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February 22, 2013

MINTZ, LEVIN, COHN, FERRIS, GLOVSKY, AND POPEO, P.C.
ATTN: ANDREW D. SKALE
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SUITE 600
SAN DIEGO, CA 92121

RE: "Monoporte," "Acuity," "Fullback," "Racerback," "Halo," "Visteon," "Q-Porte," "Lumen," "Trilite," "Meridian," "Sideshow," and "4-Horizons"
Copyright Office Control Number: 61-424-071(B)

Dear Mr. Skale:

I am writing to you on behalf of the Copyright Office Review Board (hereinafter "Board") in response to your letter dated March 3, 2008, in which you requested the Copyright Office (hereinafter "Copyright Office" or "Office) to reconsider, for a second time, its refusal to register the above-captioned works, collectively known as the "12 Works." The Board has carefully examined the applications, the deposits, and all correspondence concerning these applications, and hereby affirms the denial of registration.

I. DESCRIPTION OF WORK

The subject works are a collection of 12 separate door designs. The company, Neoporte, Inc., seeks to register each of the door designs as 3-dimensional sculptures. The photographs included in the appendix herein show the door designs in detail.

II. ADMINISTRATIVE RECORD

A. Initial application and Office's refusal to register

On February 21, 2007, the claimant, Neoporte, Inc., filed twelve applications for copyright registration of door designs with the Office. On April 26, 2007, Copyright Office Examiner, Rebecca Barker, refused registration of the 12 Works at issue because they were deemed to be useful articles which did not contain any separable features that were copyrightable. *See* Letter from Rebecca Barker to Andrew D. Skale (Apr. 26, 2007). After a brief review discussing the copyright concepts of "useful articles" and "separability," she stated that although the deposited works may contain features that can be identified as "separable," they are not copyrightable. After a short discussion on creative authorship, she stated that the separable elements of the 12 Works that were submitted were not copyrightable because they represented an insufficient amount of original authorship. Consequently, registration was rejected for each of the 12 Works. *See id.* at 2.

B. First request for reconsideration

On July 6, 2007, you sought reconsideration of the initial rejection of the 12 Works by the Copyright Office. *See* Letter from Andrew D. Skale to the Copyright Office (July 6, 2007) ("*First Reconsideration letter*"). You first argued that the Examiner proffered an unduly narrow test for conceptual separability which may have resulted in a constricted view of which elements of the works could be considered for copyrightability. You also argued that the Examiner incorrectly found that the works lacked original authorship. *Id.*

To support your case, you clarified that the works at issue are 3-dimensional sculptures embedded on, or part of, doors. You stated that the American Heritage Dictionary of the English Language (4th ed. 2000) defines a door, and hence its function, as "[a] movable structure used to close off an entrance, typically consisting of a panel that swings on hinges or that slides or rotates." *Id.* at 1. You asserted that the function of a door is to operate as a movable structure to close off an entrance. You argued that, to the extent the sculptures' elements are not related to such function, they are separable. *Id.*

You explained that two different types of 3-dimensional sculptures grace the doors: sculptures composed of elevated circles and sculptures incorporating geometric designs of glass. You commented that both the elevated circles and the geometric glass can be said to exist independent of the function of the doors themselves, as they are not essential or integral to the entrance function a door serves. You further commented that no function of the door dictates the arrangement of the various elements. You argued, then, that the elements composing the sculptures for which copyright protection is sought are separable from the function of the doors themselves. *Id.* at 2.

As to the creative nature of the door designs, you noted that many of the names of the works submitted provide a clear key to the expressive arrangement of the elements on the doors. You noted, for example, "Four Horizons" is a door with four long and thin rectangular panes of vertically arranged glass. You commented that this design is just as expressive and creative as if the separate panes were painted upon the surface. You further commented that the arrangements of the otherwise common shapes in the door designs possess a scintilla of creativity. You noted, for example, that "Tri-Lite" is a large rectangle with three off-center square panes disbursed within, and that courts have specifically found combinations of glass rectangles are copyrightable. *See id.* (citing *Runstadler Studios, Inc. v. MCM Ltd. P'ship*, 768 F. Supp. 1292 (N.D. Ill. 1991)). You made similar arguments for the other door designs in questions. *Id.* at 3-4.

You argued that the door designs are clearly separable from the "closing-off an entrance" function of a door, and their expression far surpasses the scintilla of expression required for originality. *First Reconsideration letter* at 1. You also asserted that geometric arrangements are regularly afforded copyright protection. *Id.* at 3, citing *OddzOn Prods. Inc. v. Oman*, 16 U.S.P.Q. 2d 1225, 1227 (D.D.C. 1989); *Atari Games Corp. v. Oman (Atari I)*, 888 F.2d 878, 883-84 (D.C. Cir. 1989); *Tennessee Fabricating Co. v. Moultries Mfg. Co.*, 421 F.2d 279, 282 (5th Cir. 1970); *Concord Fabrics, Inc. v. Marcus Bros. Textile Corp.*, 409 F.2d 1315, 1316 (2d Cir. 1969); *Roulo v. Russ Berrie & Co.*, 886 F.2d 931, 939-40 (7th Cir. 1989); *North Coast Ind. v. Jason Maxwell, Inc.*, 972 F.2d 1031, 1034 (9th Cir. 1992); and *In Design v. Lynch Knitting Mills, Inc.*, 689 F. Supp. 176, 178-79 (S.D.N.Y. 1988). You concluded that from the philosophical expressions of the designs, to the multivariate use of shapes and the ares resulting from such combinations, the 12 Works at issue are no exception to such copyrightability.

C. Examining Division's response

Ms. Virginia Giroux-Rollow of the Copyright Office's Examining Division carefully reviewed the 12 Works in light of the points raised in your First Reconsideration letter. She found that the Office was still unable to register a copyright claim in any of the 12 Works as "3-D sculptures" because they are useful articles that do not contain any authorship that is both separable and copyrightable. *See* Letter from Virginia Giroux-Rollow to Andrew D. Skale (Dec. 4, 2007) ("*Giroux-Rollow letter*").

She noted that section 101 of the Copyright Act ("Act") defines a "useful article" as an "article having an intrinsic function that is not merely to portray the appearance of an article or to convey information. An article that is part of a useful article is considered a useful article." *Id.*, citing 17 U.S.C. § 101. She added that the Act further provides that the "design of a useful article shall be considered a pictorial, graphic, or sculptural work only if and to the extent that such design incorporates pictorial, graphic, or sculptural features that can be identified separately from and are capable of existing independently of the utilitarian aspects of the article without destroying its basic shape." *Id.*

Ms. Giroux-Rollow stated that your letter does not dispute the fact that these works, door with designs, are useful articles. Instead, she noted that your argument in favor of registration is that these works contain non-functional sculptural elements based on the designer's aesthetic judgment rather than utilitarian concerns and as such, contain conceptually separable authorship that is automatically copyrightable. *Id.* at 2.

She noted that the Copyright Office's test for conceptual separability is enunciated in *Compendium of Copyright Office Practices, Compendium II*, (1984) (hereinafter "*Compendium II*"), § 505.03, which follows generally the separability principle set forth in *Esquire v. Ringer*, 591 F.2d 796 (D.C. Cir. 1978). The *Compendium II* states that conceptual separability occurs when the pictorial, graphic or sculptural features, while physically inseparable by ordinary means from the utilitarian item, are nevertheless clearly recognizable as a pictorial, graphic, or sculptural work which can be visualized on paper, for example, or as a free-standing sculpture, as another example, independent of the shape of the article, without destroying its basic shape. Examples include the carving on the back of a chair or pictorial matter engraved on a glass vase. *Id.*

Ms. Giroux-Rollow further noted that the test for conceptual separability, however, is not met by merely analogizing the general shape of an article to works of modern sculpture since in this case, the alleged "artistic or decorative" features and the useful articles cannot be perceived as existing separately. She stated that the Copyright Office cannot register features that are an integral part of the overall shape or contour of a useful article even when the features are non-functional or could have been designed differently. *Id.* (citing *Esquire, supra*, upholding the Copyright Office's refusal to register an outdoor lighting fixture on the grounds that copyright protection was not possible based on the "overall shape or configuration of a utilitarian article no matter how aesthetically pleasing that shape or configuration might be"). She commented that the 1976 Copyright Act codified this practice of not registering claims to copyright in the overall shape or form of articles that have a utilitarian function. She stated that the only possible basis for a registration of a useful article is whatever aspect of the useful article that can viewed as separable and that is also copyrightable as a

"work of art." *Giroux-Rollow letter*, citing *Norris Industries, Inc. v. Int'l Telephone & Telephone Corp.*, 696 F.2d 918 (11th Cir. 1983) (holding that a wire-spoked wheel cover was not copyrightable because it was a useful article that did not contain any sculptural design that could be identified apart from the wheel cover itself).

