CIVIL COVER SHEET

ORIGINAL

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

FILED
APR 23 2002
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS

I. (a) PLAINTIFFS

Nancy A. Ross and Regency Railings, Inc.

DEFENDANTS

Capital U.S. Management, L.L.C. and Industria Italiana Arteferro, S.P.A.

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF (EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT Harris (IN U.S. PLAINTIFF CASES ONLY)

NOTE. IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Kenneth R. Glaser and Kenneth T. Emanuelson, Gardere Wynne Sewell LLP, 1601 Elm Street, Suite 3000, Dallas, Texas 75201 (214) 999-3000

ATTORNEYS (IF KNOWN)

3-02CV0841P

II. BASIS OF JURISDICTION (PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (For Diversity Cases Only) (PLACE AN "X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

V. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excl Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholder's Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury

PERSONAL INJURY
- ☐ 362 Personal Injury – Med Malpractice
- ☐ 365 Personal Injury – Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All other Real Property

CIVIL RIGHTS
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 444 Welfare
- ☐ 440 Other Civil Rights

PRISIONER PETITIONS
- ☐ 510 Motions to Vacate Sentence Habeas Corpus
- ☐ 530 General
- ☐ 535 Death Penalty
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights

FORFEITURE/PENALTY
- ☐ 610 Agriculture
- ☐ 620 Other Food & Drug
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 630 Liquor Law
- ☐ 640 R R & Truck
- ☐ 650 Airline Regs
- ☐ 660 Occupational Safety/Health
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Mgmt Relations
- ☐ 730 Labor/Mgmt Reporting & Disclosure Act
- ☐ 740 Railway Labor Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Empl Ref Inc Security Act

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☒ 830 Patents
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lund (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U S Plaintiff or Defendant)
- ☐ 871 RS – Third Party 26 USC 7609

OTHER STATUTES
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce/ICC Rates/etc.
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 810 Selective Service
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 875 Customer Challenge 12 USC 3410
- ☐ 891 Agricultural Acts
- ☐ 892 Economic Stabilization Act
- ☐ 893 Environment Matters
- ☐ 894 Energy Allocation Act
- ☐ 895 Freedom of Information Act
- ☐ 900 Appeal of Fee Determination Under Equal Access to Justice
- ☐ 950 Constitutionality of State Statutes
- ☐ 890 Other Statutory Actions

VI. CAUSE OF ACTION (CITE THE U.S. STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.)

Complaint for Direct, Contributory, and Inducement of Patent Infringement, and Copyright Infringement. Patent Infringement arises under Title 35 United States Code, sections 271, 281, 283, 284 and 285. Copyright Infringement arises under 17 U.S.C. sections 101 et seq.

VII. REQUESTED IN COMPLAINT: ☐ CHECK IF THIS IS A CLASS ACTION UNDER F R C P 23 **DEMAND $** CHECK YES only if demanded in complaint

JURY DEMAND: ☒ YES ☐ NO

VIII. RELATED CASE(S) IF ANY: (See instructions): JUDGE DOCKET NUMBER

DATE 4/23/02 SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG JUDGE

ORIGINAL

U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FILED
CLERK, U.S. DISTRICT COURT
By
Deputy

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

NANCY A. ROSS	)	
AND	)	
REGENCY RAILINGS, INC.	)	
	)	
Plaintiffs,	)	**CIVIL ACTION NO.**
	)	3-02CV 0841P
v.	)	
	)	
INDITAL U.S. MANAGEMENT, L.L.C.	)	
AND	)	
INDUSTRIA ITALIANA ARTEFERRO, S.P.A.	)	
	)	
Defendants.	)	

COMPLAINT FOR DIRECT, CONTRIBUTORY, AND INDUCEMENT OF PATENT INFRINGEMENT, AND COPYRIGHT INFRINGEMENT

Plaintiffs Nancy A. Ross ("Ross") and Regency Railings, Inc. ("Regency") complain of defendants Indital U.S. Management, L.L.C. ("Indital") and Industria Italiana Arteferro, S.p.A. ("Ind.I.A.") on the grounds of direct and contributory patent infringement, inducement of patent infringement, and copyright infringement.

I. PARTIES, JURISDICTION, AND VENUE

1. This action for patent infringement arises under Title 35, United States Code, including §§ 271, 281, 283, 284 and 285. This action for copyright infringement arises under 17 U.S.C. §§ 101 et seq. This court has jurisdiction over this action under 28 U.S.C. §§ 1331 and 1338(a). Venue is proper in this district under 28 U.S.C. §§ 1391(b), (c) and (d) and 1400.

2. Plaintiff Nancy A. Ross is an individual resident of the State of Texas having her place of business at 100 Glass Street, Suite 101, Dallas, Texas 75207.

3. Plaintiff Regency Railings, Inc. is a Texas corporation having its principal place of business at 100 Glass Street, Suite 101, Dallas, Texas 75207.

