United States Copyright Office
Library of Congress - 101 Independence Avenue SE - Washington, DC 20559-6000 - www.copyright.gov

October 13, 2006

Law Offices of Jackson and Chovanes
Attn: Eugene Chovanes
One Bala Plaza, Suite 319
Bala-Cynwyd, PA 19004

RE: THE TRINITY RING
Control Number: 61-309-3143(J)

Dear Mr. Chovanes:

The Copyright Office Review Board has received your second request for reconsideration of the Examining Division's refusal to register THE TRINITY RING. The Review Board has carefully considered this work in light of the points raised in your December 9, 2004, letter as well as in the entire administrative record relating to this work. The Review Board concludes that the THE TRINITY RING does not contain a sufficient amount of creative authorship upon which to support a copyright registration. The Board affirms the denial of registration for the reasons set forth below.

Description of the Work:

The work consists of a triangular prism which is twisted 120° at one end and bent to connect the two ends of the prism into the form of a circular band, such that side A meets with Side B, Side B meets with Side C, and Side C meets with the Side A when the two ends are connected. See also, Exhibits A and B [reproductions of deposit materials showing THE TRINITY RING], and Exhibit C [figures and illustrations in supplemental evidence] appended to the letter.

Administrative Record:

On December 24, 2003, the Copyright Office received an application for registration for the jewelry design entitled THE TRINITY RING submitted by you on behalf of your client Clancy D. McKenzie.

On February 18, 2004, Visual Arts Section Examiner Joy Fisher Burns informed your client that the deposit materials which he sent to the Copyright Office consisted of schematic drawings for a jewelry design. Because Mr. McKenzie, your client, had checked the "jewelry design" authorship indication. Ms. Burns informed him that he could either amend the application to indicate "technical drawing" as the authorship on which he was claiming copyright, or, if your client did, indeed, wish to register jewelry design authorship, Mr. McKenzie could deposit a photograph of the jewelry

design if the work existed as three-dimensional jewelry. After receiving a response on March 12, 2004, from your client, Ms. Burns, in a letter dated May 3, 2004, refused registration for THE TRINITY RING. She stated that, in order to satisfy the minimum requirements for registration as articulated in the *Feist* decision – independent creation and a modicum of creative authorship–, a jewelry design must contain a minimum amount of pictorial, graphic or sculptural authorship. *Feist Publications v. Rural Telephone Service Co.*, 499 U.S. 340 (1991). Ms. Burns explained that familiar shapes, symbols and designs or minor variations thereof are not protected by copyright. Further, she stated that copyright does not extend to any idea, concept, system, or process that may be embodied in a work. Letter from Burns to McKenzie of 05/03/04, at 1.

Ms. Burns also stated that neither the aesthetic appeal nor the commercial value of a work are factors relevant to the copyrightability of a work. The sole question is whether there is sufficient creative authorship reflected in a work and, in that regard, Ms. Burns stated that the jewelry design at issue here does not contain the necessary authorship to support a claim to copyright. *Id.*

In a letter dated June 7, 2004, you requested reconsideration of the refusal to register THE TRINITY RING. You stated that the Applicant believes that the ring is "unique" and that it does possess the requisite originality to sustain a copyright. You described the ring and the triangular cross-section "which rotates as one views the ring as it travels around the circumference." Letter from Chovanes to Giroux of 06/07/04, at 1. You explained that although the ring appears to have three sides, "it really has one continuous side and one continuous edge." *Id.* You argued, on this description alone, that the work is entitled to registration.

In response to your letter dated June 7, 2004, requesting reconsideration of the Copyright Office's refusal to register a copyright claim in the above work, on August 13, 2004, Ms. Virginia Giroux again denied registration on behalf of the Examining Division. Letter from Giroux to Chovanes of 08/13/04.

Ms. Giroux stated that after careful review of the work in light of the points raised in your letter as well the model of the ring submitted thereafter, the Examining Division was unable to register a copyright claim in this work because THE TRINITY RING does not contain a sufficient amount of original and creative sculptural authorship upon which to support a copyright registration.

Ms. Giroux stated that Sec. 102(b) of the copyright law makes it clear that "in no case does copyright protection extend to an idea, process, concept, mathematical principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in a work." *See* 17 U.S.C. 102(b). Therefore, it is not the process or mathematical principle that may have been applied in creating this work that can be copyrighted, but the actual resulting expression or product that is examined for copyrightability. Letter from Giroux of 08/13/04, at 1.

