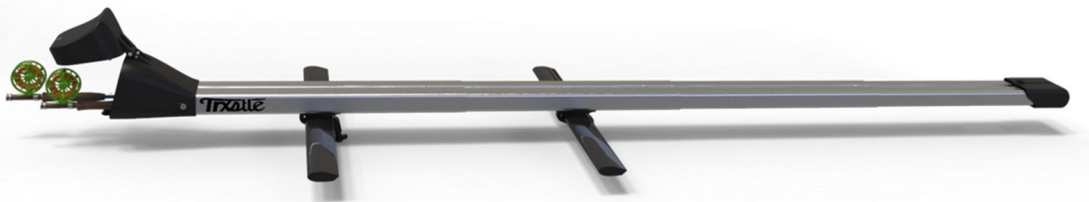
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22 Oak Avenue CRC System with Shoulder Strap



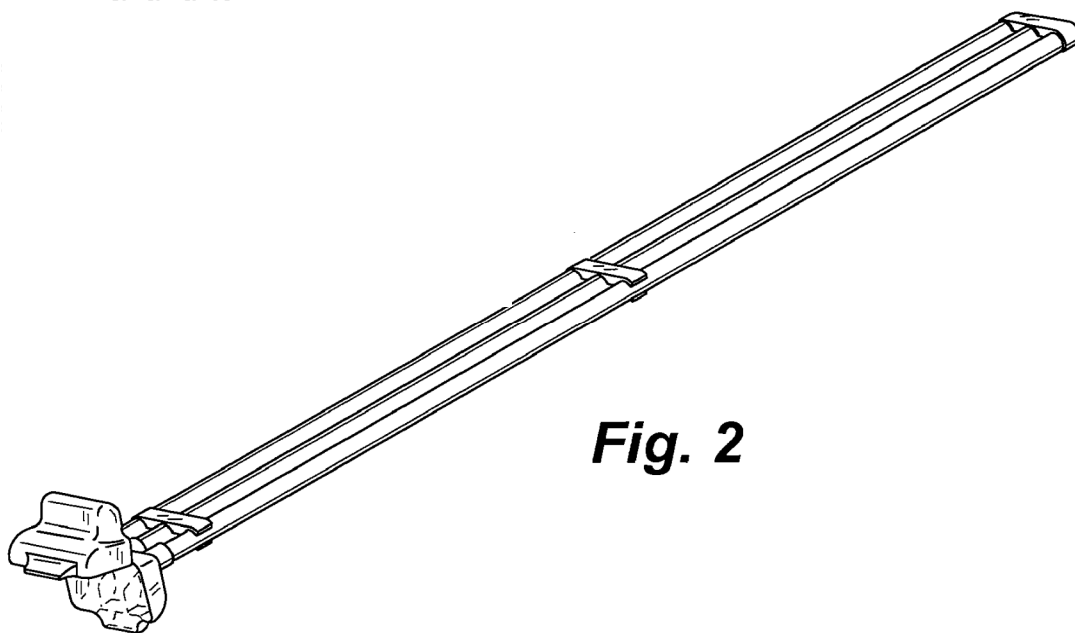
23 Fig. 1 of the '446 Patent

1 18. As can be seen above, the design of Oak Avenue's CRC System is plainly dissimilar
2 from the design claimed by the figures of the '446 patent.

3 19. The dissimilarity is also plain to the ordinary observer as shown below in
4 comparing the design of the CRC System, as mounted to a vehicle roof rack and telescoped to its
5 full length, with rods and reels partially inserted through its open cover, to the design claimed in
6 Fig. 2 of the '446 patent. For instance, the CRC System has a contiguous rectangular outer case,
7 whereas the design claimed in the '446 patent requires three distinct and physically separated
8 cylindrical tubes:



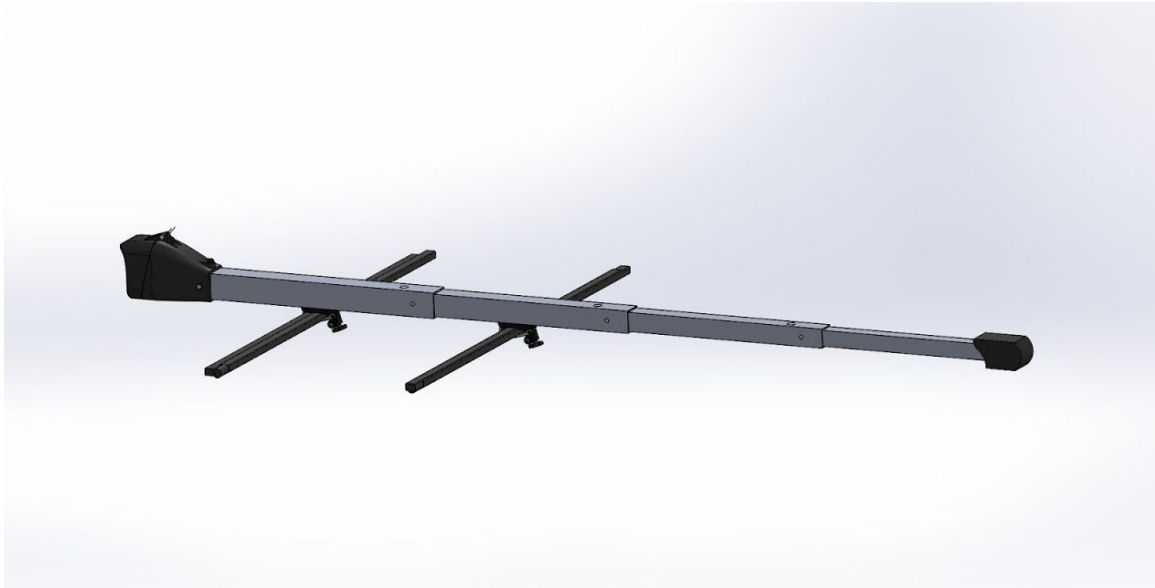
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13 *Oak Avenue CRC System Telescoped on Roof Rack with Reel Cover Opened*



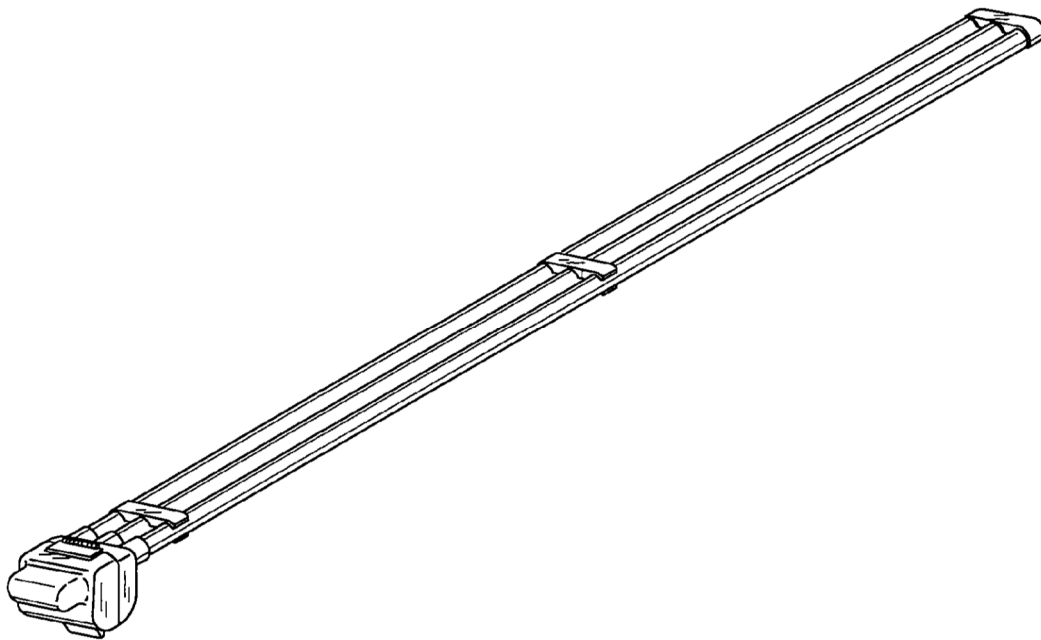
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18 **Fig. 2**

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22 *Fig. 2 of the '446 Patent*

1 20. As shown below, the design of Oak Avenue's The Olympian System is also plainly
2 dissimilar to the design claimed in the '446 patent.



