

UNITED STATES TARIFF COMMISSION

**CONVERTIBLE GAME TABLES AND
COMPONENTS THEREOF**

**Report to the President
Concerning the Recommendation of a Temporary Exclusion Order
in Investigation No. 337-34 Conducted Under the
Provisions of Section 337 of Title III of the Tariff Act of 1930, as Amended**



**TC Publication 652
Washington, D. C.
March 1974**

UNITED STATES TARIFF COMMISSION

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UNITED STATES TARIFF COMMISSION
Washington, D.C.

March 4, 1974

In the matter of an investigation)	Docket No. 34
with regard to the importation and)	Section 337
domestic sale of certain converti-)	
ble game tables and components)	Tariff Act of 1930, as amended
thereof)	

INTRODUCTION

On October 26, 1972, ATI Recreation, Inc., of Miami Lakes, Fla. (now ATI Recreation Division of All-Tech Industries, Inc.), hereinafter referred to as complainant, 1/ filed a complaint with the U.S. Tariff Commission requesting relief under section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), alleging unfair methods of competition and unfair acts in the importation and sale of certain convertible game tables. Complainant alleged that its U.S. Patent No. D223,539 and its trademark application for the trademark "TRIO" protect certain convertible game tables, and that the importation and sale of such convertible game tables by Armac Enterprises, Inc., and Sears, Roebuck & Co., both of Chicago, Ill., have the effect or tendency to destroy or substantially injure an efficiently and economically operated industry in the United States.

1/ The terms "complainant" and "respondent" frequently appear in this Report. Commissioners Leonard and Young wish to enter the following: The use of these terms is limited to serving as a convenient means of identifying certain parties before the Commission, and is not to be construed, by implication or otherwise, as an indication that the Commission proceedings are adjudicatory as opposed to fact-finding.

Notice of complaint received and the institution by the Commission of a preliminary inquiry into the issues raised in this complaint was published in the Federal Register of November 17, 1972 (37 F.R. 24473). Interested parties were given until December 28, 1972, to file written views pertinent to the subject matter. On December 26, 1972, Armac Enterprises, Inc. (hereinafter referred to as respondent) filed a motion for postponement of all further proceedings in this matter. Sears, Roebuck & Co. filed its reply to the complaint on December 27, 1972, indicating that it was not an importer of convertible game tables, that it was not seeking pool table manufacturers in Taiwan, and that, in the opinion of its patent counsel, U.S. Patent No. D223,539 was not being infringed by the convertible game tables sold by Sears.

Complainant filed its response to the motion for postponement by respondent on January 8, 1973.

On January 22, 1973, complainant filed a supplemental complaint with the Commission alleging certain other unfair methods or unfair acts on the part of respondent. Among these unfair methods and unfair acts were infringement of a newly issued mechanical patent covering the subject convertible game tables (U.S. Patent No. 3,711,099), the establishment of a false regular price of the subject tables, and the making of false representations as to the sponsorship given to the subject tables. Relief was requested by complainant from these alleged

unfair methods or unfair acts under section 337 apart from the relief requested in its original complaint. 1/

Having conducted a preliminary inquiry in accordance with section 203.3 of the Commission's Rules of Practice and Procedure (19 CFR 203.3), the U.S. Tariff Commission, on August 30, 1973, ordered a full investigation, authorized the issuance of a subpoena duces tecum to be served upon respondent, and scheduled a hearing on the subject matter of the investigation for October 15, 1973. Notice of the investigation and of the date of the hearing was given in the Federal Register of September 12, 1973 (38 F.R. 25236).

On October 1 and 2, 1973, pursuant to the Commission's subpoena, respondent's books, documents, and records were inspected and testimony pertaining thereto was obtained from the firm's officers. On October 3, 1973, respondent filed a motion to reschedule the date of the hearing. The Commission denied this motion on October 4, 1973, and the interested parties were notified of this decision.

The scheduled hearing was held on October 15-17, 1973. Complainant and respondent made appearances of record at this hearing. On October 17, 1973, the hearing was adjourned to be resumed on November 16, 1973. By public notice issued November 1, 1973, the Commission rescheduled the resumption of the hearing to February 5, 1974 (38 F.R. 30797). The hearing resumed on February 5, 1974, during which the parties and the Commission submitted testimony and documents; it was adjourned on the same date.

1/ Even though requested by the Commission, Sears declined to take any position with respect to infringement of U.S. Patent No. 3,711,099.

FINDINGS AND RECOMMENDATION OF THE COMMISSION 1/

The Commission finds a prima facie violation of Section 337 of the Tariff Act of 1930 by unfair methods of competition or unfair acts in the importation and sale of convertible game tables (whether imported assembled or not assembled) made in accordance with the claim(s) of U.S. Patent No. 3,711,099, or the table top(s) therefor. The Commission also finds that, in the absence of a temporary exclusion order, immediate and substantial harm would result to the domestic industry.

Accordingly, the Commission recommends that the President issue a temporary exclusion order 2/ to forbid entry into the United States of convertible game tables (whether imported assembled or not assembled) made in accordance with the claim(s) of U.S. Patent No. 3,711,099, or the table top(s) therefor, except where (1) the importation is made under bond, or (2) the importation is under license of the registered

1/ Vice Chairman Parker dissenting.

2/ Subsection (f) of Section 337 of the Tariff Act of 1930 reads as follows:

(f) Whenever the President has reason to believe that any article is offered or sought to be offered for entry into the United States in violation of this section but has not information sufficient to satisfy him thereof, the Secretary of the Treasury shall, upon his request in writing, forbid entry thereof until such investigation as the President may deem necessary shall be completed; except that such articles shall be entitled to entry under bond prescribed by the Secretary of the Treasury.

owner of U.S. Patent No. 3,711,099, or (3) in the case of the table top(s), either table top (if imported separately) is for sale or for use other than the combination purposes covered by said patent and the importer so certifies. 1/

1/ Commissioner Ablondi is of the opinion that not only convertible game tables (whether imported assembled or not assembled) made in accordance with the claim(s) of U.S. Patent No. 3,711,099, or the table top(s) therefor be excluded from entry into the United States but also that any component of this table (including individual components of the base pedestal assembly), if imported separately, be excluded from entry if intended for use in connection with this table. He maintains that the language of section 337 provides sufficient latitude to permit a recommendation of this type, which "language is broad and inclusive and should not be held to be limited to acts coming within the technical definition of unfair methods of competition as applied in some decisions. The importation of articles may involve questions which differ materially from any arising in purely domestic competition, and it is evident from the language used that Congress intended to allow wide discretion in determining what practices are to be regarded as unfair". In Re Von Clemm, 43 C.C.P.A. (Customs) 58-59, 229 F.2d 443 (1955). See also In Re Northern Pigment Co., 22 C.C.P.A. (Customs) 166, 71 F.2d 447.

STATEMENT OF CHAIRMAN BEDELL AND
COMMISSIONERS LEONARD, MOORE, YOUNG, AND ABLONDI

On October 26, 1972, a complaint was filed with the United States Tariff Commission by ATI Recreation, Inc. (now ATI Recreation, Division of All-Tech Industries, Inc.), of Miami Lakes, Fla., under section 337 of the Tariff Act of 1930. A supplemental complaint was filed by ATI with the Commission on January 22, 1973. The complaint, as supplemented, requested that the Commission recommend to the President that certain imported convertible game tables be temporarily excluded from entry into the United States pending the completion of the Commission's investigation to determine whether the same imports should be permanently excluded. We agree that a temporary exclusion order should be issued for the reasons given below.

The Commission's decision to recommend a temporary exclusion order is based upon its determination that (1) a prima facie violation of section 337 is established and (2) immediate and substantial harm to the domestic industry would result if a temporary exclusion order is not issued.