Ms. Giroux also pointed out that it does not follow that because a work may be entitled to patent protection it is necessarily copyrightable. The standards of patentability and copyrightability

are different from each other. Further, Ms. Giroux pointed out that uniqueness may be applicable to patent protection, but not to copyright. Therefore, the fact that this ring may be unique or atypical does not necessarily mean that it is copyrightable. *Id.*

Ms. Giroux explained that the Examining Division does not dispute the fact that jewelry designs are works of art that fall within the subject matter of copyright. However, not all jewelry designs are per se copyrightable. All works, no matter within what category they fall, must contain a sufficient amount of original and creative authorship to be copyrightable. *Id.*

Ms. Giroux also stated that the Examining Division does not dispute your assertion that this work is original with the author and not copied from another work. However, she explained that, to be regarded as copyrightable, a work must not only be original, but it must also "possess more than a *de minimis* quantum of creativity." *See Feist,* 499 U.S. 340. In the case of a jewelry design, a certain minimum amount of pictorial, graphic, or sculptural expression in the work must have originated with the author. Originality, as interpreted by the courts, means that the authorship must constitute more than a trivial variation of public domain elements. *See Alfred Bell & Co. v. Catalda Fine Arts, Inc.*, 191 F.2d 99 (2d Cir.1951). In applying this standard, the Copyright Office examines a work to determine whether it contains elements, either alone or in combination, on which a copyright can be based. Ms. Giroux also pointed out that, because the Copyright Office does not make aesthetic judgments, the attractiveness of a design, its uniqueness, its visual effect or appearance, the time, effort, and expense it took to create, or its commercial success in the marketplace are **not** factors taken into account during the examining process. The question is whether there is sufficient original and creative authorship within the meaning of the copyright law and settled case law. Letter from Giroux of 08/13/04, at 1-2.

Ms. Giroux further explained that the type of sculptural authorship embodied in the work at issue here, which is, to some degree, determined by use of mathematical principles or processes, does not reflect a sufficient amount of original and creative authorship to support a copyright registration. She concluded that the resulting jewelry design based on the mathematical principle of rotating an equilateral triangle by twisting it 120 degrees is essentially a circular spiral shape which is, it itself, *de minimis;* further, the arrangement is a rather simple and common configuration. *See Compendium of Copyright Office Practices II,* Ch. 500, 503.02(a) & (b) (1984).

Ms. Giroux also noted that the Office's application of *Compendium II* principles, see above, has been confirmed by several judicial decisions. In *John Muller & Co. v. New York Soccer Team,* 802 F.2d 989 (8th Cir. 1986), the court upheld a refusal to register a logo, consisting of four angled lines forming an arrow, with the word "arrows" in cursive script below, noting that a "work of art" or "pictorial, graphic, or sculptural work must embody some creative authorship in its delineation of form." *See also Forstmann Woolen Co. v. J.W. Mays, Inc.*, 89 F. Supp. 964 (E.D.N.Y. 1950) (label with words "Forstmann 100% Virgin Wool" interwoven with three fleur-de-lis held not copyrightable); *Homer Laughlin China Co. v. Oman*, 22 U.S.P.Q. 2d 1074 (D.D.C. 1991) (upholding refusal to register chinaware "gothic" design pattern, composed of simple variations and combinations of geometric designs, because of insufficient creative authorship to merit copyright

protection); *Jon Woods Fashions, Inc. v. Curran*, 8 U.S.P.Q. 2d 1870 (S.D.N.Y. 1988) (upholding refusal to register fabric design consisting of striped cloth with small grid squares superimposed on the stripes where Register concluded that design did not meet minimal level of creative authorship necessary for copyright); and *DBC Of New York, Inc. v. Merit Diamond Corp.*, 768 F. Supp. 414 (S.D.N.Y. 1991) (upholding refusal to register a jewelry design and noting that "familiar shapes or designs are not entitled to copyright protection", citing 37 C.F.R. 202.1). Letter from Giroux of 08/13/04, at 2.

While agreeing that court cases have found that even a slight amount of creativity will suffice to obtain copyright protection and that the vast majority of works make the grade if they possess some creative spark, Ms. Giroux pointed out that Nimmer, in the treatise, 1 Melville B. Nimmer & David Nimmer, *Nimmer On Copyright*, Sec. 2.01(B) (2002), states that "there remains a narrow area where admittedly independent efforts are deemed too trivial or insignificant to support a claim to copyright." Ms. Giroux explained that the Examining Division finds that THE TRINITY RING falls within this narrow area. Letter from Giroux 08/13/04, at 2-3.

Ms. Giroux stated that the Copyright Office applies the precedent of *Feist,* 499 U.S. 340, in its examination of claims to copyright; in *Feist* the Supreme Court articulated that the requisite level of creativity for copyright is very low; even a slight amount of original authorship will suffice. However, in the instant work, the circular band and its spiral configuration simply fail to meet even the low threshold for copyrightable authorship set forth in the *Feist* case.