She found that there were elements on the surface of the door designs that are conceptually separable from the utilitarian aspects of the works. However, she did not believe that these elements or features, as a whole, constitute copyrightable sculptural works of art. *Id.* at 3.

Ms. Giroux-Rollow explained that to be regarded as copyrightable, a work must not only be original and independently created by the author, but it must also "possess more than a *de minimis* quantum of creativity." *Id.* (citing *Feist Publ'ns v. Rural Tel. Serv. Co.*, 499 U.S. 340 (1991)). In the case of a design, a certain minimum amount of pictorial or sculptural expression in the work must have originated with the author. She commented that originality, as interpreted by the courts, means that the authorship must constitute more than trivial variation or arrangement of public domain, pre-existing, or non-copyrightable elements. *Id.* (citing *Alfred Bell v. Catalda Fine Arts, Inc.*, 191 F.2d 99 (2d Cir. 1951)).

Then, she described each separable design in detail. *See id.* at 3-4. She stated that the separable elements on "Monoporte" consist of two concentric squares on the upper center surface (eye level) of the door. The separable elements on "Acuity" consist of three sets of concentric squares arranged vertically on the surface of the door. The separable elements on "Fullback" consist of a series of six columns of small circles covering the entire surface of the door. The separable elements on "Racerback" also consist of a series of seven rows of small circles arranged vertically only down the center surface of the door. The separable elements on "Halo" consist of two concentric circles with six tiny circles positioned around and between the inner and outer circles. The separable elements on "Visteon" consist of two concentric rectangular shapes positioned vertically down the middle surface of the door. The separable elements on "Q-Porte" consist of a series of four sets of two concentric squares positioned vertically down the surface of the door. The separable elements on "Lumen" consist of two thin concentric rectangular shapes positioned vertically on the surface of the door. The separable elements on "Meridian" consist again of two thin concentric rectangular shapes positioned vertically down the center surface of the door. The separable elements on "Sideshow" consist again of two thin concentric rectangular shapes positioned vertically, but instead to the right or left of center along the surface of the door. The separable elements on "4-Horizons" consist of four sets of two horizontally placed concentric rectangular shapes positioned vertically along the surface of the door. The separable elements on "Trilite" consist of three sets of two concentric squares each placed off-center and positioned vertically along the surface of the door. *Id.*

Ms. Giroux-Rollow found that these designs consisted of uncopyrightable trivial variations of arrangements of basic geometric shapes. *Id.* She noted that squares, circles, and rectangles, no matter what their size or dimensions, or any minor variation thereof, are common and familiar geometric shapes, in the public domain and are, therefore, not copyrightable. *Id.* at 3 (citing 37 C.F.R. § 202.1). She concluded that the sculptural authorship on the surface of the 12 Works did not reflect sufficient originality and creativity to support a copyright registration as a copyrightable "work of art." She added that the combination and arrangement of the shapes on the surface of each work did not rise to the level of authorship necessary to support a copyright registration. She believed that the resulting designs are *de minimis*, involving public domain shapes combined and arranged in a rather simple configuration. *Id.* (citing *Compendium II* §§ 503.02(a) and (b)).

Ms. Giroux-Rollow noted that even a slight amount of creativity will suffice to obtain copyright protection and that the vast majority of works make the grade easily if they possess some creative spark. She further noted that the Copyright Office regards *Feist* as the articulation from the Supreme Court that the requisite level of creativity is very low; even a slight amount of original authorship will suffice. She pointed out, however, that Nimmer in his treatise, *Nimmer On Copyright*, § 2.01(b) states that "there remains a narrow area where admittedly independent efforts are deemed too trivial or insignificant to support a copyright." She found that the door designs on the 12 Works fall within this narrow area. Thus, she concluded, the 12 Works fail to meet even the low threshold for copyrightable authorship set forth in *Feist*. *Id.* at 4.

She then distinguished the case law you cited as supporting your position. She first described *Kieselstein-Cord v. Accessories by Pearl, Inc.*, 632 F.2d 989 (2d Cir. 1980), where the Copyright Office registered belt buckles because they contained conceptually separable elements that were copyrightable. The sculptures on the surface of the belt buckles were non-representational, but consisted of fanciful shapes separately identifiable from the overall functional design of the buckles themselves. She found no such comparable authorship in the door designs of the 12 Works. *Id.* at 4-5.

Next, Ms. Giroux-Rollow discussed *Runstadler*, which involved 39 clear glass rectangles overlapping each other to form a spiral, the court observed that the artist's "choice of location, orientation, and dimensions of the glass panes and degrees of arcs of the spiral, showed far more than a trivial amount of intellectual labor and artistic expression on the Plaintiff's part." She found no such comparable authorship in the door designs of the 12 Works. *Id.* at 5.

She then discussed *Superior Form Builder's, Inc. v. Dan Chase Taxidermy Supply Co.*, 74 F.3d 488 (4th Cir. 1996). She explained that this case involved plastic mannequins used for mounting animal skins and shaped to form sculptures of animals and were, therefore, not useful articles, but instead sculptural works which contained a sufficient amount of original and creative sculptural authorship to warrant copyright protection. She found no such comparable authorship in the door designs of the 12 Works. *Id.*

Ms. Giroux-Rollow also noted, with comment, the following cases you cited: *Soptra Fabric v. Stafford Knitting Mills, Inc.*, 490 F.2d 1092 (2d Cir. 1974) (involving a fabric design consisting of numerous elements in addition to stripes of crescents scalloping between the stripes and multiple rows of semi-circles in a distinct pattern); *Tennessee Fabricating Co. v. Moultrie Mfg. Co.*, 421 F.2d 279 (5th Cir. 1970) (involving a room divider design made of intercepting lines and arc lines described in a filigree pattern which by definition was intricate ornament work); *Concord Fabric, Inc. v. Marcus Brothers Textile Corp.*, 409 F.2d 1315 (2d Cir. 1969) (involving an intricate fabric design of circles within squares and frames around the outer border running in opposite directions and figures around the outer part of the circles); and *In Design v. Lynch Knitting Mills, Inc.*, 689 F. Supp. 176 (S.D.N.Y. 1988) (involving a fabric design of background of superimposed parallelograms of different sizes, orientations, and colors). She stated that although all of these cases dealt with the copyrightability of a non-representational graphic or artistic design, in each case, the author created a design that was more than a trivial variation of a theme, either by selecting a variety of shapes and arranging them in a creative manner or both. She found that this was not the case with the door designs at issue. *Id.*

She noted that in your letter you indicated that in creating the designs on the surface of these doors, the author was also attempting to create a certain visual or symbolic impression. She

commented that this may be true, but it does not mean that the designs are copyrightable; 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. She further commented that the fact that the placement and positioning of the elements on the surface of these doors may create a certain effect or impression, but it does not mean that they are copyrightable. She concluded that unless a work of this type contains a sufficient amount of original and creative sculptural authorship that is both separable and copyrightable, no registration is possible. *Id.*

Ms. Giroux-Rollow concluded that because all of the door designs featured on the 12 Works are either related to the utilitarian function of the doors themselves, or, if separable, are not copyrightable, there is no conceptually separable authorship that can be recognized by the Office. Therefore, copyright registration for the 12 Works at issue was again refused. *Id.* at 6.

D. Second request for reconsideration

On March 3, 2008, you filed your second request for reconsideration. You noted that the Copyright Office has "conceded" that the design features are separable from the doors themselves. Thus, you assert, the "only issue now is whether the works are copyrightable." You maintain that Copyright Office regulations provide that artistic works, such as the 12 Works, are copyrightable. Moreover, you argue that the themes, or creative effects, of the 12 Works further justify their registration. *See* Letter from Andrew D. Skale to the Copyright Office (Mar. 3, 2008) ("*Second Reconsideration letter*"), at 1-2.

You emphasize that the artistic use and combination of shapes in the 12 Works renders them copyrightable. You specifically argue that arrangements and combinations of familiar symbols are copyrightable. You note that the photographs attached to your letter show the creative use of familiar symbols and shapes, and that there has been more than a mere modicum of creativity in the 12 Works at issue. *Id.* at 2.

You also submit that while creative expression is the standard of copyrightability, that creative expression cannot be assessed without considering the effect the work is intended to, and does, convey. You state that the impact or meaning associated with each of the 12 Works is not "symbolic value" as in the case of a standard ornament, such as a religious cross, "but rather embodies powerful themes creatively imbued in the works." You conclude that effects and themes conveyed by the arrangement of shapes in the 12 Works demonstrate that they involve more than a "trivial variation" of common symbols. *Id.* at 4.