Prima Facie Violation of Section 337

Unfair method or act

For purposes of recommending the issuance of a temporary exclusion order, we are confining our determination to a finding of unfair methods of competition or unfair acts, within the meaning of section 337, in the importation or sale of a so-called convertible game table made in accordance with the claim(s) of U.S. Patent No. 3,711,099, or the table top(s) therefor. 1/

ATI is by assignment the owner of U.S. Patent No. 3,711,099, which was issued on January 16, 1973. This patent has never been litigated before the courts, and ATI has never granted a license to any party for production or sale of the patented convertible game table.

1/ In view of its finding relating to the patent at issue, the Commission does not find it necessary to determine also at this time whether other unfair methods of competition or other unfair acts (which have also been alleged by ATI) constitute other prima facie violations of sec. 337 which would provide independent bases for recommending to the President that he issue a temporary exclusion order in this case. (Commissioner Ablondi's recommendation is also based upon a finding of a prima facie violation of another statute, to wit, sec. 5(a)(1) of the Federal Trade Commission Act (15 U.S.C. sec. 45(a)(1)), the substance of which involves unfair methods of competition. In his opinion, the violation of this statute, which bears a direct and causal relation to a finding of unfair methods of competition or unfair acts in the "sale" of an article under sec. 337, would provide a separate and independent basis for recommending to the President the issuance of a temporary exclusion order in this case.)

The domestic industry concerned

The domestic industry under consideration consists of that portion of ATI's operations which is engaged in the manufacture of the patented convertible game table. The investigation discloses that these operations are economically and efficiently operated, using modern and efficient manufacturing equipment and employing up-to-date management techniques.

The domestic product

The product manufactured by the domestic producer is a multipurpose article of furniture suitable for use as a rebound pool table, 1/ a dining table, and a poker table. Suitability for these alternate uses is achieved by two tops, one of which is usable on both sides. Both tops of this table are circular, have the same diameter, and are primarily constructed of wood. The rebound pool table top encloses a recessed octagonal shaped playing surface bounded by eight rebound rails of equal length. A number of obstacle rebound posts are found within the recessed playing surface. Two ball collectors are attached on the underside of the pool table top in such a manner that they can easily be put out of the way to allow for the unobstructed use of the table as a dining or poker table. The flat surface of the second

1/ The term "rebound pool" is used as being synonymous with "bumper pool," a term used in the claims of the patent. The latter term has been registered as a trademark to a party not involved in this proceeding

top is suitable for use as a dining table and other flat-top uses. The reverse surface of the second top, by virtue of strategically placed individual recesses having sufficient depth to accommodate the securing or placing therein of beverage glasses and chips, is ideally suited for a game such as poker.

The entire assembly, including both tops and the base, is generally delivered to the ultimate consumer in knocked-down condition in two cartons. Included in one carton are the two table tops. The second carton contains the components of the base pedestal, which includes four legs, a planar shelf for fastening the legs together, and the requisite hardware. The components in the two cartons can easily be transformed into the complete product with the aid of instructions provided by the manufacturer. The planar shelf is first fastened to the legs. The pool table top is then firmly affixed to the upper ends of the legs. The reversible top may thereafter be placed on the pool table top with the desired side up; if correctly positioned, the perimeters of the two table tops are congruous.

The imported product

With the exception of the configuration of the table tops, 1/ the imported product appears to be substantially identical to the domestic

1/ The imported table tops are octagonal in shape. The independent claims of the patent, however, do not require that the table tops have a particular configuration.

product described above, even to the extent of having the same octagonal shaped rebound pool playing surface on the pool table top and, on the second top, a surface having strategically placed individual recesses with sufficient depth to accommodate the securing or placing therein of beverage glasses and chips, which type of surface, as noted above, is ideally suited for a game such as poker.

At the time that the imported product enters U.S. ports and at the time it is delivered to the importer's customers, the imported product, like the domestic product, arrives in knocked-down condition packed in two cartons: one contains the two tops, and the other contains the components of the base pedestal and instructions for assembly.

Final assembly of the components of the imported product is accomplished in basically the same manner as that of the components of the domestic product.

The patent in question

We find that the domestic product is made in accordance with all claims of U.S. Patent No. 3,711,099. 1/ Accordingly, as indicated above, since the imported product is substantially identical to the domestic product, we are constrained to find that the imported product is also made in accordance with all claims of this patent, except dependent claims 9 and 11. 2/

1/ See pp. A-6 through A-10 of the report.

2/ Claim 9 refers to a planar shelf including "a plurality of arcuate cut-out sections positioned between adjacent legs". The imported product does not display such cut-out sections. Claim 11 refers to the top of the table as being "substantially circular in configuration". The imported product has an octagonal top.

Taking independent claim 3 1/ as exemplary of the independent claims of the patent, we conclude that the heart of the invention lies in the peculiar combination created by the two table tops, which lend themselves to at least three different uses: the first table top has an upper surface "consisting essentially of a bumper [rebound] pool game playing surface", 2/ while the second table top, depending upon which surface is to be used, can be employed either as a "flat smooth surface" or as a "second game means". 3/ The second top is "removably positionable upon the first top". 4/ Therefore, the entire assembly may be used as a rebound pool table (which is the same as "bumper pool"), a dining table (which is "flat" and "smooth"), or a poker table (poker is a "game" and, as such, can certainly be a "second game").

A significant element of claim 3 is that the "pair" of "ball collection means" (i.e., ball collectors) are "removable" from the lower surface of the pool table top to permit unobstructed use of the table as a dining or poker table. 5/ This feature is present in both the domestic and the imported products.

1/ See pp. A-8 through A-10 of the report.

2/ Ibid.

3/ Ibid.

4/ Ibid.

5/ Ibid.

We also note the reference in claim 3 to another significant element, i.e., "support means having an upper end and a lower end", 1/ which permits the employment of any form of pedestal assembly in connection with this table. Under claim 3, the four-legged type of pedestal assembly is but one of a variety of such forms.

It will be noted that the domestic product embodies certain features, such as an octagonally shaped rebound pool playing surface on the rebound pool table top and, on the second top, a surface having strategically placed individual recesses to facilitate playing the game of poker, which are more specific than, but still wholly within, the coverage of claim 3 of U.S. Patent 3,711,099, which requires only a rebound pool playing surface having a "plurality of opposed rectilinear surfaces" 2/ (not necessarily eight) and a surface on the second top which can be used as a "second game means" 3/ (there is no reference in claim 3, or in any other claim of this patent, to recesses of the kind which are particularly adapted to playing poker as opposed to other card games). Although a manufacturer has a wide range of choices provided him in making tables, the manufacturer of this foreign product apparently went to the extent of appropriating even the domestic producer's choice of specifics.

1/ Ibid.

2/ Ibid.

3/ Ibid.

The unfair method of competition or unfair act in the importation of the patented product

Sets of components are imported and ultimately assembled into convertible game tables. These game tables, which are imported and assembled without license, are substantially covered by the claim(s) of U.S. Patent No. 3,711,099. The Commission has long held that the unlicensed importation of a product which is patented in the United States is an unfair method of competition or unfair act within the meaning of section 337. 1/

A secondary issue arises in connection with the scope of the recommended temporary order of exclusion. It will be observed that such order would provide for the exclusion of the two tops of the patented table, if imported apart from the components. As previously stated, the combination uses permitted by the two tops are the heart of the invention covered by the patent. To permit such tops to be separately imported would render the exclusion order wholly ineffective. Although the Commission is unaware of any tops having been imported for other than the combination uses provided for in the patent, it is conceivable that such other uses might occasionally occur. Accordingly, if either of the two tops is separately imported, the recommended order of exclusion would permit its release if such top is not for sale or use for the combination purposes covered by the patent, and the importer so certifies.

1/ See In re Von Clemm, 43 C.C.P.A. (Customs) 56, 229 F.2d 441, 443 (1955); In re Orion Co., 22 C.C.P.A. (Customs) 149, 71 F.2d 458, 465 (1934); In re Northern Pigment Co., 22 C.C.P.A. (Customs) 166, 71 F.2d 447, 455 (1934); and Frischer & Co. v. Bakelite Corp., 17 C.C.P.A. (Customs) 494, 39 F.2d 247, 260, cert. denied 282 U.S. (1930). See also Articles Comprised of Plastic Sheets Having an Openwork Structure, TC Publication 444 (1971); Lightweight Luggage, TC Publication 463 (1972); and Pantyhouse, TC Publication 471 (1972).