Ms. Giroux also noted that although the author may have been attempting to create a three-sided illusion, this does not mean that the work is copyrjghtable. The effect or impression that a work conveys suggests some aspect of mental activity that goes to the mind of the viewer rather than to the composition of the work itself. Therefore, a work may create a certain impression or illusion, as is the case here, but this does not mean that it is copyrightable.

Although there may have been other ways in which the sculptural elements in this work, their shape, proportion, and configuration could have been selected and arranged, Ms. Giroux explained that all designs involve choices. She pointed out that it is not the possibility of choices that determines copyrightability, but rather whether the particular resulting expression or product contains copyrightable authorship. Ms. Giroux concluded that the sculptural expression embodied in this work simply does not contain a sufficient amount of original and creative authorship to support a copyright registration. Letter from Giroux 6/13/04, at 3.

Finding a lack of sufficient copyrightable authorship, Ms. Giroux stated that the Examining Division must again refuse registration of THE TRINITY RING.

Second Request for Reconsideration:

In a letter dated December 9, 2004, you again requested reconsideration of the Examining Division's refusal to register the work. Without citing any law, you stated that the Applicant believes that his ring is unique and possesses the requisite originality necessary to support a registration. In addition to claiming the "uniqueness" of the jewelry design, your sole argument is that the Examining Division's position that the design is the result of a mathematical process of rotating an equilateral triangle by twisting it 120 degrees could only be based on hindsight and on information about the creation of the work which the Applicant has supplied to the Office. You argue that to the casual observer, "the design represents creativity and not mathematical principle. In no way is the applicant's jewelry design in the realm of familiar shapes or designs . . . not entitled to copyright protection. On the contrary, the design is fascinating and beguiling." Letter from Chovanes to the Review Board of 12/24/04, at 2. You go on to claim that the design "represents striking and extensive creativity, and should be granted registration to applicant's claim for copyright with no question." You summarize the second request for reconsideration by stating that the "question on this appeal is whether such design involves '... even a slight amount of creativity." *Id.*

Decision of the Review Board:

The Copyright Office Review Board, after a review of the application, the deposit, the demonstrative models, and the entire administrative record, affirms the Examining Division's refusal of registration. The Review Board finds that THE TRINITY RING is a minor variation of a common geometric shape and, as such, represents insufficient creative authorship to sustain a claim of copyright.

The Copyright Office Review Board does not dispute a number of your assertions. We agree that "jewelry" is copyrightable subject matter, that the standard for copyrightability is low and that this work is original to the author, *i.e.*, not copied. Yet, the Review Board also agrees with the responses to these points addressed by Ms. Giroux. While "jewelry" is proper subject matter for copyright, jewelry is copyrightable only if it contains a modicum of creative authorship. *Feist,* 499 U.S. at 345. And, while the level of creative authorship is "not particularly stringent," some works do not meet the requisite level. *Id.* at 358-359.

The Review Board accepts your assertion that your client's work is original to him and not copied, but the Supreme Court has made it clear that to be copyrightable, a work must be original and contain a sufficient level of creative authorship. *Id.* at 345. Whether or not THE TRINITY RING is "novel" is not a relevant question for the Board's determination, because as the Court has stated: "[o]riginality does not signify novelty; a work may be original even though it closely resembles other works so long as the similarity is fortuitous, not the result of copying." *Id.* Thus, the sole question before the Review Board is whether THE TRINITY RING contains sufficient creative authorship.

You do not dispute that a triangular prism is a common geometric shape. Triangular prisms fall within the geometric category of polyhedrons, or three-dimensional shapes formed by using basic shapes such as triangles, squares, rectangles and circles, and include shapes such as cylinders, cones, and rectangular prisms. Figure 28 of your supplemental evidence depicts a standard triangular prism shape. Figures 28, 29, and 30 reveal the mathematical formula used to create the ultimate shape claimed in your client's application, namely, by twisting one end of the prism 120 degrees, the lines on the prism are twisted (assuming that the overall prism is pliable). *See* Figure 29, Exhibit C. By connecting the triangular ends of the prism together so that side A meets with Side B, Side B meets with Side C, and Side C meets with the Side A, a continuous twisted loop is created. *See* Figure 30, Exhibit C.