4. Upon information and belief, defendant Ind.I.A. is an alien corporation organized and existing under the laws of Italy, having a principal business address of Via Vicenza 8/12, 36034 Malo (Vi), Italy, but doing business in the State of Texas. Ind.I.A. is therefore subject to suit in this district.

5. Upon information and belief, defendant Indital is a Texas limited liability company, having a principal place of business at 415 Blueberry Street, Houston, Texas 77018, and is a wholly owned subsidiary of defendant Ind.I.A. Defendant Indital can be served with process, inter alia, through its registered agent, Bradley Stein, at 3109 Kelly Street, Houston, Texas, 77026.

6. Defendants Indital and Ind.I.A. will hereinafter sometimes be referred to collectively as "Defendants."

7. Defendants have committed, and continue to commit, the acts of infringement complained of herein, within the State of Texas and within this judicial district.

II.
FACTS GIVING RISE TO THIS ACTION

8. Ross is an award-winning interior designer and is particularly noted for her unique and creative designs of stairway and balcony railing systems. Owing to her reputation in the Dallas area, Ross' talents have been employed by many prominent citizens in the Dallas-Ft. Worth Metropolitan area, including celebrities and leaders of the Dallas business community. She is an allied member of the American Society of Interior Design and is a licensed interior designer by the Texas Association of Interior Design. She has been the recipient of many professional credits including recognition of her work by national interior design publications, as well as numerous builder and building trades associated publications. Her work has been recognized through awards for Best Interior Design In An Upscale Home and Luxury Home Of The Year. She has received awards for interior design in area expositions of upscale homes by national organizations, including Street of Dreams and Parade of Homes. These awards include Best Interior Design, Best Overall Room and Best Furnished Home. Her stairway and balcony railing designs are well known.

9. In the course of designing stairways and balconies for her clients' homes, Ross became increasingly aware of significant drawbacks inherent in then-existing railing systems and components. In particular, Ross determined that the conventional railing systems were overly complicated, insufficiently adaptable to various stairway and railing dimensional requirements, labor-intensive and thus overly costly to install.

10. Cognizant of the drawbacks inherent in existing railing designs, Ross began to develop an improved railing design overcoming the limitations found in the available railing systems.

11. Ultimately, Ross was successful in developing railing systems having substantial improvements over prior systems. Ms. Ross filed patent applications on the inventions of her systems during 1996 and 1998.

12. On October 13, 1998, Ross was granted, and is the owner of, United States Letters Patent No. 5,820,111, titled "Modular Stairway and Balcony Railing System" ("the '111 Patent"), a copy of which is attached hereto as Exhibit A. The '111 Patent is valid, subsisting, and in full force and effect.

13. On May 9, 2000, Ross was granted, and is the owner of, another United States Letters Patent No. 6,059,269, titled "Modular Stairway and Balcony Railing System" ("the '269 Patent"), a copy of which is attached hereto as Exhibit B. The '269 Patent is valid, subsisting, and in full force and effect.

14. The '111 Patent and the '269 Patent will hereinafter sometimes be referred to collectively as "the Ross Patents."

15. In addition to creating the inventions described and claimed in the Ross Patents, Ross also created a wide array of ornamental patterns, wholly original with Ross, which have contributed to and enhanced the aesthetic appearance of railing systems, and which are copyrightable subject matter under the Copyright Laws of the United States.

16. Ross has at all times complied with the Copyright Laws of the United States and has secured the exclusive rights and privileges under the Copyright Laws to her ornamental

patterns, including the securing of Certificates of Registration on numerous ones of her original and creative railing designs.

17. In particular, one of the original designs that Ross has created is entitled "Tuscany Railing Design," for which the Register of Copyrights has issued Certificate of Registration VA 1-086-070, and is attached hereto as Exhibit C. The copyright to the Tuscany Railing Design is valid and subsisting, and Ross is, and always has been, the lawful owner of such copyright and of the Certificate of Registration thereto.

18. Ross has granted to Regency Railings an exclusive license to manufacture and sell, inter alia, the railing systems described and claimed in the Ross Patents as well as those incorporating her copyrighted designs, including the copyrighted Tuscany Railing Design.

19. Pursuant to its license, Regency Railings commenced production and sale of railing systems incorporating the Tuscany Railing Design at least as early as 1998. Since that time, Regency has successfully commercialized these systems until Defendants entered the market and commenced its infringing activities, as set out in detail hereinafter.

20. Ross and Regency Railings have also extensively promoted the Tuscany Railing Design through a number of promotional channels, including magazine advertising and internet advertising. Thousands of copies of magazines featuring photographs of this design have been distributed to the public, and photographs of this design are also made available to the public through Regency Railings' website at www.regencyrailings.com.

III.
PATENT INFRINGEMENT

21. Plaintiffs reassert the allegations of paragraphs 1-14, 18 and 19 of the Complaint, which are incorporated herein by reference for the purpose of providing the initial allegations of this cause of action.