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11 *Oak Avenue's The Olympian System Telescoped and Mounted to a Roof Rack*

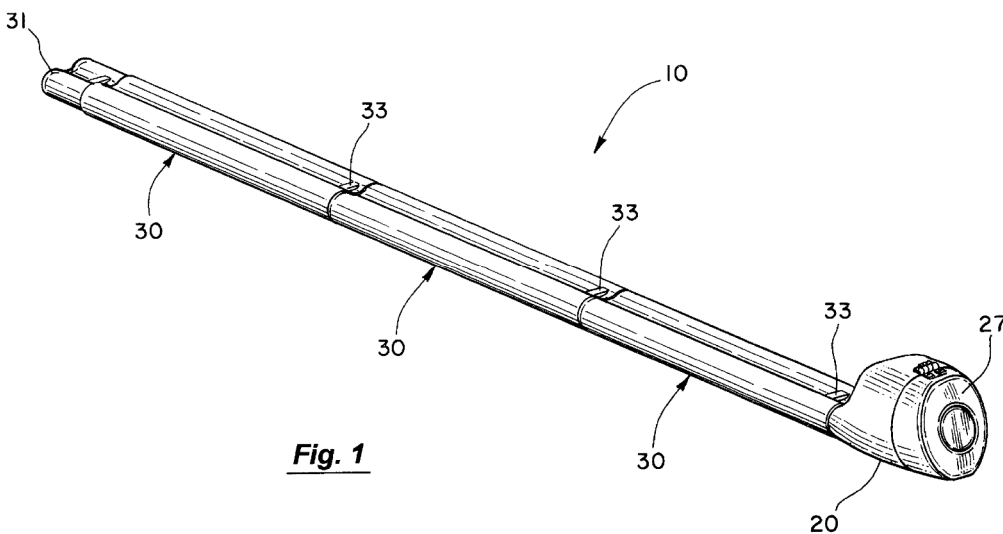


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22 *Figure 1 of the '446 Patent*

1 21. As an ordinary observer can readily see, as shown above, the only correspondence
2 between Oak Avenue’s designs and the design claimed in the ‘446 patent is the purely functional
3 characteristic of a shape that accommodates the shape of a rod and reel, but they are different in
4 the details of such shape including all of the significant ornamental characteristics, and therefore
5 they are plainly dissimilar and Defendant’s allegation of design patent infringement fails the first
6 requirement.

7 22. Defendant’s allegation of design patent infringement also fails the second
8 requirement because no ordinary observer would consider the two designs to be substantially the
9 same in view of a comparison of the claimed and accused designs with the prior art.

10 23. Shown below is one example of the prior art, which the ordinary observe can readily
11 see is more similar to the claimed design of the ‘446 patent than any of the Oak Avenue products.



20 Fig. 1 of Prior Art Patent US 6,760,994

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22 24. As shown by the prior art above, and in view of Defendant’s alleging the scope of
23 the ‘446 patent to encompass the design of Oak Avenue’s products, the ‘446 patent is invalid
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1 because it lacks the novelty and non-obviousness as compared to the prior art that is required for
2 patentability and because the design claimed in its figures is not ornamental and is only functional.

3 25. The '446 patent is also unenforceable due to Defendant's bad faith assertion of
4 infringement against products that are not within any reasonable scope of the '446 patent.

5 26. Defendant's bad faith assertion of the '446 patent violates the unfair business
6 practices statutes and the Patent Troll Prevention Act enacted by the state of Washington at RCW
7 19.86 and 19.350.

8 **OAK AVENUE'S CLAIMS FOR RELIEF**

9 **FIRST CLAIM FOR RELIEF**

10 **(Declaratory Judgment of Non-Infringement of the '446 Patent)**

11 27. Plaintiff hereby realleges and incorporates by reference the allegations in the
12 foregoing paragraphs as though fully set forth herein.