The Review Board finds that the application of a mathematical formula on a common geometric shape fails to meet the requisite level of creative authorship as it is reflected in the authorship of this particular work, THE TRINITY RING; the work is insufficient in its creativity to sustain a claim of copyright. Further, not only is this design a simple variation on a prism, but THE TRINITY RING is also a three-dimensional variation on the common shape known as a "Mobius strip" that was named after the astronomer and mathematician August Ferdinand Mobius, one of the discoverers of this object in 1858. While the Mobius strip consists of transforming a two-dimensional rectangular strip into a continuously-sided, or non-orientable circular surface, THE TRINITY RING design is the same concept applied to a different geometric shape, albeit using a slightly different mathematical formula – 120 degrees rather than the 180 degree twist of the rectangle in the case of the Mobius strip.

As previously stated, while the Review Board does not dispute that your client created the design without copying, the Review Board does note that other instances of three-dimensional versions of the Mobius strip are existent. *See, e.g.*, "Mobius Strip" by Robert R. Wilson located at the Fermi National Accelerator Laboratory (Fermilab) in Batavia, Ill. This sculpture consists of an equilateral triangle rotated 120 degrees to form a continuous tube. For information *see* http://www.sciencenews.org/articles/20000902/mathtrek.asp. Thus, even though novelty is not relevant to the copyrightability analysis, your claim that the design is novel appears, to some degree, erroneous.

Independently discovering a mathematical formula does not constitute creative authorship. As the Court has stated,

> No one may claim originality as to facts.... This is because facts do not owe their origin to an act of authorship. The distinction is one between creation and discovery: The first person to find and report a particular fact has not created the fact; he or she has merely discovered its existence. To borrow from *Burrow-Giles*, one who discovers a fact is not its "maker" or "originator." "The discoverer merely finds and records...." The same is true of all facts – scientific, historical, biographical, and news of the day. "They

> may not be copyrighted and are part of the public domain available to every person.

Feist, 499 U.S. at 347-348 (internal citations omitted).

The three-dimensional shape depicted in the THE TRINITY RING is the result of a common geometric shape with an application of a mathematical formula. Although mathematic principles are precluded from protection under section 102(b), 17 U.S.C. § 102(b), the Copyright Office Review Board need not resolve whether the ultimate shape is the result of a mathematical principle itself. Rather, the Review Board denies registration to the claim of copyright on the basis of insufficient creative authorship. To the extent that the deposit material depicts a work containing any variations on the geometric shape itself, those variations are "so trivial as to be virtually nonexistent." *Feist, 499 U.S.* at 359. Further, to the extent that the author was attempting to create an illusion, the Review Board agrees with Ms. Giroux that the effect or impression that a work conveys upon an individual is not intrinsic to the work itself, but rather is the result of mental activity that goes on in the mind of the viewer – mental activity that is extrinsic to the work and which may subjectively differ from viewer to viewer. Only those features and elements that exist in the work itself constitute authorship.

For the foregoing reasons, the Copyright Office Review Board affirms the Examining Division's refusal to register the claim for THE TRINITY RING.

Sincerely,

/S/

Nanette Petruzzelli
Special Legal Advisor for Reengineering
for the Review Board
United States Copyright Office