22. At all times material hereto, Plaintiffs have assured that the statutory patent notice of the Ross Patents has been affixed in accordance with the requirements of 35 U.S.C. § 287.

23. Based upon its pre-filing investigation, Plaintiffs are informed that Defendants are engaged in activities, within this district and elsewhere in the United States, which constitute direct, induced, and/or contributory infringement of one or more claims of the Ross Patents.

24. The infringing conduct of Defendants has caused, and if not enjoined will continue to cause, damage to the rights of Plaintiffs in the Ross Patents.

25. Plaintiffs are further entitled to recover from Defendants, under 35 U.S.C. § 284, their damages, including lost profits, they have sustained and will sustain as a result of Defendants' acts of infringement alleged above. In addition, upon information and belief, Defendants acts of infringement were and are intentional and willful, entitling Plaintiffs to enhanced damages under 35 U.S.C. § 284. At present, the full amount of such damages cannot be fully ascertained by Plaintiffs.

IV.
COPYRIGHT INFRINGEMENT

26. Plaintiffs reassert the allegations of paragraphs 1-8, and 15-20 of the Complaint which are incorporated herein for the purpose of providing the initial allegations of this cause of action.

27. By reason of Defendants' access to the advertising and other materials promoting the copyrighted Tuscany Railing Design, as well as Defendants' observation of Ross' railing designs and Regency railing products, Defendants have had access to and have reviewed the Tuscany Railing Design.

28. This access can be confirmed by the fact that railing systems and components sold and offered for sale by Defendants incorporate a design not only substantially similar, but essentially identical to, the Tuscany Railing Design.

29. Based on the foregoing, Plaintiffs allege that Defendants have reproduced, copied, displayed, and sold railing systems incorporating, the copyrighted Tuscany Railing Design in violation of Plaintiffs' exclusive rights under 17 U.S.C. § 106.

30. Defendants acts of copyright infringement were without the authorization or

consent of Plaintiffs and Plaintiffs are therefore entitled to recover, under 17 U.S.C. § 504, the actual damages suffered as a result of Defendants' infringement, but no less than statutory damages, and any and all profits of the Defendants that are attributable to the infringement. Plaintiffs are further entitled to an injunction under 17 U.S.C. § 502.

V.
ATTORNEYS' FEES

31. All of the foregoing allegations are incorporated herein by reference for all purposes.

32. Defendants' conduct herein has required Plaintiffs to retain the undersigned attorneys to enforce and protect their rights under the Patent and Copyright Law and to prosecute their claims in this lawsuit.

33. Owing to Defendants' violation of Plaintiffs' copyright, Plaintiffs are entitled to recover their reasonable attorney's fees under 17 U.S.C. § 505 in prosecuting its copyright infringement claims through trial and, if necessary, through appeal.

34. The facts giving rise to this cause of action qualify it as an exceptional case, and Plaintiffs are therefore also entitled to recover their reasonable attorney's fees under 35 U.S.C. § 285 in prosecuting its patent infringement claims through trial and, if necessary, through appeal.

VI.
PRAYER FOR RELIEF

Plaintiffs Nancy A. Ross and Regency Railings, Inc. therefore pray for judgment that:

a. Defendants have infringed one or more of the claims of the Ross Patents;

b. Defendants have infringed the copyrighted Tuscany Railing Design;

c. Defendants, their directors, officers, agents, servants, and employees, and all other persons in active concert or privity or in participation with Defendants, be restrained and enjoined from infringing the Ross Patents and the Tuscany Railing Design;

d. Defendants be ordered to pay to Plaintiffs the full amount of Plaintiff's damages, including enhanced and punitive damages, as well as profits obtained by Defendants, as a consequence of Defendants' infringing conduct;

e. Plaintiffs recover pre-judgment interest at the maximum lawful rate on the sums awarded herein;

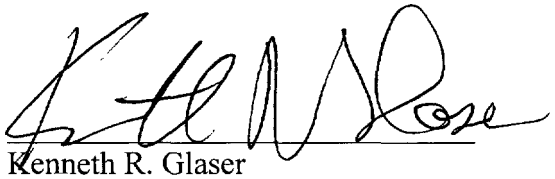
f. Plaintiffs recover post-judgment interest at the maximum lawful rate on the sums awarded herein; and

g. Plaintiffs be awarded their costs and the reasonable attorneys' fees and such other relief which Plaintiffs shall show themselves justly entitled.

JURY DEMAND

Plaintiff hereby demands trial by jury on all issues triable to a jury.

Respectfully submitted,



Kenneth R. Glaser
TX State Bar No. 07999000
Kenneth T. Emanuelson
TX State Bar No. 24012591
GARDERE WYNNE SEWELL, L.L.P.
3000 Thanksgiving Tower
1601 Elm Street
Dallas, Texas 75201-4761
Telephone - (214) 999-3000
Facsimile - (214) 999-4667

ATTORNEYS FOR PLAINTIFFS