You add that the choices and themes captured in the 12 Works were purposefully designed, and have their intended effect on the viewer, demonstrating much more than a trivial amount of creativity. You particularly note that the works entitled "Four Horizons," "Halo," "Tri-Lite," and "Slideshow" each symbolize an express idea or feeling. You comment that each of the designs use the placement, size, and shape of the glass panes to express their own symbolic or literal message, thus demonstrating that "they fall well beyond the mere scintilla of expression necessary for originality." *Id.* You assert that other works, such as "Racerback" and "Fullback" also demonstrate such creativity. You note that these two door designs both rely upon the arrangement of small circles throughout the surface of the door, giving it a braille effect. You state the creator of the works had to balance the desire for texture with the goal of providing an uncluttered and spacious sculpture. You conclude that "from the philosophical expressions of the designs, to the multivariate use of shapes and the ares resulting from such combinations, the works at issue are deserving of registrations." *Id.*

at 4-5.

III. DECISION

After reviewing the materials presented to us and the arguments in favor of registering Applicant's works, the Board upholds the Examining Division's decision to refuse registration of the 12 Works at issue. The Board, on its own motion, determines that 10 of the 12 Works are useful articles with no separable features. Two of the Works – "Fullback" and "Racerback" – are determined to have conceptually seperable features. However, none of the 12 Works contain a sufficient amount of original and creative authorship upon which to support copyright registration.

A. Useful articles and separability

A useful article is defined as having "an intrinsic utilitarian function that is not merely to portray the appearance of the article or to convey information." 17 U.S.C. § 101. An article that is normally a part of a useful article is considered a "useful article." *Id.* Copyright protection can be extended to the design of a useful article "only if, and only to the extent that, such design incorporates pictorial, graphic, or sculptural features that can be identified separately from, and are capable of existing independently of, the utilitarian aspects of the article." *Id.* (defining a "pictorial, graphic, and sculptural works"). Given the Examining Division's disposition on the subject of conceptual separability, you did not present an argument concerning whether the works at issue are useful articles. Nevertheless, we review the matter *de novo* and find that a discussion of useful articles and the relevant separability tests is warranted at this time. We find that the 12 Works are useful articles and are subject to the separability analysis that copyright law requires.

Only elements or features that are physically or conceptually separable from the utilitarian purpose of a useful article may be copyrighted. A separability analysis ensures that the utilitarian aspects of useful articles are not registered. Section 505.02 of *Compendium II* provides written guidelines for this separability analysis as follows:

> Registration of claims to copyright in three-dimensional useful articles can be considered only on the basis of separately identifiable pictorial, graphic, or sculptural features which are capable of independent existence apart from the shape of the useful article. Determination of separability may be made on either a conceptual or physical basis.

These guidelines are based on Congress's clarification in the legislative history of the Copyright Act of 1976 that utilitarian aspects of useful articles are not copyrightable:

> [A]lthough the shape of an industrial product may be aesthetically satisfying and valuable, the Committee's intention is not to offer it copyright protection under the bill. Unless the shape of an automobile, airplane, ladies' dress, food processor, television set, or any other industrial product contains some element that, physically or conceptually, can be identified as separable from the utilitarian aspects of that article, the design would not be copyrighted under the bill. The test of separability and independence from the "utilitarian aspects of the article" does not depend upon the nature of the design –

> that is, even if the appearance of an article is determined by esthetic (as opposed to functional) considerations, only elements, if any, which can be identified separately from the useful article as such are copyrightable. And, even if the three-dimensional design contains some such element (for example, a carving on the back of a chair or a floral relief design on silver flatware), copyright protection would extend only to that element, and *would not cover the over-all configuration of the utilitarian article as such.*

H.R. Rep. No. 94-1476, at 55 (1976). (emphasis added)

A subject's pictorial, graphic, or sculptural features are "physically separable" if they can be separated from the useful article by ordinary means.

> The physical separability test derives from the principle that a copyrightable work of sculpture which is later incorporated into a useful article retains its copyright protection . . . . However, since the overall shape of a useful article is not copyrightable, the test of physical separability is not met by the mere fact that the housing of a useful article is detachable from the working parts of the article.

Compendium II, § 505.04

In the case of conceptual separability, *Compendium II*, § 505.03, states:

> Conceptual separability means that the pictorial, graphic, or sculptural features, while physically inseparable by ordinary means from the utilitarian item, are nevertheless clearly recognizable as a pictorial, graphic, or sculptural work which can be visualized on paper, for example, or as free-standing sculpture, as another example, independent of the shape of the useful article, *i.e.*, the artistic features can be imagined separately and independently from the useful article without destroying the basic shape of the useful article. The artistic features and the useful article could both exist side by side and be perceived as fully realized, separate works – one an artistic work and the other a useful article. Thus, carving on the back of a chair, or pictorial matter engraved on a glass vase, could be considered for registration. The test of conceptual separability, however, is not met by merely analogizing the general shape of a useful article to works of modern sculpture, since the alleged "artistic features" and the useful article cannot be perceived as having separate, independent existences. The shape of the alleged "artistic features" and of the useful article are one and the same, or differ in minor ways; any differences are de minimis. *The mere fact that certain features are nonfunctional or could have been designed differently is irrelevant under the statutory definition of pictorial, graphic, and sculptural works.* (emphasis added)

Section 505 of *Compendium II*, as quoted above, is a direct successor to the Copyright Office regulation that was affirmed in *Esquire*, 591 F.2d 796, *cert. denied*, 440 U.S. 908 (1979). The Office relies on the authority of *Esquire* for the analysis it follows to determine whether pictorial, graphic,

or sculptural works are separable from the utilitarian objects in which they are incorporated. As *Esquire* explains, copyright protection is not available for the "overall shape or configuration of a utilitarian article, no matter how aesthetically pleasing that shape may be." *Id.* at 800. In that case, the Office had refused to register an outdoor lighting fixture which arguably contained non-functional, purely aesthetic features. The court upheld the Office's refusal, noting that "Congress has repeatedly rejected proposed legislation that would make copyright protection available for consumer or industrial products." *Id.*[1] Similarly in *Norris*, 696 F.2d at 924, *cert. denied*, 464 U.S. 818 (1983), the court held that a wire-spoked wheel cover was not entitled to copyright protection because it was a useful article used to protect lugnuts, brakes, wheels and axles from damage and corrosion, and it did not contain any sculptural design features that could be identified apart from the wheel cover itself.

The District Court for the District of Columbia confirmed the Office's *Compendium II* test in *Custom Chrome, Inc. v. Ringer*, 1995 U.S. Dist. LEXIS 9249 (D.D.C. June 30, 1995). The plaintiffs in *Custom Chrome* brought an action under the Administrative Procedure Act (the "APA"), 5 U.S.C. §§ 701-706, asserting that the Office's refusal to register twenty-three motorcycle parts was arbitrary and not in accord with the law. *Custom Chrome*, 1995 U.S. Dist. LEXIS 9249, at *1. The court held that the Office's use of the *Compendium II* separability test to determine that the motorcycle parts did not contain separable features was reasonable and consistent with the Copyright Act and with "declared legislative intent." *Id.* at *12.

Because *Custom Chrome* was an APA action, the court did not determine which of the several separability tests proffered by legal scholars or derived from case law was the correct one. The court simply stated that "so long as the Copyright Office has offered a reasonable construction of the copyright statute, its judgment must be affirmed even if this court were to accept Custom Chrome's assertions that the duality test would support its copyright claims." *Custom Chrome*, at *15. We point out *Custom Chrome* to emphasize that *Compendium II's* separability test, centering on the general shape of the useful article, is consistent with "later cases decided under the present law and the legislative history," *Id.* at *16, in denying protection to the shape of an industrial product even though it may be aesthetically pleasing. Further, *Compendium II* states that the shape or configuration of supposedly artistic features cannot be considered to provide the requisite separability merely because the features are nonfunctional. *Id.* at § 505.03.

We analyze the 12 Works at issue here under the *Esquire* and *Compendium II* test. Under this test, we find that only two of the 12 Works exhibit any separable features.

B. Compendium test applied to the 12 Works

1. The useful articles at issue

The Board considers both the door designs and the doors themselves to be two parts of the

[1] Although *Esquire* was decided under the 1909 version of the Copyright Act, its reasoning is, nevertheless, applicable to cases arising under the 1976 Act. "[T]he 1976 Act and its legislative history can be taken as an expression of congressional understanding of the scope of protection for utilitarian articles under the old regulations." 591 F.2d at 803.

same useful articles. Again, the statutory definition of a useful article states that "an article that is normally a part of a useful article" is considered a useful article. 17 U.S.C. § 101. The materials you have submitted in support of registration for the work show that they are marketed as one unit. The works are not simply the design features but the doors themselves. In fact, most of the color photographs that were submitted as part of your Second Reconsideration letter show the doors installed and serving their intended function.