Exhibit A

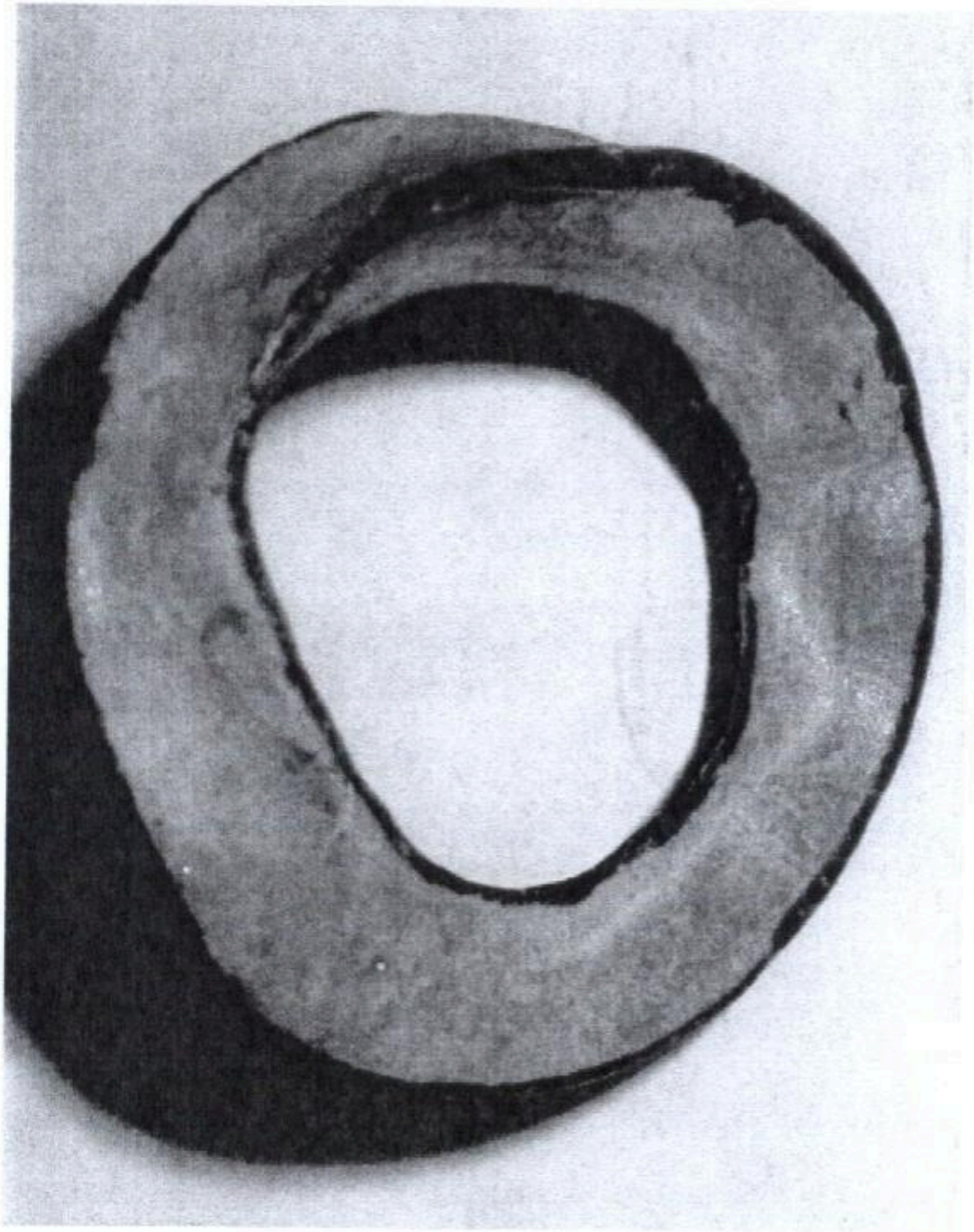


Exhibit B



Exhibit C

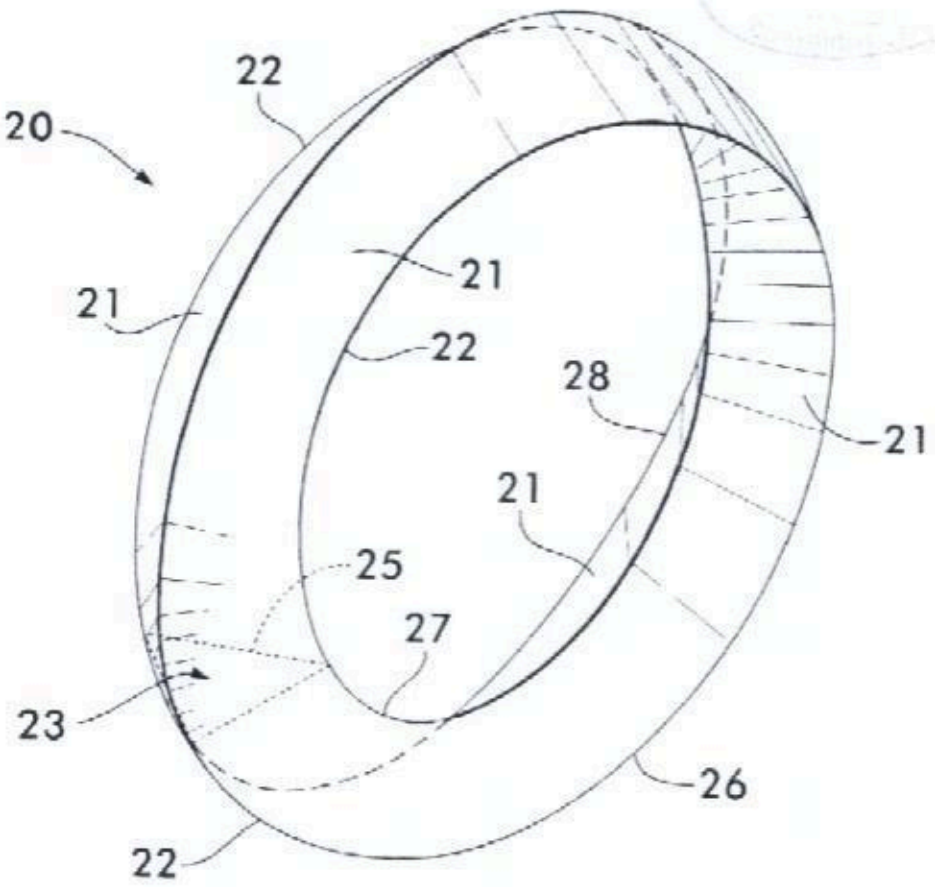


FIG.1

Exhibit C con't