Our finding that an unfair method or act is established under section 337 is buttressed by the fact that we have no reason to believe that U.S. Patent No. 3,711,099 would be unenforceable in a court of law.^{1/}

Immediate and Substantial Harm

We find that the injury standard set forth in the statute, which requires only "the tendency...to...substantially injure", appears not only to have been met but to have been surpassed in this case in that we also find that immediate and substantial harm will result to ATI if a temporary exclusion order is not issued.

In response to its subpoena, the Commission secured accurate detailed information with respect to the quantities of infringing imports. Actual imports account for a substantial part of domestic consumption of the convertible game tables described in the patent.

The unlicensed sales of the imported components of convertible game tables, which are covered by the claims of the patent in issue, already represent substantial lost sales and declining profits to ATI. There is no doubt that before the Commission completes its full investigation the importers will have an opportunity to increase their penetration of the lucrative domestic market for convertible game tables developed by ATI. In the absence of a temporary exclusion order the infringing imports will cause immediate and substantial harm to ATI's operations.

The immediacy of the threat presented by the importers is shown by evidence developed during the investigation and at the hearing, which leads us to conclude that competition from imports is becoming more severe with each passing day. Such competition is having a damaging effect

^{1/} Commissioner Young presumes that U.S. Patent No. 3,711,099 is valid until a court of competent jurisdiction decides otherwise (In Re Von Clemm, 229 F.2d 441).

on the selling price of the domestic unit as well as on ATI's efforts to license its patent to other domestic producers. The evidence presented to the Commission also indicates that, by virtue of such import competition, ATI is suffering a cutback in orders for convertible game tables. In addition, one of ATI's largest customers is beginning to question seriously ATI's prices. Further, the evidence indicates that ATI's future plans for (1) expanding its plant facilities, (2) embarking on a more ambitious program of capital expansion, (3) further increasing the number of persons employed in its plant, and (4) pursuing a more vigorous research and development effort are being set aside because of the uncertainties attendant to intense import competition.

Recommendation

The imported goods in question are not precluded from entry if a temporary exclusion order is issued. On the contrary, they are still entitled to entry under a bond prescribed by the Secretary of the Treasury. Should the importers ultimately prevail, the temporary exclusion order would be lifted and the bond would no longer be necessary. However, if a permanent exclusion order is issued, the Secretary may proceed against the bond covering the importations made during the pendency of the proceedings.

In conclusion, based upon the foregoing, we recommend that the President issue a temporary exclusion order in this case.

Dissenting Views of Vice Chairman Parker

I do not concur with the views of the majority.

In my judgment, a recommendation for the issuance of a temporary exclusion order at this stage of the Commission proceedings is inappropriate. There is no provision in the Commission's Rules of Practice and Procedure for the making of such a recommendation at this time after a full investigation has been instituted and before such an investigation has been completed. Under the rules, upon conclusion of a preliminary inquiry, the Commission determines whether a full investigation is warranted and whether a temporary exclusion order, providing it has been requested, will be recommended. 1/ In this proceeding, at the close of the preliminary inquiry the Commission ordered a full investigation and set a date for the public hearing. 2/ The Commission did not, however, recommend issuance of a temporary exclusion order although complainant had requested such action.

The full investigation which was ordered in this matter is now in the final stages, and it is expected that it will soon be concluded. Under these circumstances, I believe that proper procedure would necessitate the completion of the hearing and investigative process and an evaluation of all the evidence, including the receipt and consideration of briefs, before an attempt is made to reach a determination.

1/ Secs. 203.3 and 203.4 of the Commission's Rules of Practice and Procedure.

2/ Sec. 203.5 of the Commission's Rules of Practice and Procedure provides that a public hearing will be accorded in connection with each full investigation.

I see no proper basis for recommending that the President issue an order of exclusion on the basis of a prima facie determination at this stage of the proceedings after the issues have been joined and a full investigation ordered, but before the public hearing and investigative process which was ordered has been completed. On what does the prima facie determination rest? If it purports to rest on the incompleted hearing and investigation, serious questions as to the fairness of the hearing procedure authorized under the Tariff Commission rules might arise.

The majority, after making a prima facie determination of a violation of section 337, also finds "that, in the absence of a temporary exclusion order, immediate and substantial harm would result to the domestic industry." This purports to be a conclusive finding and necessarily rests on the incompleted hearing and investigation. Regardless of the propriety of attempting to act on only a partial investigation, such evidence as is presently before the Commission, in my judgment, falls far short of the type of showing which, I believe, is necessary to support a recommendation for the issuance of a temporary exclusion order. The "immediate and substantial harm" test used by the majority for its recommendation for a temporary exclusion order, in my judgment, is not substantiated by any evidence before the Commission. The domestic industry has experienced steadily increasing sales of its convertible game tables since 1971, when these tables

were first manufactured. There has been no showing of an idling of production facilities, or of a reduction in employment, or of more than a slight decrease in profits. Such decrease, however, has not been shown to have been caused by imports of game tables. While there is evidence that imports are accounting for an increasing share of domestic consumption in a growing market, such a fact, by itself, does not, in my judgment, warrant a finding that such imports are causing the kind of injury which would warrant the finding of the majority or its recommendation for the issuance of a temporary exclusion order. The evidence also indicates that the domestic industry (the one domestic concern manufacturing the tables) is operating at full capacity, and there has been no adequate showing that it could meet the domestic demand now being supplied by imports.

The temporary exclusion order recommended by the majority, in my opinion, is also too broad. It would not only give monopoly protection to the convertible game table allegedly covered by the combination patent of the complainant but also extend, at least in part, monopoly protection to articles (tabletops) which, by themselves, are not covered by the patent. These tops, separately or together, may be staple articles of commerce suitable for substantial noninfringing use. In my judgment, not even the most strained construction of the claims of the patent in question would permit the interpretation that tops, by themselves, are the subject of the patent and, therefore,

should not be accorded monopoly treatment. To recommend the exclusion from commerce of either top (if separately imported) unless the importer certifies to the Secretary of the Treasury that the article is not for sale or use other than in a combination covered by the patent places an administrative burden on the Secretary of the Treasury which would be difficult, if not impossible, to enforce in any reasonable manner if he is expected to determine what happens subsequent to importation of the article. It should be noted at this point that complainant has other effective remedies available to him in the event that table tops, if imported separately, are subsequently put to infringing uses. Under these circumstances, it would seem unreasonable to burden the Secretary of the Treasury with difficult, if not unworkable, directives.

For the reasons stated above, I recommend against the issuance of a temporary exclusion order.

INFORMATION DEVELOPED DURING THE PRELIMINARY INQUIRY

Product Description

Convertible game tables are a type of multifunctional furniture which, by reversing or rearranging certain of the constituent parts, can be used for different purposes. In this report, the term "convertible game table" refers specifically to a combination table designed for and capable of use as (a) a rebound pool table of the type marketed under the registered trademark "Bumper Pool," (b) a card table, or (c) a dining table. Modification of the table for these alternate uses is achieved by the placing, removal, and/or reversal of one or more of its constituent tops. Such tables are generally 48 to 52 inches in diameter, round or octagonal in shape, and seat 6 to 8 people in the card-playing or dining configuration. The multiple uses to which such a table can be put makes it especially suited for homes, apartments, or condominiums where space is at a premium.