2. All of the 12 Works fail Compendium II's test for physical separability

To the extent that physical separability is an issue in this case, the Board determines that the door designs are not physically separable from the doors themselves. Physical separability would appear to be a moot point in this instance because the door design elements could not be actually separated by ordinary means, the hallmark of a physically separable element. *Compendium II*, § 505.04. Though you describe these elements as "three-dimensional sculptures," *First Reconsideration letter* at 1, these elements are not physically distinct from the door panel. Rather, they comprise the door panel. Having to divide an otherwise solid door with a specialized device, such as a band saw, would not be within the scope of separation by ordinary means – either under *Compendium II's* test or under any other test – because doing so would essentially destroy the specific work. In addition, since the overall shape of a useful article is not copyrightable, this test cannot be met by the mere fact that the housing of a useful article is detachable from the working parts of the article, even by ordinary means.

3. Ten of the 12 Works fail Compendium II's test for conceptual separability

The Board concludes that the design features of all but two of the 12 Works are not separable under the Office's *Compendium II* test because these features are part of the overall shape of the article itself. The artistic features of these designs cannot be "imagined separately and independently from the useful article without destroying the basic shape of the useful article" as required by *Compendium II*, § 505.03. We find that the basic shape of 10 of the designs at issue would certainly be compromised if separated from the doors themselves.

Specifically, the glass panes in your door designs are not conceptually separable from the doors because they are part of the overall design of the door panels. You refer to these elements as "sculptures incorporating geometric designs of glass." *First Reconsideration Letter* at 2. This definition implies that these sculptures are somehow separate from the door panels. Yet, these designs are not artistic works that "happen to be on a door," *Second Reconsideration letter* at 1, they are the designs of the door panels themselves.[2] First, each design is part of the overall door panel, not a separate creative work like a painting. Second, glass panes are normally a part of the overall shape of door panels and serve a purpose: they provide light, keep out the elements, and may allow a means to view what is on the other side of the door.[3] On the other hand, creative designs within glass panes, such as those often found in churches, may be copyrightable, but the shape and arrangement of the glass panes themselves is not copyrightable regardless of their creative design and aesthetically pleasing nature. Regarding the "Fullback" and "Racerback" designs, however, the elevated circles

[2] You argue that these designs "could easily be placed on a steel sculpture to be displayed in a museum or some other setting." *First Reconsideration letter* at 2. However, these designs specifically depict the design of door panels, and not a steel sculpture.

[3] Additionally, glass panes serve a useful purpose as transparent and semi-transparent windows. Your descriptions of "Four Horizons," "Halo," and "Slideshow" recognizes this useful function. *Second Reconsideration letter* at 3.

can be imagined "separately and independently from the useful article without destroying the basic shape of the useful article," *Compendium II § 505.03*, with the useful article in this case being a door. Unlike the other door designs, "Fullback" and "Racerback" do not integrate their artistic elements into the fundamental shape of the door, but add these elements, much as one would add a carving to the back of a chair, to use an example from *Compendium II*.

The cases you cited in support of separability do not compel a different conclusion with regard to the 10 door designs where the Board finds no separability. First, *Kieselstein-Cord v. Accessories by Pearl, Inc.* involved two belt buckles, registered by the Copyright Office, which consisted of solid sculptured designs with rounded corners appearing within several surface levels. 632 F.2d at 990. The Second Circuit stated that the belt buckles in *Kieselstein* should be "considered jewelry" that was distinct from both the belt buckles's functional frame and purpose. *Kieselstein*, 632 F.2d at 993. The court explained that wearers of the buckles "used them as ornamentation for parts of the body other than the waist." *Id.* We do not consider the simple, geometric rectangular arrangement of the 10 door designs to rise to applied art status in this sense.

Moreover, the features of the 10 door designs containing window elements are subsumed in the overall shape or configuration of the useful articles *themselves*, whereas the belt buckles in *Kieselstein* contained applied art that was distinct from the useful articles. The Second Circuit explicitly stated that, in considering the sculptural features of the *Kieselstein* belt buckles conceptually separable, its conclusion of conceptual separability "is not at variance with the expressed congressional intent to distinguish copyrightable applied art and uncopyrightable industrial design." 632 F.2d at 993. It is the overall shape of the useful article that Congress has determined cannot be protected by copyright. The applied art in *Kieselstein* reflected sculpted, contoured lines which could not fairly be said to be co-extensive with the entire shape of the buckles. In contrast the 3-dimensional design of the 10 door designs are part and parcel of the doors themselves, whose ultimate purpose is to be a part of a house or building.

Likewise, the work at issue in *Spectrum Creations, Inc. v. Catalina Lighting, Inc.* was a graphic, stained-glass design embodied in plaintiff's lampshade, rather than the overall shape of the lamp itself. *See Spectrum Creations, Inc. v. Catalina Lighting, Inc.*, 2001 U.S. Dist. LEXIS 11861 (W.D. Tex. July 31, 2001). Additionally, the graphic design in *Spectrum Creations* was used "on more than 35 items, including, but not limited to, lighting fixtures and lamps," further supporting the finding that this design was separate from the overall shape of this particular lamp. On this basis, the district court distinguished the graphic design embodied in the lamp at issue in *Spectrum Creations* from the lamp at issue in *Esquire*, where the owner sought copyright protection for "the entire shape and design of [an] outdoor lamp," and held that such graphic design was uncopyrightable. In the case at hand, the 10 door designs are comparable to the lamp design rejected in *Esquire, i.e.*, the designs of the articles are co-extensive with, and constitute, the shape of the useful articles (the door panels). This was not the case in *Spectrum Creations*, distinguishable because the protected aspect of the lamp there was the graphic design or artwork on the shade.

Third, the copyrighted mannequins in *Superior Form Builders, Inc. v. Dan Chase Taxidermy Supply Co.* are also distinguishable from the 10 door panel designs. *Superior Form Builders, Inc. v. Dan Chase Taxidermy Supply Co.*, 74 F.3d 488, 494 (4th Cir. 1996). As Ms. Giroux-Rollow noted, the court in *Superior Form Builders* found that the mannequins are sculptures themselves and "'by definition are not useful articles.'" *Id.* at 494 (citing and affirming the District Court's conclusion).

The court explained that mannequins are useful articles when they "[have] as [their] function something more than portraying [their] own appearance," such as the mannequins of partial human torsos addressed in *Carol Barnhart, Inc. v. Economy Cover Corp. Id.* (citing *Carol Barnhart*, 773 F.2d 411, 418 (2d Cir. 1985). Thus, this case is more about determining whether an article as a whole should be considered a useful article or a work of art. Here, door panels are clearly useful articles and, therefore, their overall designs are not copyrightable.

Finally, applying the rationale of the U.S. District Court for the Southern District of New York in *Act Young Imports, Inc. v. B & E Sales Co.*, 667 F. Supp. 85 (S.D.N.Y. 1986) also does not lead to a different conclusion. The court in *Act Young* did not thoroughly discuss the issue of separability apart from referencing *Carol Barnhart* and *Kieselstein*. Instead, the court merely concluded that "the artistic aspect of the backpack, that is the animal image, is separate from the useful function of the packs." The "animal-shaped backpacks," *Id.* at 87, therefore had two conceptually distinct parts: the backpack and the animal shape attached to the standard backpack form. The copyrighted design was not the aesthetic design of a backpack but the conceptually separate 3-dimensional animal shape. While we recognize this line may be difficult to draw in some situations, the 10 door designs do not involve a separate sculpture attached to a door panel but clearly the design of the door panel itself.

Thus, 10 of the 12 door designs fail *Compendium II*'s test for conceptual separability and the case law you cited does not compel us to conclude differently. Moreover, nothing about these 10 designs legally distinguishes themselves from the designs of any other door panel.

C. The standard for creativity

While we need not reach the issue of creativity regarding the 10 door designs that we found contained no separable features under the useful article analysis, we consider the question in order to address the arguments presented in your Second Reconsideration letter, and as applied to the "Fullback" and "Racerback" designs.

It is axiomatic that separable elements incorporated into a useful article can warrant copyright protection in and of themselves provided that they embody a sufficient amount of creativity. *Compendium II*, Ch. 500, § 503.02(a) ("Copyrightability depends upon the presence of creative expression in a work, and not upon . . . symbolic value.").

However, an artistic feature which may be separable from a utilitarian object does not necessarily mean that it will merit copyright protection, either as a single work or in combination with other elements. All copyrightable works, be they sculptures, engravings or otherwise, must qualify as "original works of authorship." 17 U.S.C. § 102(a). The term "original" consists of two components: independent creation and sufficient creativity. *Feist*, 499 U.S. at 345. First, the work must have been independently created by the author, *i.e.*, not copied from another work. The Office accepts at face value the assertion on the application for registration that your client, Neoporte, Inc., independently created these door designs. Therefore, the first component of the term "original" is not at issue here. Second, the work must possess sufficient creativity. In determining whether a work embodies a sufficient amount of creativity to sustain a copyright claim, the Board adheres to the standard set forth in *Feist*, where the Supreme Court held that only a modicum of creativity is necessary.