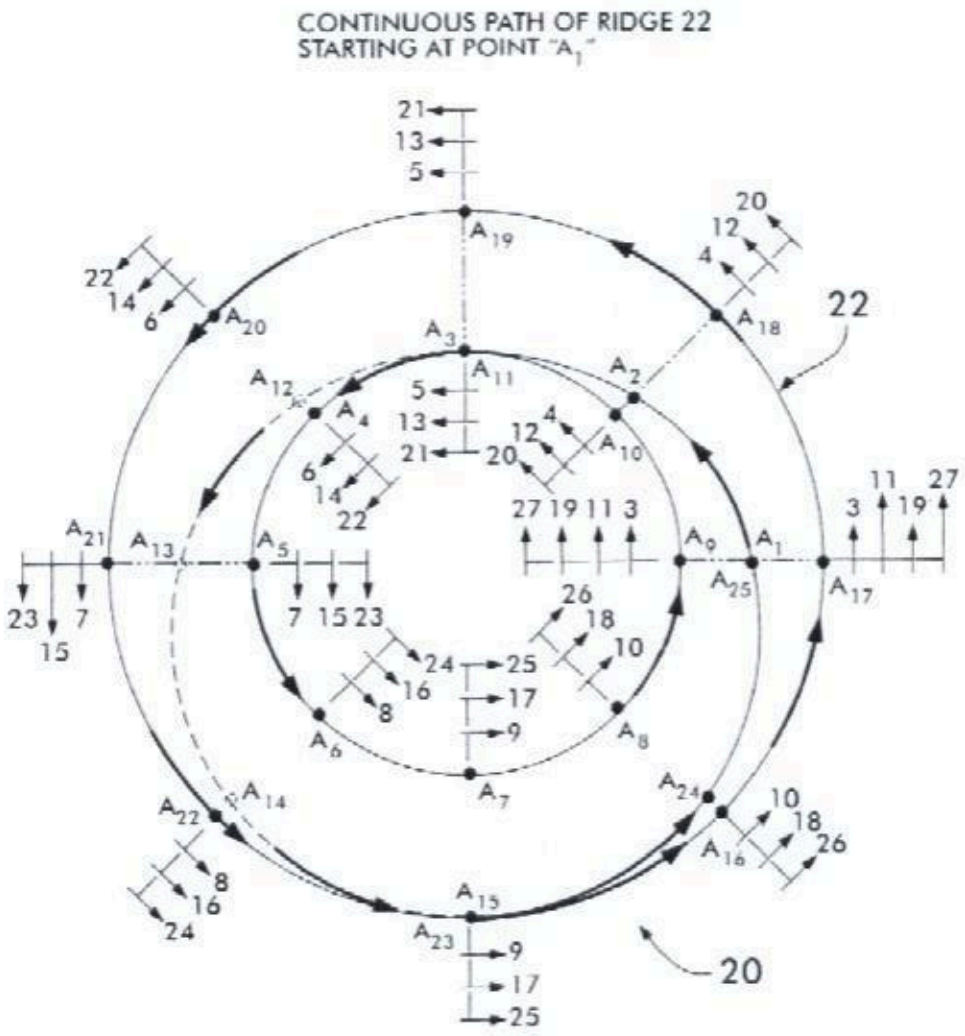


FIG.2

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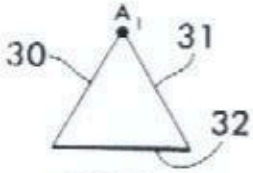