13 28. Oak Avenue's products do not infringe the '446 patent under 35 USC §§ 271 *et*
14 *seq.*

15 29. Oak Avenue has suffered, and will continue to suffer, permanent and irreparable
16 injury, for which Oak Avenue has no adequate remedy at law.

17 30. Oak Avenue is entitled to preliminary and permanent injunctive relief as provided
18 by 35 U.S.C. § 283.

19 31. This is an exceptional case and Oak Avenue is entitled to its attorney fees under 35
20 U.S.C. § 285.

21 **SECOND CLAIM FOR RELIEF**

22 **(Declaratory Judgment of Invalidity and Unenforceability of the '446 Patent)**

23 32. Plaintiff hereby realleges and incorporates by reference the allegations in the
24 foregoing paragraphs as though fully set forth herein.

1 33. The '446 patent is invalid under 35 USC § 101-103 and 171.

2 34. The '446 patent is unenforceable due to Defendant's misuse of this patent in
3 alleging infringement in bad faith.

4 **THIRD CLAIM FOR RELIEF**

5 **(Washington Unfair Business Practices and Bad Faith Assertions of Patent Infringement,**
6 **RCW 19.86 And 19.350)**

7 35. Plaintiff hereby realleges and incorporates by reference the allegations in the
8 foregoing paragraphs as though fully set forth herein.

9 36. Defendant's bad faith assertions of patent infringement under RCW 19.350.020,
10 and violations of that statute and are actionable under RCW 19.86.020.

11 37. Defendant's infringement allegations are objectively baseless, as shown by the
12 comparison of the designs above and by Defendant's assertion by letter (Exhibit A) that Oak
13 Avenue infringes just by making a vehicle-mounted fishing rod storage device.

14 38. Defendant's demand letter does not contain any bona fide factual allegations
15 relating to the specific areas in which Plaintiff's product infringes Defendant's patent.

16 39. Upon information and belief, Defendant did not conduct a competent analysis
17 comparing the claimed design of the patent to Plaintiff's product.

18 40. Defendant's infringement allegations contain false, misleading and deceptive
19 information regarding the features of Plaintiff's accused product that could give rise to
20 infringement.

21 41. Plaintiff Oak Avenue seeks damages, treble damages, and attorney fees pursuant to
22 RCW 19.86.090.

1 **RESERVATION OF RIGHTS**

2 42. Oak Avenue is still investigating this matter and has not yet had an opportunity to
3 conduct any discovery, and therefore reserves the right to raise such additional claims as may be
4 appropriate upon further investigation and discovery.

5 **PRAYER FOR RELIEF**

6 Plaintiff Oak Avenue respectfully requests judgment against Defendant as follows:

7 a. Declaring that Oak Avenue has not infringed and is not infringing, either directly
8 or indirectly, any valid and enforceable claim of the '446 patent, in violation of 35 U.S.C. § 271
9 or 289;

10 b. Issuing preliminary and permanent injunctive relief against Defendant, and that
11 Defendant and each of its officers, directors, agents, counsel, servants, employees, and all persons
12 in active concert or participation withdraw their claims and be restrained from alleging,
13 representing, or otherwise stating that any Oak Avenue product infringes the '446 patent or from
14 instituting any action or proceeding alleging infringement of any claims of the '446 patent against
15 Oak Avenue or any customers, manufacturers, users, importers, or sellers of Oak Avenue's
16 products;

17 c. Declaring Oak Avenue as the prevailing party and this case as exceptional, and
18 awarding Oak Avenue its reasonable attorney fees, pursuant to 35 U.S.C. § 285;

19 d. Awarding Oak Avenue all damages caused by Defendant's unlawful acts, including
20 punitive damages and pre- and post-judgment interest, as provided by law;

21 e. That Defendant be ordered to pay all fees, expenses and costs associated with this
22 action; and

23 f. Awarding such other and further relief as this Court deems just and proper.
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1 **DEMAND FOR JURY TRIAL**

2 Plaintiff demands trial by jury on all issues so triable in accordance with Rule 38, Federal
3 Rules of Civil Procedure.

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5 DATED this 30th day of January, 2018. Respectfully submitted,

6 KOLISCH HARTWELL, P.C.

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