The Court stated that the requisite level of creativity is "extremely low;" "even a slight

amount will suffice." *Feist*, 499 U.S. at 345. However, the Court also held that some works (such as the work at issue in that case) fail to meet the standard. The Court observed that "[a]s a constitutional matter, copyright protects only those constituent elements of a work that possess more than a *de minimis* quantum of creativity," *id.* at 363, and that there can be no copyright in a work in which "the creative spark is utterly lacking or so trivial as to be virtually nonexistent." *Id.* at 359; *see also* 37 C.F.R. § 202.10(a) ("In order to be acceptable as a pictorial, graphic, or sculptural work, the work must embody some creative authorship in its delineation or form."); 1 M. Nimmer & D. Nimmer, *Nimmer on Copyright* § 2.01(B) (2002) ("[T]here remains a narrow area where admittedly independent efforts are deemed too trivial or insignificant to support a copyright.").

Even prior to *Feist*, the Copyright Office recognized the modest, but existent, requisite level of creativity necessary to sustain a copyright claim. *Compendium II* states, "Works that lack even a certain minimum amount of original authorship are not copyrightable." *Compendium II*, Ch. 200, § 202.02(a). With respect to pictorial, graphic, and sculptural works, *Compendium II* states that a "certain minimal amount of original creative authorship is essential for registration in Class VA or in any other class." *Id.* Ch. 500, § 503.02(a). In implementing this threshold, this Office, as well as the courts, has consistently found that standard designs and geometric shapes are not sufficiently creative in themselves to support a copyright claim. *Id.* ("[R]egistration cannot be based upon the simplicity of standard ornamentation . . . .").[4]

Of course, some combinations of common or standard design elements contain sufficient creativity with respect to how they are combined or arranged to support a copyright. *See Feist*, 499 U.S. at 358 (explaining that the Copyright Act "implies that some 'ways' [of compiling or arranging uncopyrightable material] will trigger copyright, but that others will not;" determination of copyright rests on creativity of coordination or arrangement). However, merely combining non-protectible elements does not automatically establish creativity where the combination or arrangement itself is simplistic or trivial. For example, the Eighth Circuit upheld the Register's refusal to register a simple logo consisting of four angled lines which formed an arrow and the word "Arrows" in cursive script below the arrow. *John Muller & Co. v. New York Arrows Soccer Team, Inc.*, 802 F.2d 989 (8th Cir. 1986).

Even though the design aspects of only two door designs were separable from the door panel themselves, we have determined that these very few separable features are uncopyrightable. Additionally, even considering *arguendo* that the design aspects of the other 10 designs were separable, these design aspect are also uncopyrightable. Taking all 12 Works together, the only potentially separable features consist of uncopyrightable geometric configurations in various patterns. Since geometric shapes are uncopyrightable, these design patterns would be copyrightable only if some distinguishable aspect in their selection, arrangement or modification reflects choice and authorial discretion that is not so obvious or minor that the "creative spark is utterly lacking or so trivial as to be nonexistent." *Feist*, 499 U.S at 359. The simple elements present in the door designs are not numerous enough nor do their arrangements reflect this type of choice or authorial discretion.

First, viewing the color photographs included in your Second Reconsideration letter does not

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[4] *See also, id.* Ch. 200, § 202.02(j) ("Familiar symbols or designs . . . or coloring, are not copyrightable."); *Id.* Ch. 500, § 503.03(b) ("No registration is possible where the work consists solely of elements which are incapable of supporting a copyright claim."); 37 C.F.R. § 202.1(a) ("[F]amiliar symbols or designs" are "not subject to copyright and applications for registration of such works cannot be entertained.").

change our conclusion. Depicting the doors in picturesque settings does not make the shapes and patterns of the door designs more or less copyrightable, nor does it transform the functional doors into sculptural works. While useful to visualize the elements as incorporated into the doors themselves, we find that Ms. Giroux-Rollow's description, *see Giroux-Rollow letter* at 3-4, of the design elements, and the various combinations and arrangements is sufficiently accurate. Nevertheless, for purposes of this discussion, we again describe the designs below in some detail.

"Monoporte," "Acuity," and "Q-Porte" each contain a number of square windows, one, three and four, respectively. The window in "Monoporte" is centered on the door at eye level. "Acuity" has three windows centered in the door and arranged vertically. "Q-Porte" employs the same basic design with four windows. "Trilite" also has three square windows, but in this case, the windows are staggered so that two of the windows line up vertically on one side of the door and the third is placed on the other side, an equal distant from the edge. "Lumen," "Meridian," "Sideshow," "Visteon," and "4-Horizons" all use rectangular windows. The first four designs each have a single rectangular window of differing sizes which are centered in the door, except for the window in the "Sideshow" design. Here the window is placed closer to the edge opposite to the side the handle. Similarly, "Halo" has a single circular window, centered about a third of the way down from the top. The final two designs, "Racerback" and "Fullback," have no windows. Each, however, has a simplistic pattern of raised dots arranged in a linear fashion. "Fullback" has six equally spaced columns of the raised dots that cover the door, creating a pegboard appearance. "Racerback," on the hand, has seven columns of the raised dots, more closely spaced and running down the center of the door. The use of squares, rectangles, and circles arranged in the basic and common patterns described here simply lacks the spark of creativity needed to sustain a copyright.

Nor is it the possibility of choices that determines copyrightability. A combination of unprotectible elements is eligible for copyright protection only if those elements are numerous enough and their selection and arrangement original enough that their combination constitutes an original work of authorship. As the Ninth Circuit announced,

> It is not true that *any* combination of unprotectable elements automatically qualifies for copyright protection. Our case law suggests, and we hold today, that a combination of unprotectable elements is eligible for copyright protection only if those elements are numerous enough and their selection and arrangement original enough that their combination constitutes an original work of authorship.

Satava v. Lowry, 323 F.3d 805, 811 (9th Cir. 2003).

We find the designs of the 12 Works fail to meet this standard.

Second, the application of your discussion of the choices and themes of your works, while providing elaborate descriptions of the designs, is too broad to apply in these situations and conflates the function of doors with pure creative expression distinct from this function. First, if the "theme" behind a symbol automatically makes that symbol copyrightable, any symbol or combination of symbols could be copyrightable. The circle of a wedding ring may be copyrighted for "illustrating the theme of infinity by having no beginning and no end" and the black cylinder of a tall hat as "symbolizing stature." Instead of engaging in this type of analysis, the Office simply looks to whether the actual expression is sufficiently creative in and of itself to merit copyright protection. Again, we conclude that these basic combinations of general shapes are not sufficiently creative. Moreover, a functional element of a design cannot be used as support for the design's copyrightability because a useful article is not copyrightable. All but two of the themes, "Racerback"

and "Fullback," rely primarily on the function of windows.

The cases you have cited do not compel us to conclude differently. The District Court for the District of Columbia in *OddzOn* supported the Office's refusal to extent copyright protection to a KOOSH ball, a ball "formed 'of many hundreds of floppy, wiggly, elastomeric, spaghetti-like filaments radiating in three dimensions.'" 1989 U.S. Dist. LEXIS at 17077, at *1 (citing the plaintiff's description of its ball). While the court did recognize that the Office cannot refuse copyright protection for a design merely because it contains a familiar shape, the court explained that "it is not merely that the KOOSH ball approximates a sphere, it is also that there is not enough additional creative work beyond the object's basic shape to warrant a copyright." *Id.* at *6. Additionally, the court considered the "tactile aspect" of the ball to be part of the function of the ball, and therefore could not be considered copyrightable. *Id.* at *7-8. Moreover, the Eighth Circuit in *New York Arrows Soccer Team*, quoted by the District Court in *OddzOn*, also supports our conclusion by holding that a design of "four angled lines which form an arrow and the word 'Arrows' in cursive script" did not embody the requisite level of creativity to receive copyright protection. 802 F.2d 989, 990 (8th Cir. 1986).

Also, the designs at issue here are not comparable to the work in *Atari Games Corp. V. Oman (Atari II)*, 979 F.2d 242 (D.C. Cir. 1992). In *Atari II*, the Court of Appeals for the District of Columbia held that in refusing to register the video game "Breakout," the Copyright Office failed to consider the "flow of the game as a whole" and did not pay sufficient "attention to whether any creativity is displayed in the movement of the game pieces." *Id.* at 245-46. Each image displayed by the video game consisted of "rows of rectangles arranged in four monochromatic stripes" and a circle against a black backdrop. The court did find that this "work utilizing simple geometric shapes" was copyrightable, *Second Reconsideration letter* at 2, but "the interrelationship of the successive BREAKOUT screens [was a] crucial" aspect of the court's rationale. *Id.* at 244. The court specifically pointed to the "placement and design of the scores, the changes in speed, the use of sounds, and the synchronized graphics and sounds which accompany the ball's bounces behind the wall." *Id.* at 247. Here, the door designs at issue are not audiovisual works, and any movement of the shapes is related to the function of opening and closing the doors. The very basic arrangement of general shapes used in these designs does not compare to the combination of the various creative aspects of the video game.