FIG.3

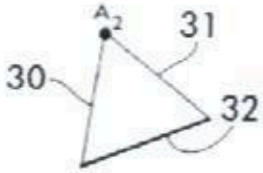


FIG.4

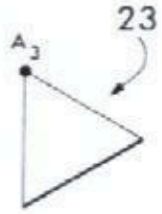


FIG.5



FIG.6

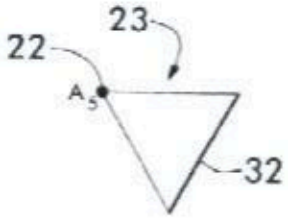


FIG.7



FIG.8

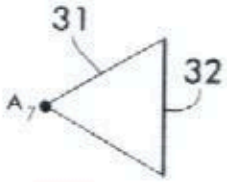


FIG.9

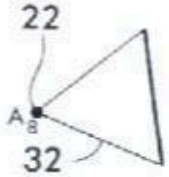


FIG.10

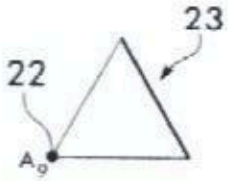


FIG.11

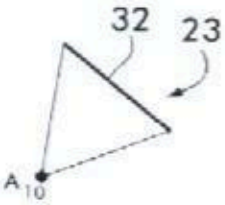


FIG.12

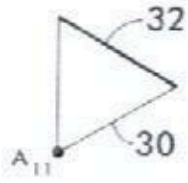


FIG.13



FIG.14

Exhibit C con't

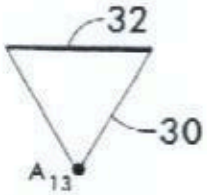


FIG.15

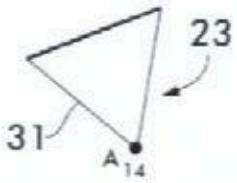


FIG.16

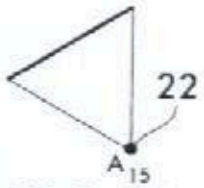


FIG.17