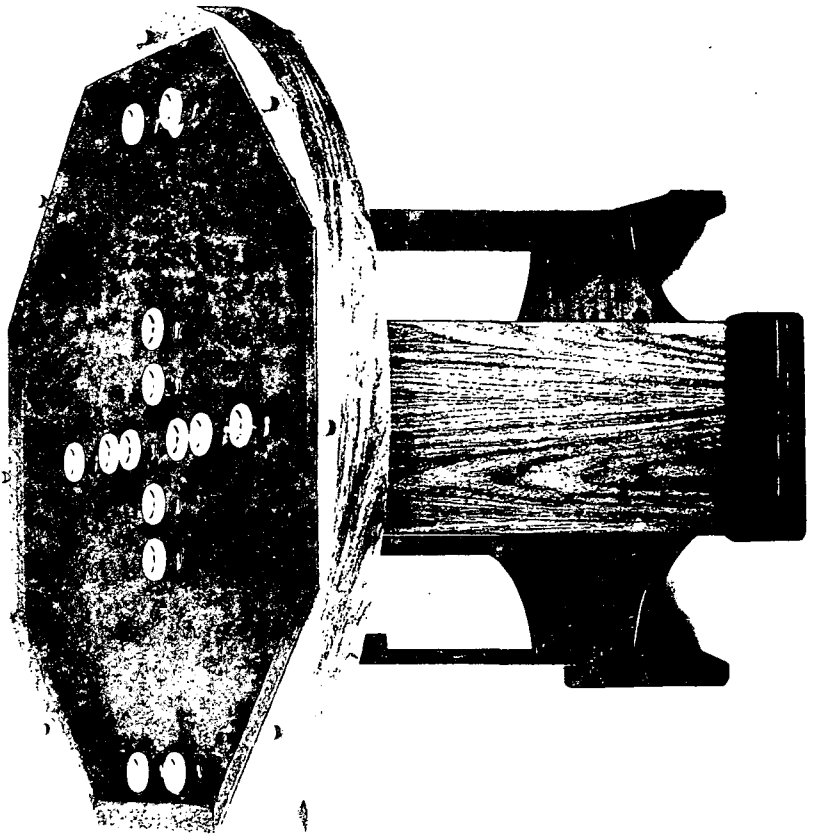
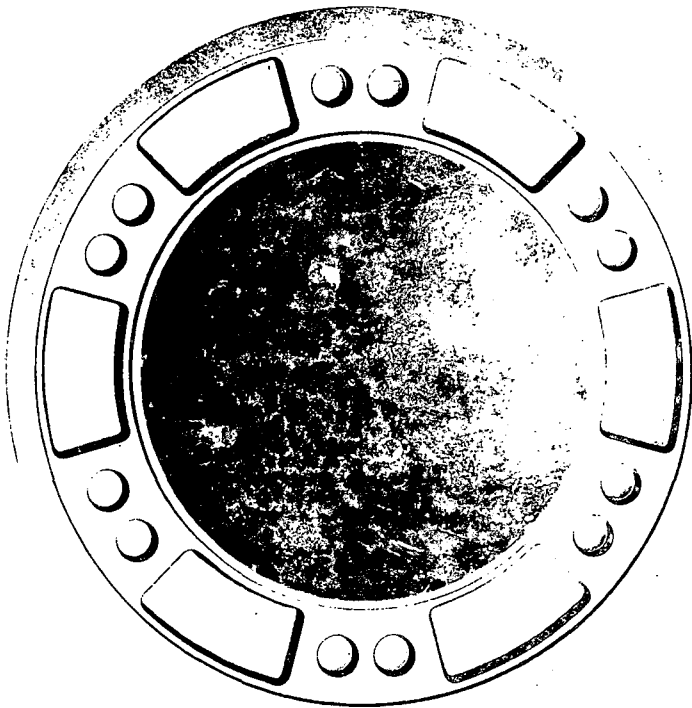
Rebound pool (sometimes referred to as carom pool) was developed during the early 1950's as a billiard modification in which a number of rubberclad bumper posts (obstacles) are placed in the center of the playing surface. "Bank shots" are required to propel the balls around the obstacles. As a result, rebound pool utilizes many billiard skills, but permits a greatly reduced playing surface. Moreover, since rebound pool is still in a relatively early state of development, the game lends itself to certain experimentation. For example, the tables under consideration have eight "rails" or sides, while conventional billiard tables have four.

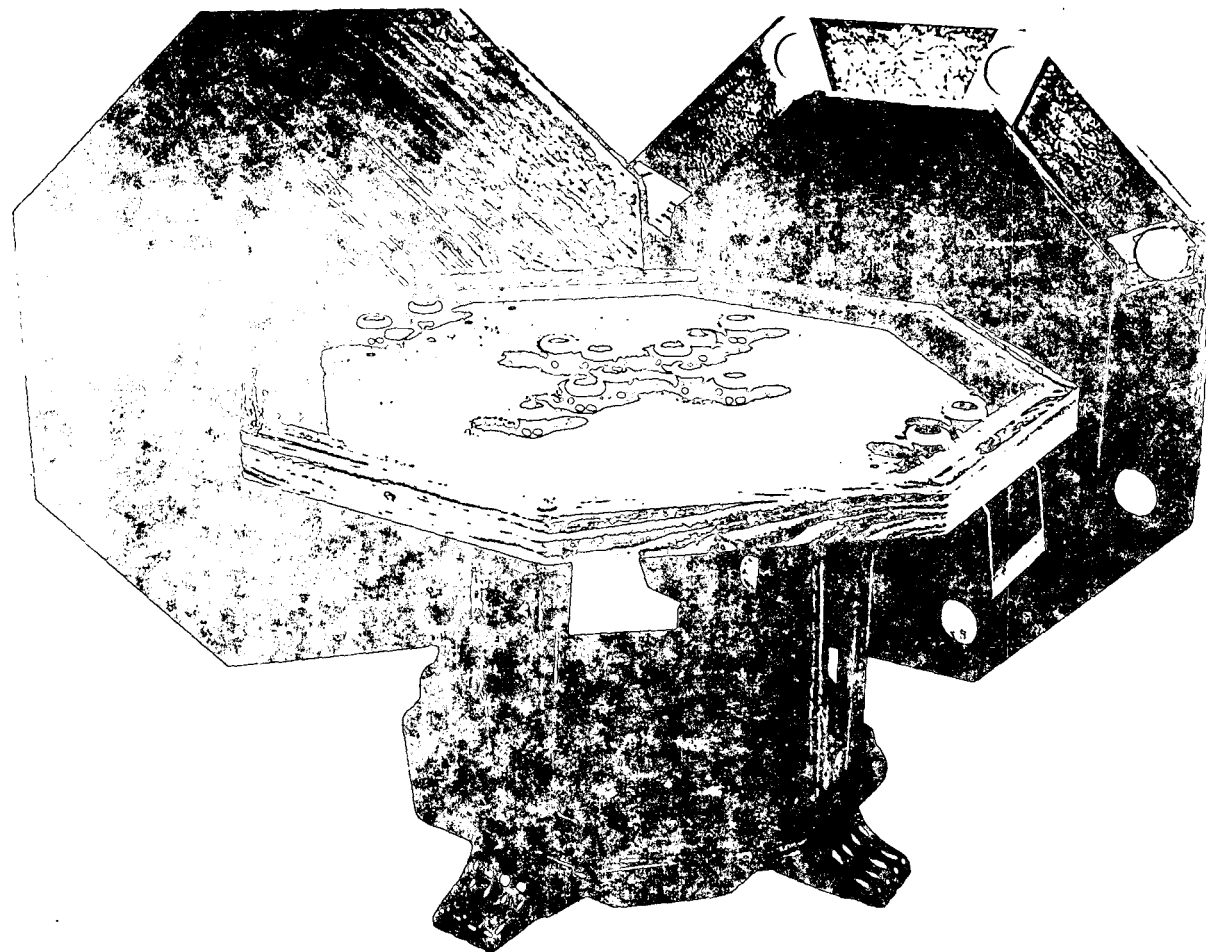
In the card-playing configuration, convertible game tables are of convenient height, allow adequate leg room, and provide a nondistracting playing surface upon which playing cards are easily handled. They also incorporate various player conveniences, such as receptacles for beverage containers, ash trays, poker chips, and the like, on the periphery of the playing surface.

As a dining table, such tables provide a smooth, stable, and easily cleaned surface. Some features, such as stability, are desirable in all configurations.