The designs at issue here are also not comparable to the work in *Tennessee Fabricating Co.*, 421 F.2d at 279. The disputed design in *Tennessee Fabricating* was a filigree pattern "formed entirely of intercepting straight lines and arc lines" on a "metal casting unit intended for use in combination or singly for a decorative screen or room divider to 'finish up' a space." *Id.* at 280-81. The owner employed an artist to design this pattern. *Id.* at 281. As Ms. Giroux-Rollow explained, a filigree pattern by definition is an "ornamental openwork of delicate or intricate design." *See Giroux-Rollow letter* at 5. A work consisting of straight and arced lines that form a creative, distinctive pattern significantly differs from a simple arrangement of generic, commonplace shapes like squares, rectangles, and circles as is the case here. *See Tennessee Fabricating Co.*, 421 F.2d at 281-82.

The design of the handkerchief in *Concord Fabric, Inc.*, 409 F.2d at 1315, also significantly differs from these door designs. First, the defendant in this case did not even raise an argument against this design's copyrightability; the "[p]laintiff's handkerchief type pattern was duly copyrighted in 1968 and defendant raises no objection for the purposes of this motion to its validity." *Concord Fabric, Inc.*, 296 F. Supp. at 737, (reversing the holding of the district court regarding the issue of substantial similarity between the designs of the defendant and plaintiff). Second, the

District Court clarified that the copyright extended only to the plaintiff's "designs within the large squares which compose the handkerchief and not in the squares themselves" nor "the basic handkerchief design." Moreover, while the primary artistic work on the fabric consisted of not only a "circle within a square within a square," *Second Reconsideration letter* at 3 (quoting *Concord Fabric, Inc.*, 409 F.2d at 1316), but also included "designs within the circles, between the squares, and around the outer square," "frames around the border," and colors. *Concord Fabric, Inc.*, 409 F.2d at 1316. Thus, while we reserve the question of whether a particular design with only a circle within a square within a square is copyrightable, the design in *Concord Fabric* is more intricate than this description and did not consist solely of arrangements of general shapes, as do these door designs.

Likewise, the defendants in *Lynch Knitting Mills* did not question the copyrightability of the pattern on a sweater that differs significantly from these door designs. *See* 689 F. Supp. 176. The only question of the validity of the copyright of this pattern involved whether the work was an independent creation or simply copied from a standard argyle pattern. *See id.* at 178-79 (dismissing this contention for lack of supporting evidence). Regardless, the court describes the abstract pattern on the sweater in great detail in the background section of the opinion, noting the "heavy black outlines of a set of diamond-like rhomboids" with a "blended gray interior" superimposed on "horizontal rows of large rhomboids" of two colors connected by "small black diamonds." *Id.* Thus, this pattern is significantly more abstract and creative than the arrangement of general shapes shown in these door designs.

The other cases cited in your first reconsideration letter are equally distinguishable. *Roulo* involved a greeting card design that contained sufficient creativity in the combination of otherwise uncopyrightable elements, such as the "size of the cards, the color of the paper, ink, and border designs, the general concept of stripes, the ellipses and the single-side format" of the design. 886 F.2d at 939-40. It is important to note that each of these aspects may be considered for copyright analysis, unlike potentially similar elements of the doors like the door's size, texture, shape, material, etc., because the card was not considered a useful article. *See id.*

Both *Soptra Fabric* and *North Coast Ind.* present other examples of situations where the substantial similarity between two works, not the original work's copyrightability, is at issue. *See Soptra Fabric*, 490 F.2d at 1092; *North Coast Ind.*, 972 F.2d at 1032. In *Soptra Fabric*, the only question regarding the validity of the copyright in a complicated textile design containing at least a "strip of crescents, scalloping or ribbons between that strip and then rows of semicircles" involved whether the design was sufficiently different from another uncopyrighted work to merit copyright protection. 490 F.2d at 1094. In *North Coast Ind.*, the Ninth Circuit does not present a full discussion of the work, apart from explaining that the work of twentieth century painter Piet Mondrian, who "developed a distinctive style of nonobjective painting based on the reduction of pictorial elements to vertical and horizontal lines, using the three primary colours and non-colours," inspired the design that soon became known as the "Mondrian look." *Id.* at 1034-35. The court used the phrase "bounded geometric figures in a pattern" not to simplify the pattern but to explain that using this idea to create a design does not infringe on a particular "Mondrian look" pattern. Thus, the particular patterns at issue in these cases were undisputably more than trivial variations of generic shapes and copyrightable, in contrast to the door designs at issue here. *See id.* at 1034.

In *Runstadler Studios*, the sculptors of "Spiral Motion" used "39 clear glass rectangles, overlying each other to form a spiral with approximately 405 degree of arc." 768 F. Supp. at 1294. While this may technically be considered a "combination of glass rectangles," *First Reconsideration*

letter at 3, this combination certainly displays more creativity than standard square or circular windows. Moreover, these glass planes clearly composed a sculpture and were not a part of a useful article in the same way that glass panes are a part of a door.

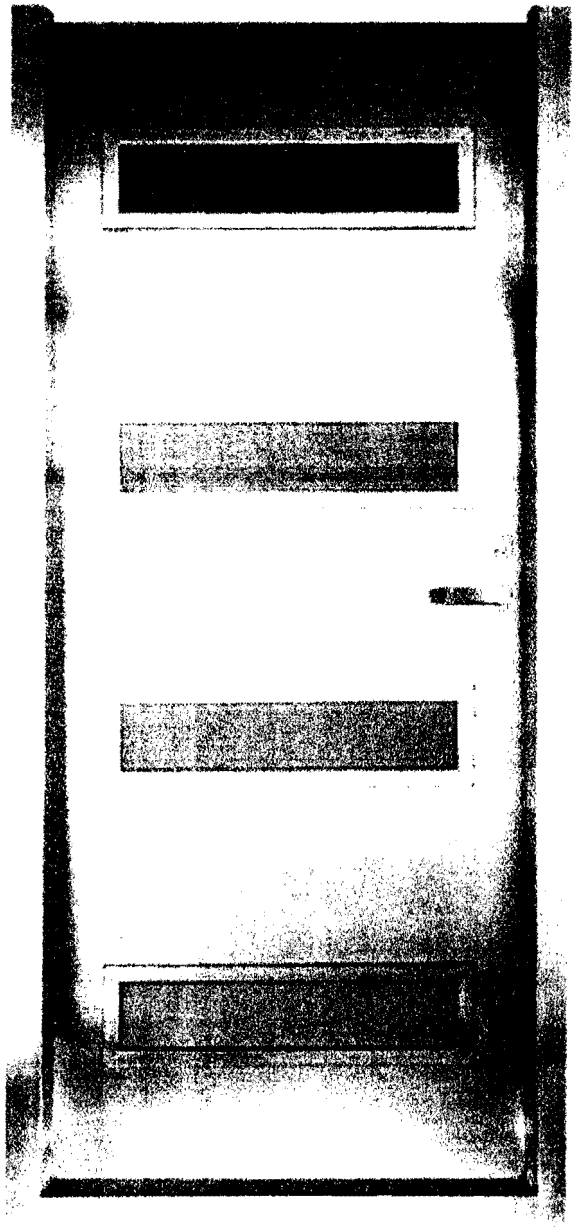
Finally, *Cordon Holding B.V. v. Northwest Publishing Corp.* involved the works of "renowned Dutch graphic artist M.C. Escher." 2002 U.S. Dist. LEXIS 6111, *3 (S.D.N.Y. Apr. 8, 2002). The District Court mentioned the phrase "repeating geometric patterns," quoted in *First Reconsideration letter* at 3, as part of its description of the style of M.C. Escher's works. *Id.* The full sentence reads, "his works are recognizable for their unique style, frequently incorporating spatial illusions, impressionistic buildings, and repeating geometric patterns." *Id.* The case itself revolved around the issue of the publication, not copyrightability, of various woodcut, wood engraving, lithograph, or mezzotint prints, including "'Hand with Reflecting Sphere,' 'Waterfall,' 'Drawing Hands,' 'Day and Night,' and 'Reptiles.' Obviously, these famous works contain much more than trivial arrangements of generic shapes much different from the situation we have before us today.

For the reasons stated above, the Board affirms the refusal to register the 12 works discussed herein. This decision constitutes final agency action in this matter.