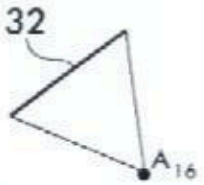


FIG.18

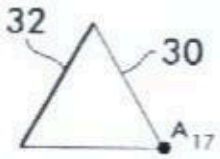


FIG.19

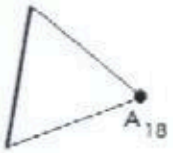


FIG.20

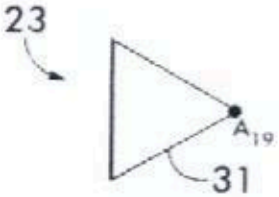


FIG.21

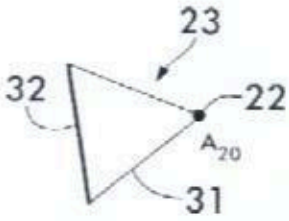


FIG.22

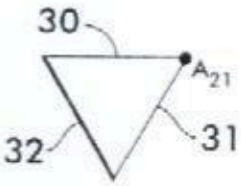


FIG.23

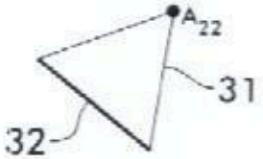


FIG.24

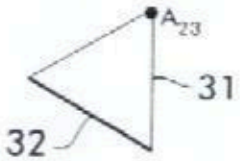


FIG.25

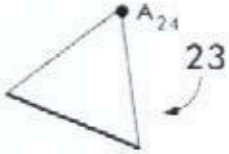


FIG.26



FIG.27

Exhibit C con't

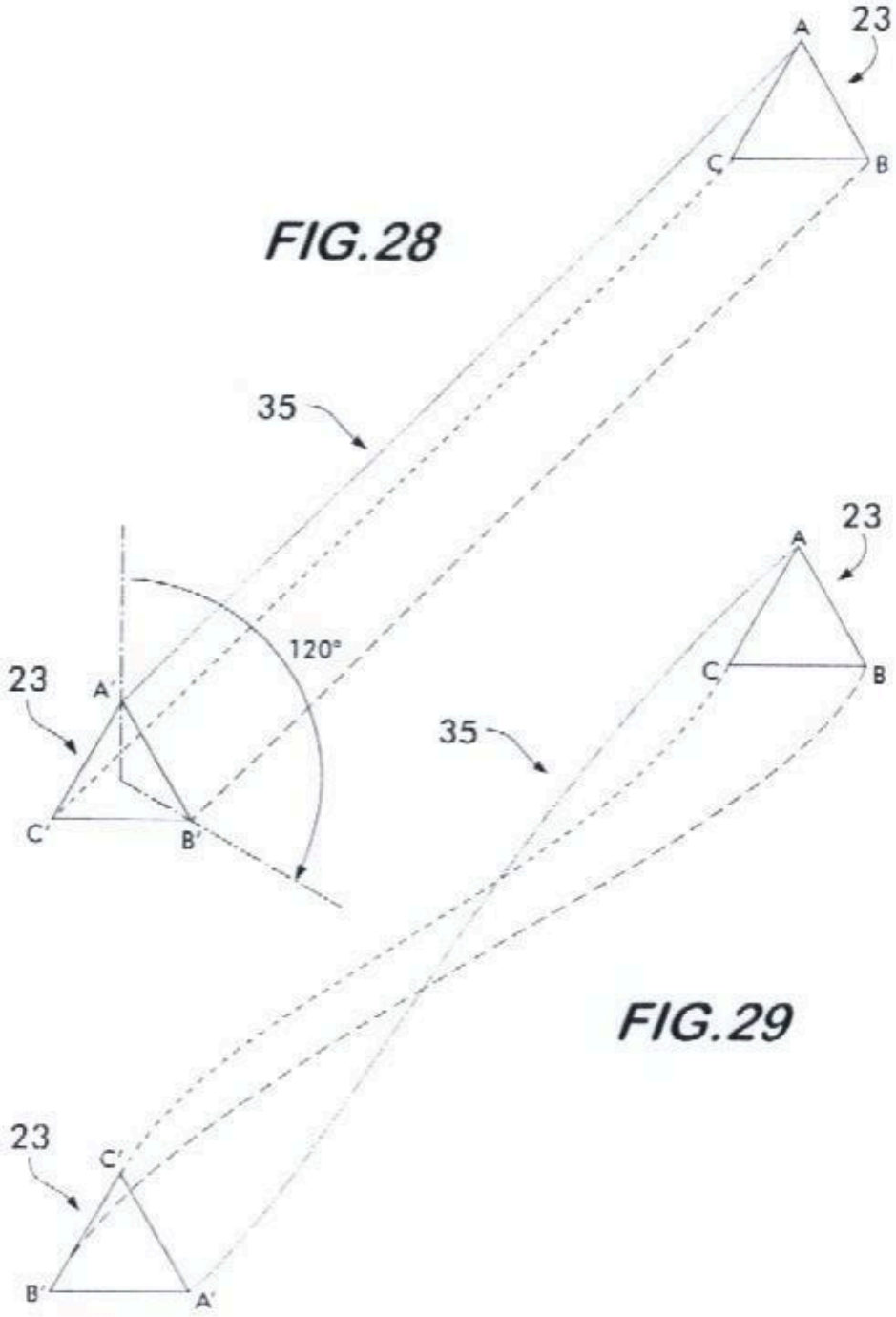


FIG.28

FIG.29

Exhibit C con't

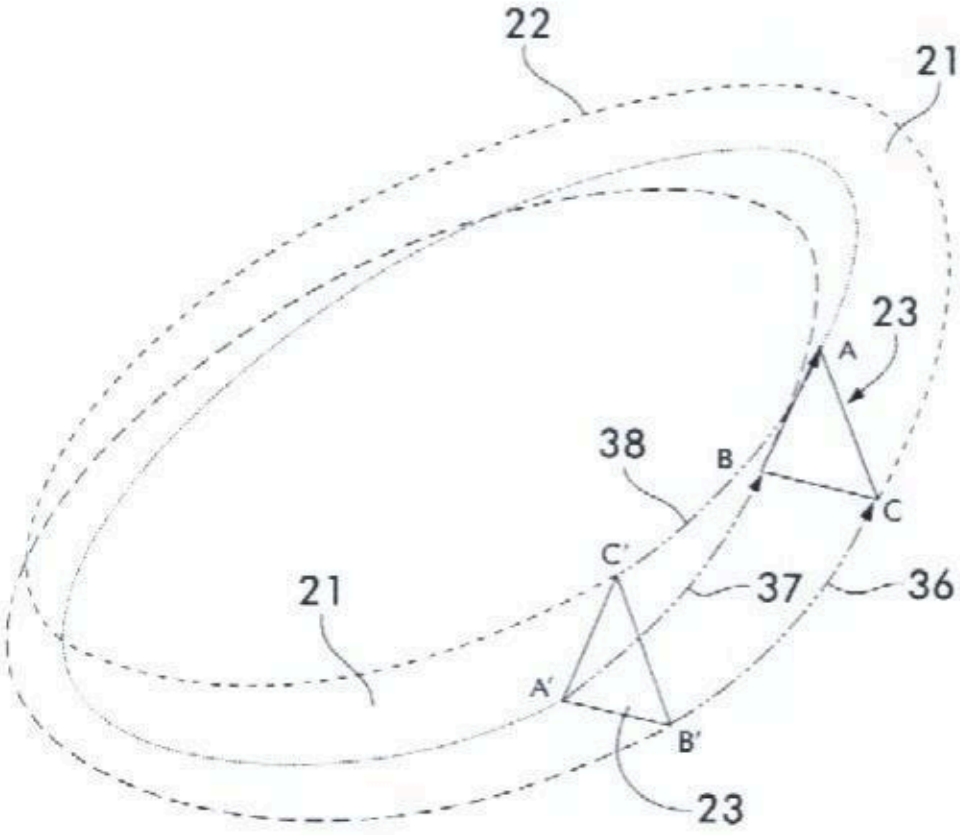


FIG.30