The convertible game table sold by complainant, All-Tech Industries, Inc., under the trade name "GAMBIT" is shown in figure 1. The convertible game table sold by respondent, Armac Enterprises, Inc., under the trade name "FLIPPER" is shown in figure 2. The convertible game table sold by Sears is shown in figure 3.

Figure 1.--All-Tech Industries, Inc. (complainant):
Model 524, "GAMBIT"





#333

146 lbs.

The unique, versatile 3 in 1 game table. This table is so functional that it will probably be used more than any other piece of furniture.

Use it as a dinnette or dinner table. Then just flip the lightweight top over and convert it to an 8 player card table. Remove the lightweight top and behold, a six sided professional quality pool-o-game table.

A-4

- Quality Construction
- Beautiful Mica Walnut Finish
- 48" Diameter, 30" High
- Octagon Designed Top To Seat 8 Comfortably
- Lightweight Convertible and Removable Top
- Card Table Has Recessed Glass and Ashtray Holders, Felt Playing Surface and Separate Poker Chip Sections
- The Flipper Table Features Wool Cloth, Wooden Bumpers with Rubber Rings, Molded Rubber Cushions, Leg Levelers and Removable Hide-A-Way Ball Return Storage Boxes
- Complete with 2 Cues, 10 Balls, Chalk and Instructions

MANUFACTURED BY



ENTERPRISES, INC.

3000 SOUTH UNION AVENUE

CHICAGO, ILLINOIS 60609

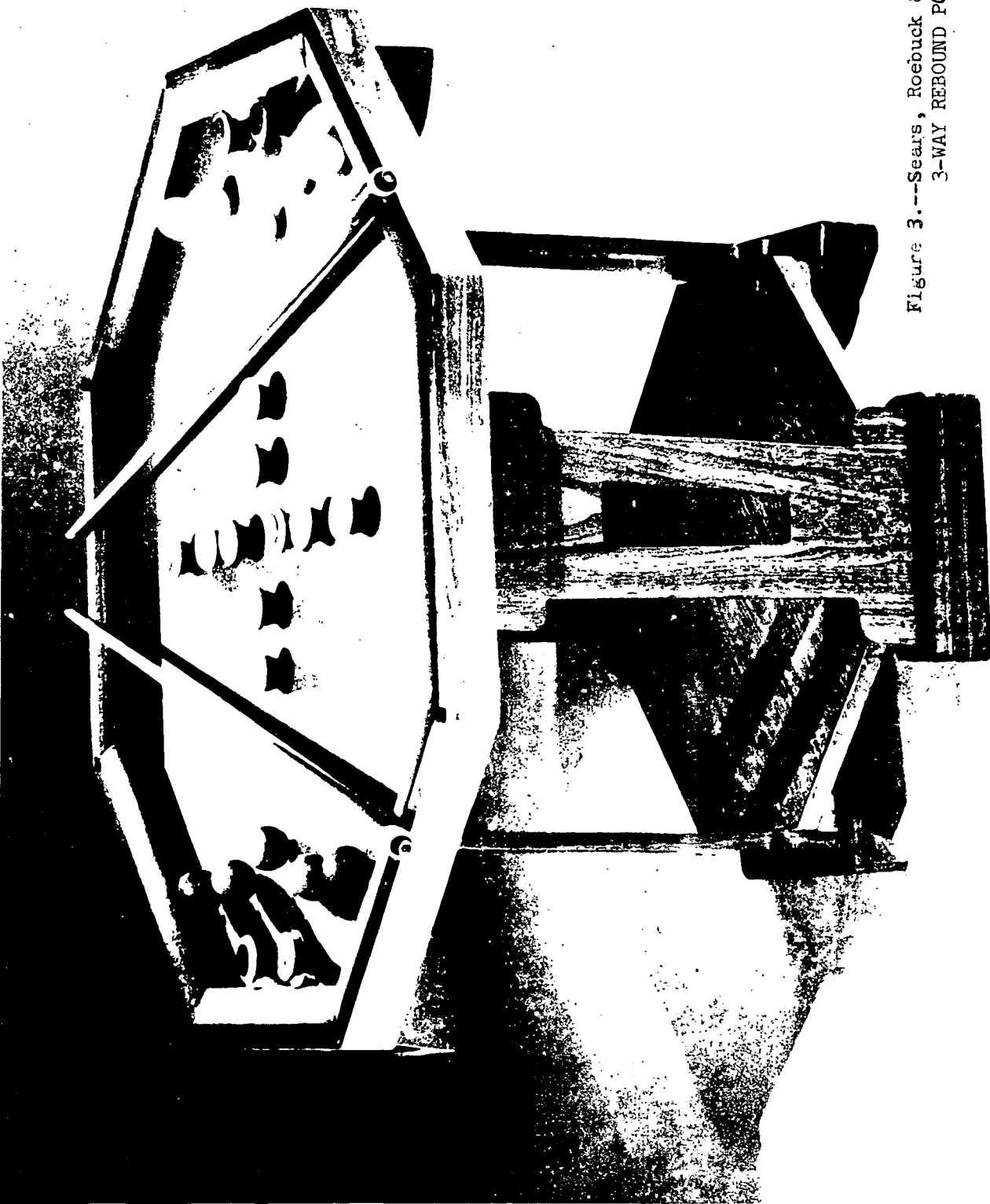


Figure 3.--Sears, Roebuck & Co.:
3-WAY REBOUND POOL TABLE.

Claims of the U.S. Patents Involved

U.S. Design Patent No. D223,539

U.S. patent laws provide for the granting of design patents to persons who invent a new, original, and ornamental design for a manufactured article. 1/ Design patents protect only the appearance of an article, not its structure or utilitarian feature. 2/ A design patent may be granted for 3-1/2 years, 7 years, or 14 years at the election of the applicant. 3/ The complainant's patent No. D223,539, a design patent, runs for a term of 14 years. Only one claim is permitted in a design patent. The claim of patent No. D223,539 is as follows:

The ornamental design for a convertible table for utility games, and bumper pool, as shown and described.4/

U.S. Patent No. 3,711,099

Patents issued pursuant to the provisions of 35 U.S.C. 101 5/ are normally designated as process patents, mechanical patents, product patents, or composition of matter patents, according to the patentable element. The item sought to be patented must be (1) novel and (2) useful to satisfy the requirements of the statute. U.S. Patent No. 3,711,099 6/ is a mechanical patent for a convertible table for "utility,

1/ 35 U.S.C. 171 provides:

171. Patents for designs

Whoever invents any new, original and ornamental design for an article of manufacture may obtain a patent therefor, subject to the conditions and requirements of this title.

The provisions of this title relating to patents for inventions shall apply to patents for designs, except as otherwise provided.

2/ It is the appearance itself, no matter how caused, that is the patentable element. Gorham Mfg. Co. v. White (81 US 511).

3/ The term(s) of a design patent are provided for in 35 U.S.C. 173

4/ U.S. Patent No. D223,539 is reproduced in appendix A.

5/ 35 U.S.C. 101 provides:

101. Inventions patentable

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

6/ U.S. Patent No. 3,711,099 is reproduced in appendix A.

games, and bumper pool." The term of such a patent normally runs for a period of 17 years from the date of issuance; 1/ however, in this case, the assignee filed a terminal disclaimer whereby that portion of the term of the patent subsequent to May 2, 1986--the expiration date of the design patent--has been disclaimed. 2/

Pertinent summary information relating to Patents Nos. D223,539 and 3,711,099 is as follows:

Summary of Patent Information

Patent number	Owner or assignee	Date filed	Date issued	Date expires	Number of claims
D223,539---	All-Tech Industries, Inc.	5-17-71	5-2-72	5-2-86	1
3,711,099--	ATI Recreation, Inc. <u>1/</u>	11-3-71	1-16-73	5-2-86 <u>2/</u>	15

1/ Now ATI Recreation Division of All-Tech Industries, Inc.

2/ That portion of the term of this patent subsequent to May 2, 1986, has been disclaimed.