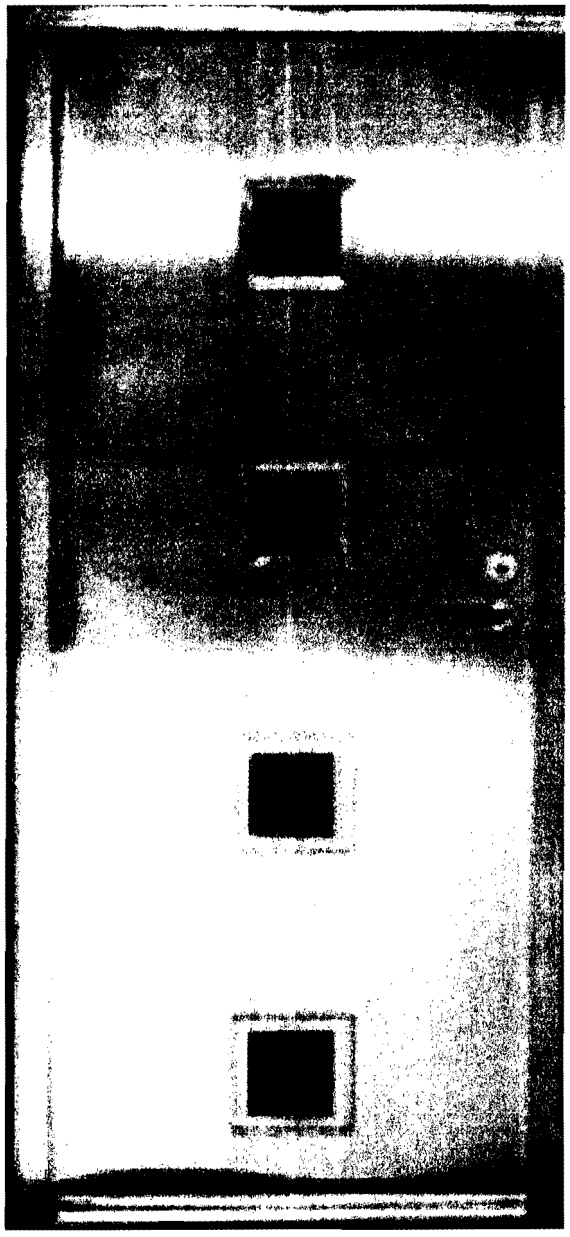
Sincerely,

Tanya M. Sandros
Copyright Office Deputy General Counsel
for the Review Board
United States Copyright Office