U.S. Patent No. 3,711,099 contains 4 independent and 11 dependent claims. The claims of this patent are summarized in the left-hand column on the next several pages opposite illustrations of the complainant's GAMBIT table. The elements of each claim are identified by a number and letter designation placed adjacent to the proper location on the illustration.

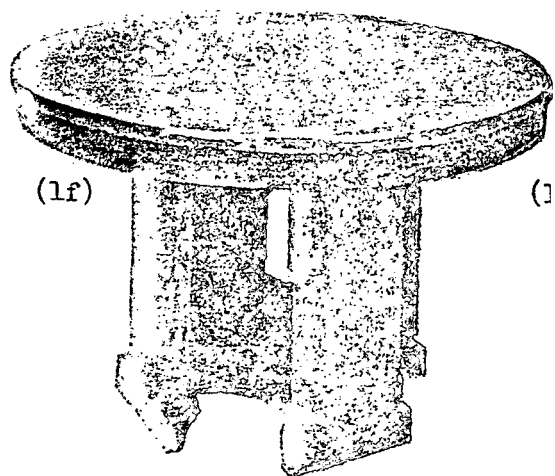
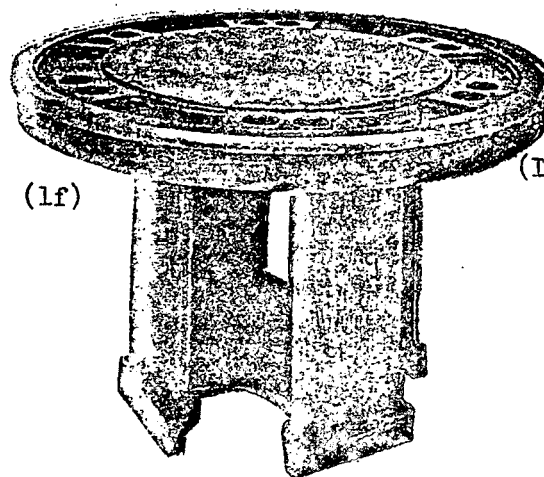
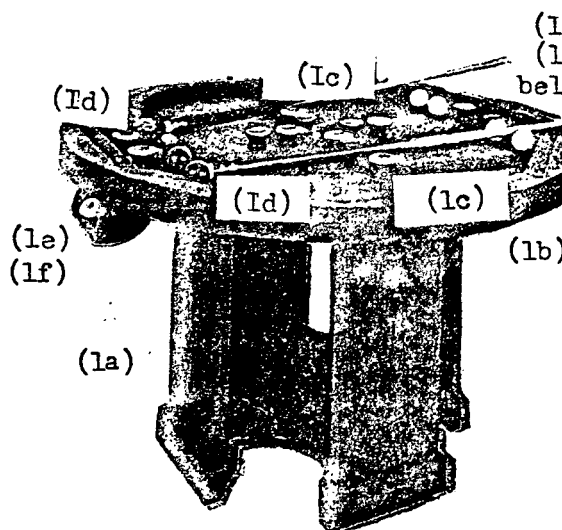
1/ The term of such a patent is provided for in 35 U.S.C. 154.

2/ 35 U.S.C. 253 permits any patentee or applicant to disclaim or dedicate to the public the entire term or any terminal part of the term. According to complainant's counsel, the terminal disclaimer in this case renders a potential issue of "double patenting," moot since no patent monopoly is sought which would extend the term of the mechanical patent beyond that of the design patent previously issued.

Claim 1

A combination flat top, game table and bumper pool game table assembly comprising in combination,

- (1a) leg support means having an upper end and a lower end,
- (1b) a first top having a lower surface fixedly secured on said upper end of said leg support means and an upper surface consisting essentially of a bumper pool game playing surface,
- (1c) said bumper pool game playing surface being bounded by a plurality of opposed rectilinear surfaces and including a plurality of obstacle bumper posts positioned substantially centrally on said bumper pool game playing surface,
- (1d) said bumper pool game playing surface being substantially imperforate and having a pair of opposite ball apertures, one each of said ball apertures being disposed adjacent one of said rectilinear surfaces,
- (1e) a pair of ball collection means mounted on the lower surface of said first top and each of said pair of ball collection means being in a position in open communication with and directly below one of said ball apertures,
- (1f) said ball collection means being removable from said position in open communication with and directly below each of said ball apertures to a position removed therefrom such that the lower surface of said first top is unobstructed to occupants seated at said table,

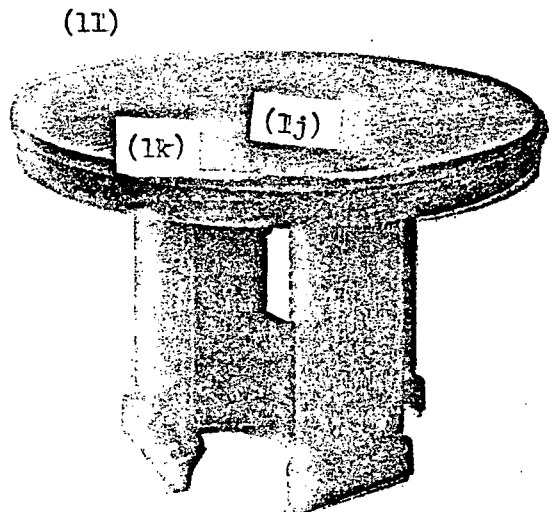
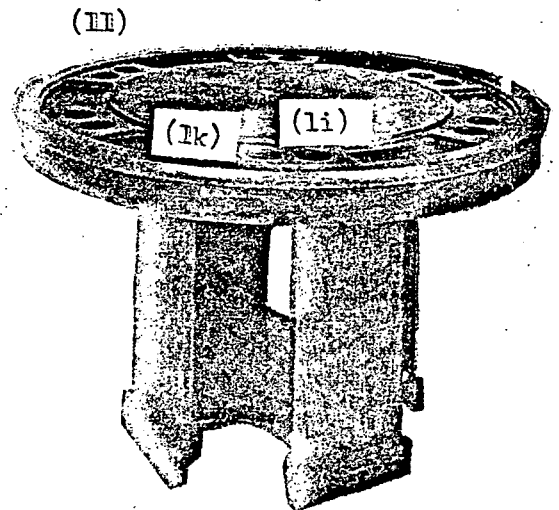
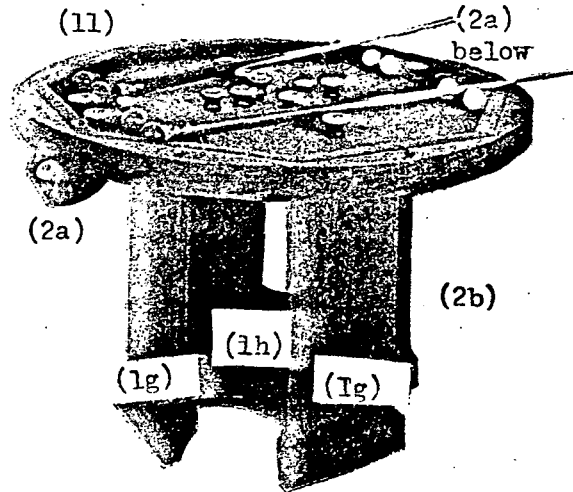


- (1g) said leg support means including a plurality of legs,
- (1h) a substantially planar shelf member positioned adjacent the lower ends of said legs and secured to each of said legs adjacent the periphery of said planar shelf member,
- (1i) a second top forming a second game means and being removably positionable upon said first top,
- (1j) a third top forming a flat smooth surface and being removably positionable upon said first top,
- (1k) said second and third tops comprising a single top having one surface formed as a flat smooth top and the opposed surface formed into said second game means,
- (1l) whereby said table assembly may be utilized as a flat top table with said third top positioned and supported upon said first top, and said assembly may be utilized as a second game means when said second top is exposed, and may be utilized as a bumper pool game when said first top is exposed.

Claim 2

Repeats all the elements of claim 1 and adds:

- (2a) each of said ball collection means being disposed between a corresponding leg and the outer periphery of said first top,
- (2b) each of said legs having a length dimension extending downwardly from said lower surface of said first top, and a width dimension which is substantial but less than one-half the length dimension.



Claim 3

Repeats elements 1b, 1d, 1e, 1f, 1i, 1j, 1k, 1l, and 2a. It deletes those elements of claim 1 and claim 2 referring to the "legs" and a "planar shelf," the reference in claim 2 to the length and width dimensions of the legs, and recasts certain others into new elements reading:

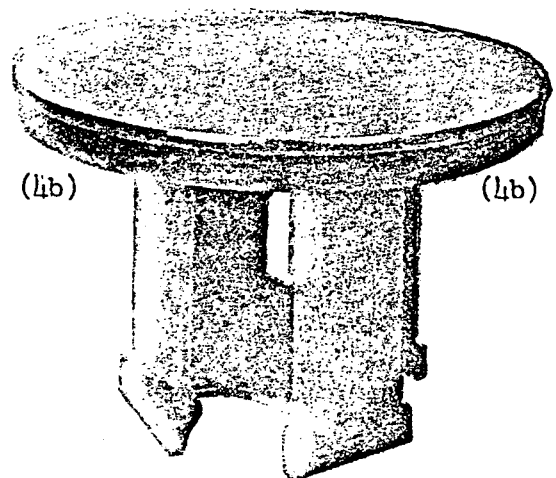
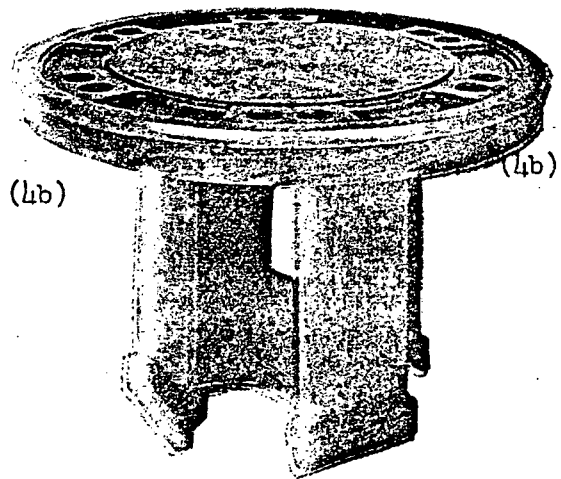
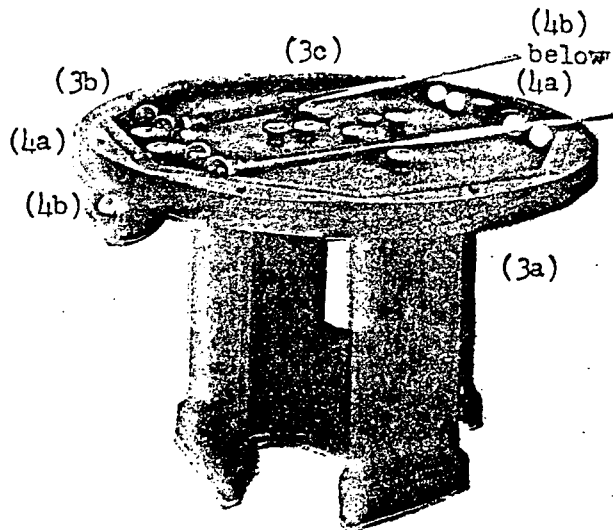
- (3a) support means having an upper end and a lower end,
- (3b) a bumper rail surrounding said bumper pool game playing surface defining a plurality of opposed equal rectilinear surfaces,
- (3c) a plurality of obstacle bumper posts positioned substantially centrally and symmetrically on said bumper pool game playing surface.

Claim 3 is regarded by complainant as providing the broadest protection.

Claim 4

Repeats elements 1a, 1b, 1c, 1d, 1e, 1g, 1i, 1j, 1k, 1l, 2a, and 2b, but deletes the reference to a "planar shelf" found in claims 1 and 2. It adds:

- (4a) each of said ball apertures being bounded on opposed sides thereof by an obstacle bumper post,
- (4b) said ball collection means consisting of a pair of ball racks, each of said ball racks being removable from said position in open communication with and directly below each of said ball apertures to a position removed therefrom such that the lower surface of said first top is unobstructed to occupants seated at said table and permitting utilization of said table for other functions.



Claims 5 through 15 are dependent claims in that they add elements to one or more of the four independent claims above.
Thus--

Claim 5

Incorporates claim 3 and adds ". . .wherein, each of said apertures is flanked by a pair of bumpers."

Claim 6

Incorporates claim 1 and adds: ". . .wherein said planar shelf member is positioned horizontally with respect to each of said legs."

Claim 7

Incorporates claim 1 and adds: ". . .wherein said bumper pool game playing surface is recessed and is bounded by said plurality of opposed rectilinear surfaces, and each of said rectilinear surfaces is provided with resilient bumper means secured thereto."

Claim 8

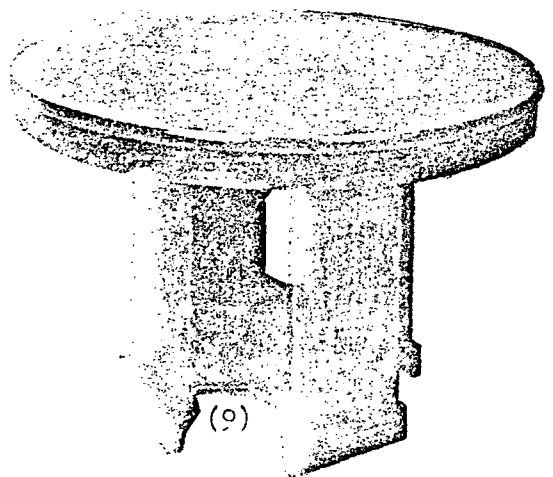
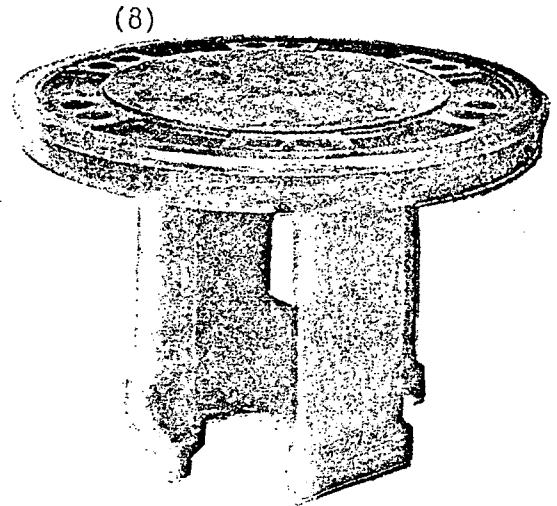
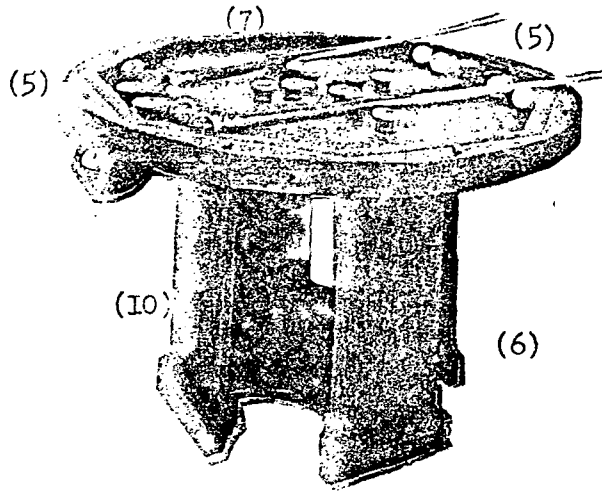
Incorporates claim 3 and adds: ". . .wherein said game playing surface of said second top is formed into a card game playing surface including a plurality of player convenience apertures."

Claim 9

Incorporates claim 1 and adds: ". . .wherein said planar shelf member includes a plurality of arcuate cut-out sections positioned between adjacent legs, thereby to provide occupant convenience sitting positions about said table."