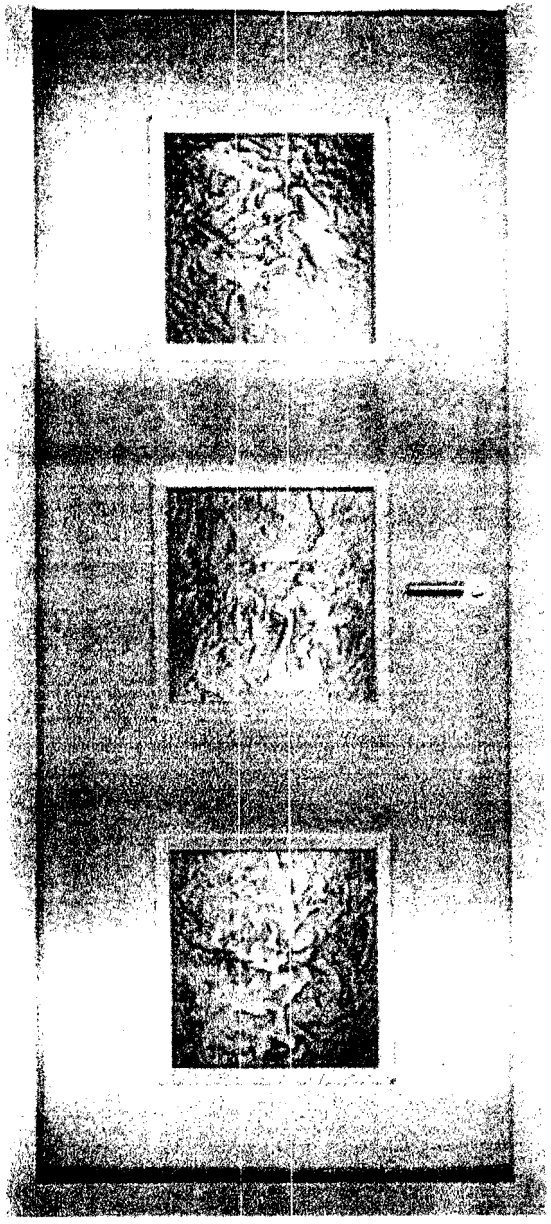
APPENDIX A-1



4-Horizons

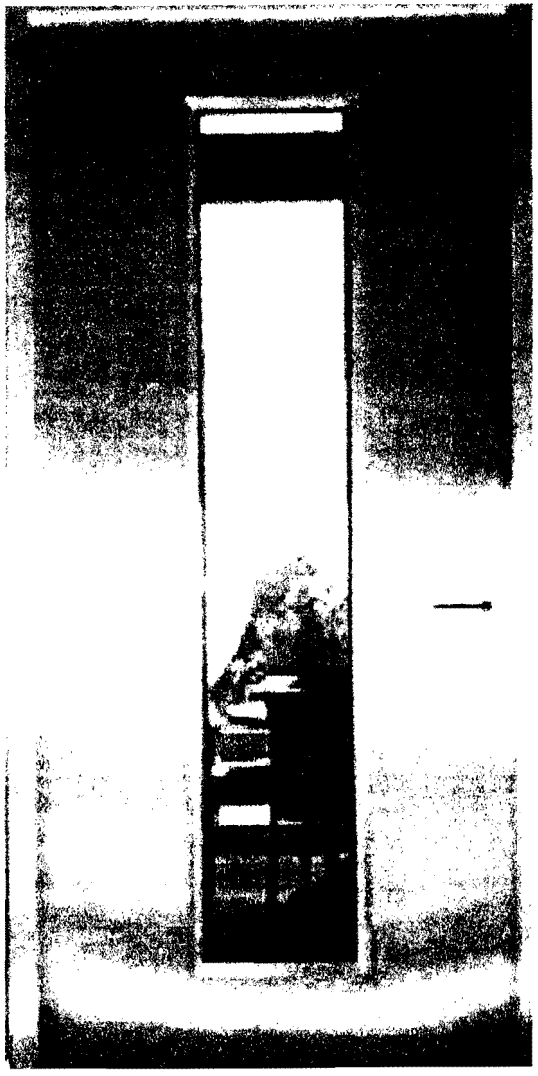


Q-Porte

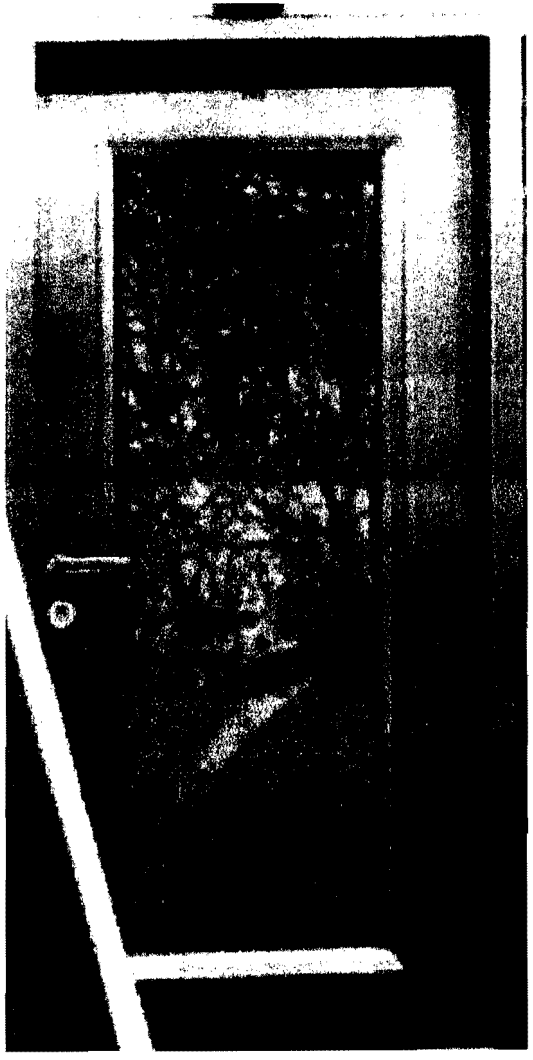


Acuity

APPENDIX A-2



Lumen

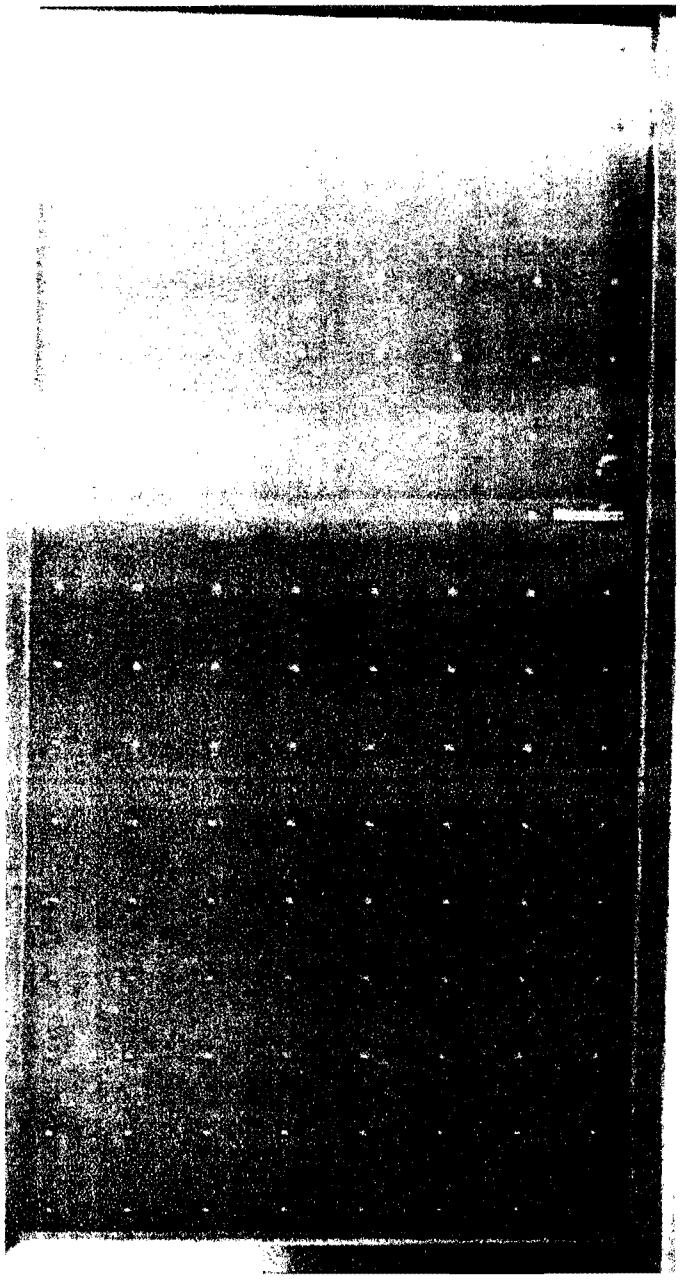


Visteon

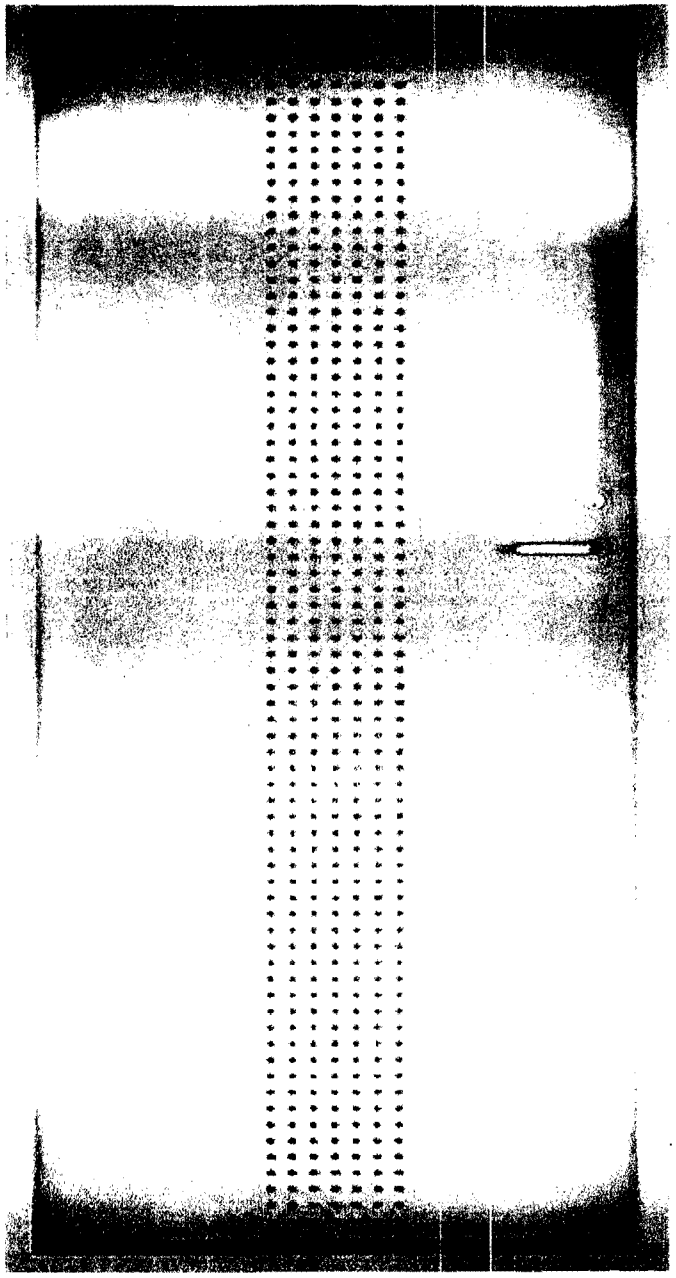


Sideshow

APPENDIX A-3

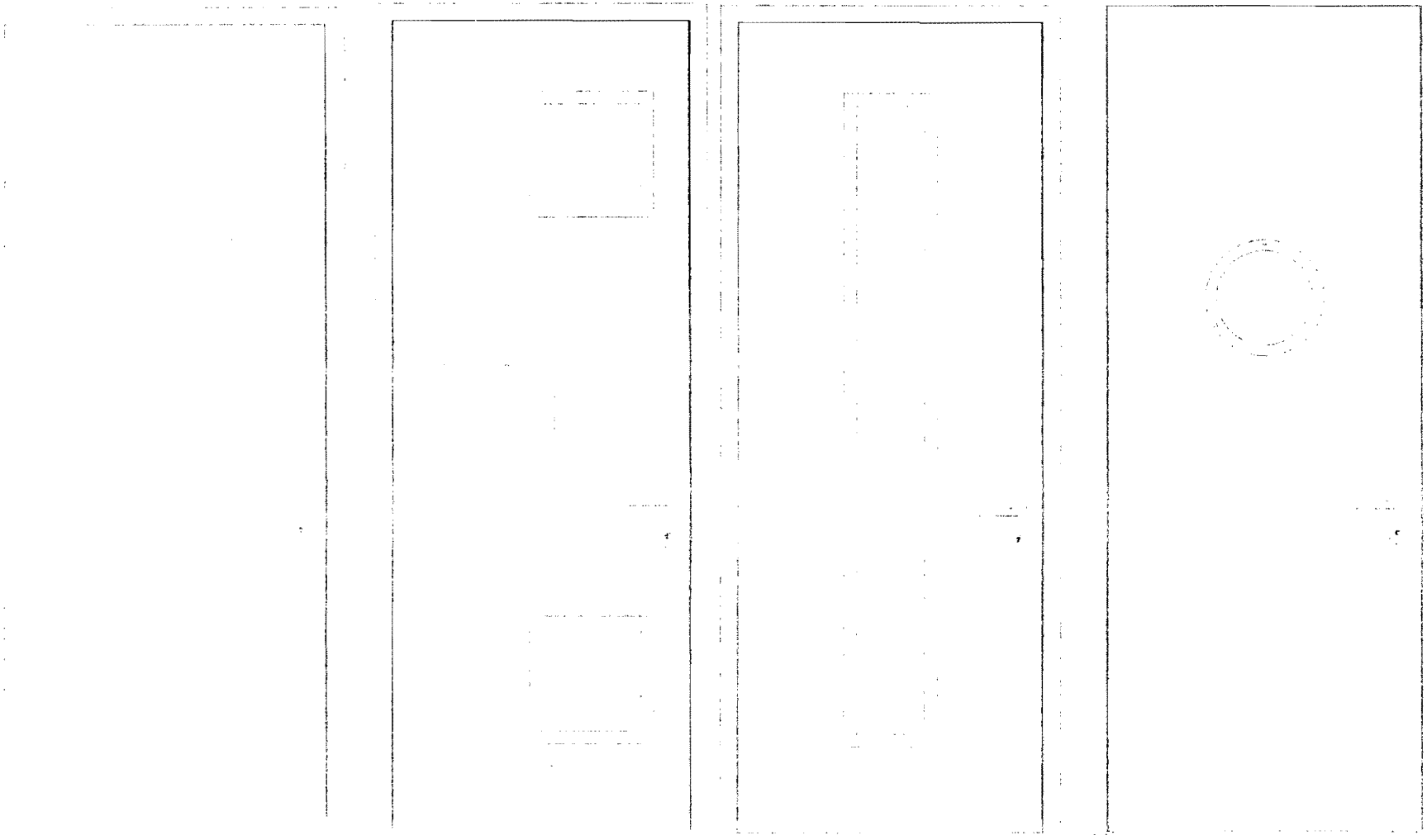


Fullback



Racerback

APPENDIX A-4



Monoporte

Trilite

Meridian

Halo