Claim 10

Incorporates claim 3 and adds: ". . .wherein said support means comprises a series of four legs for supporting said first top, each of said legs being fixedly secured to the lower surface of said first top and extending downwardly therefrom to an underlying support surface."



Claim 11

Incorporates claim 1 and adds: ". . .wherein each of said first and second tops are substantially circular in configuration."

Claim 12

Incorporates claim 1 and adds: ". . .wherein said pair of ball collection means is positioned between a corresponding leg and the outer periphery of said first top."

Claim 13

Incorporates claim 1 and adds: ". . .wherein each of said pair of ball collection means comprises a ball rack formed by a bottom wall, side walls, a back wall, and a partial front wall."

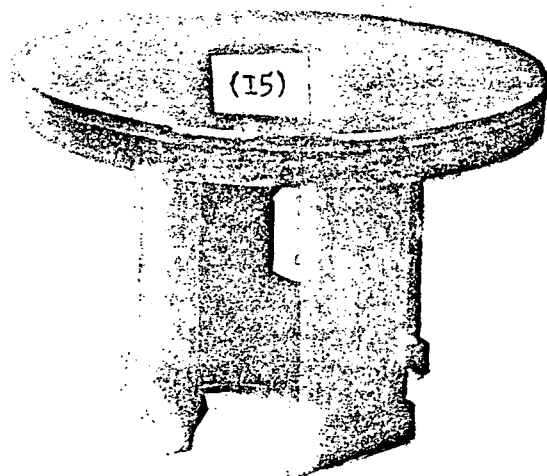
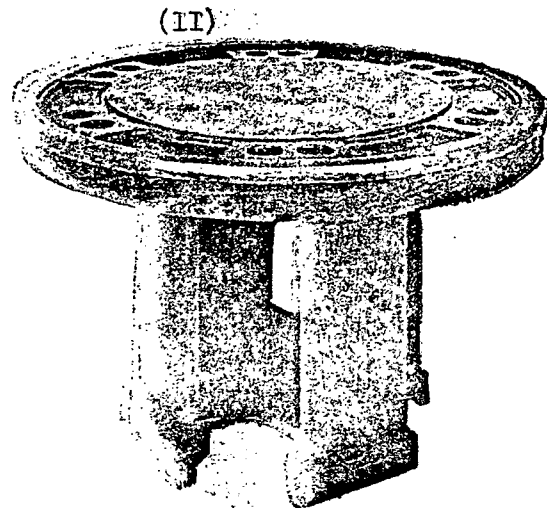
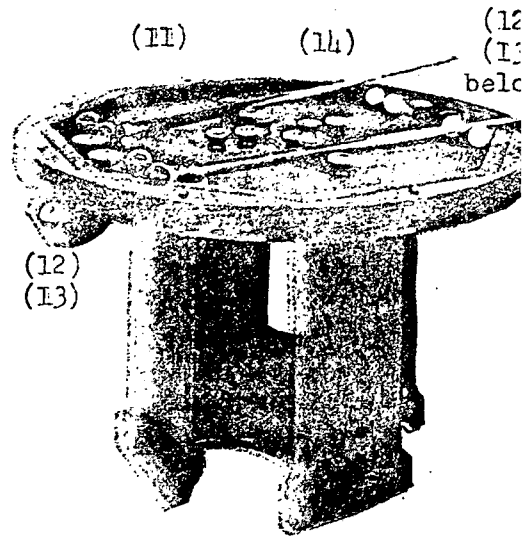
Claim 14

Incorporates claim 3 and adds: ". . .wherein said bumper pool rail surrounding said bumper pool game playing surface defines an overall octagonally shaped bumper pool ball game playing surface for said bumper pool ball game."

Claim 15

Incorporates claim 3 and adds: ". . .wherein said third top forming said flat smooth surface is covered with a plasticized material, thereby to form a smooth and protected table top."

These claims establish the limits of the patent monopoly. Each independent claim describes a complete invention, and each independent claim includes the elements necessary to make the invention operative. Dependent claims possess no legal significance apart from the independent claim(s) which they incorporate.



Complainant's Allegations

In its complaints as supplemented, the complainant alleged certain unfair methods of competition and unfair acts for which it requested relief under section 337. These consist of (1) infringement of its Patents Nos. D223,539 (the design patent issued on May 2, 1972) and 3,711,099 (the mechanical patent issued on January 16, 1973); (2) respondent Armac's use of the trademark "TRIO" (complainant had asserted its ownership of a U.S. trademark application serial No. 416,491 for the trademark "TRIO," as well as its ownership of a U.S. trademark application serial No. 407,363 for the trademark "GAMBIT"); (3) false pricing; (4) failure to comply with country-of-origin marking; (5) false representation of sponsorship; and (6) "palming off."

Patent infringement

Complainant has asserted that each of its patents for convertible game tables has been infringed by convertible game tables imported and sold by respondent.

U.S. Patent D223,539.--The complainant has alleged that its design patent has been infringed by the convertible game tables imported and sold by respondent, that such infringement constitutes an unfair method of competition or an unfair act, and, hence, relief under section 337 is warranted. Complainant stated that a comparison of the drawings of the design patent with a photograph of respondent's convertible game table "reveals a construction which, to the average purchaser, is identical

with that of the complainant's product, and as embodied in the complainant's patent rights." 1/

U.S. Patent 3,711,099.--Complainant alleged that respondents' convertible game tables infringed each and every claim of its mechanical Patent No. 3,711,099 and that their importation and sale constitutes an unfair method of competition and an unfair act for which relief may be provided under section 337.

Other unfair acts

Complainant alleged certain other unfair acts or unfair methods of competition for which relief was sought under section 337, apart from the relief sought in connection with infringement of its design and mechanical patents.

1/ ATI's complaint, p. 6. The respondent's table used in this comparison (as illustrated in Fig. 2) embodies certain changes arising from litigation concerning the design patent (ATI Recreation, Inc., v. Armac Enterprise, Inc., Civil Action No. 72 C 1129), which is discussed in the section entitled "Litigation History".

Use of the trademark "TRIO".--The complainant, as the owner of U.S. trademark application No. 416,491 for the trademark "TRIO", alleged that it has used, or is using, this trademark in connection with its convertible game tables and further alleged that respondent has caused to be published in a trade catalog a game table which was imported and which respondent purported to sell to the public under the trademark "TRIO". 1/ The presentation to the trade of photographs of the copy of complainant's table with this trademark is alleged to constitute another unfair act in the importation of articles into the United States for which relief may be provided under section 337.

False pricing.--Complainant alleged that respondent established a false regular price for convertible game tables in its eight retail outlets in violation of the Federal Trade Commission's Guides Against Deceptive Pricing and in violation of the Uniform Deceptive Trade Practices Act of the State of Illinois.2/ Complainant indicated that, based upon its information and belief, "the tables sold which are advertised with the regular price of \$249.00 or other regular price above \$199.00 have never been sold by respondents at the advertised regular price." 3/ It is also alleged that this pricing pattern was

1/ See Fig. 4.

2/ Commissioner Ablondi points out that there is a statute, viz., section 5(a) of the Federal Trade Commission Act (15 U.S.C., sec 45(a)) that declares unlawful "unfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce".

3/ ATI's supplemental complaint, p. 2. The allegation is that all sales were effectuated at a price lower than the advertised regular price.

"the subject of suggestions to other customers." 1/ Such unfair pricing is alleged to be an unfair act for which relief would be justified under section 337.

Failure to mark with country of origin.--Complainant alleged that respondent's imported convertible game tables were not marked with the country of origin in violation of 19 U.S.C. 1304. 2/ It is alleged by complainant that a direct violation of another portion of the Tariff Act is a further act in unfair competition justifying the exclusion order requested under section 337.

False representation of sponsorship.--Complainant alleged that respondent represented in its advertisements that the trademark "FLIPPER"

1/ Ibid.

2/ The pertinent parts of sec. 304 of the Tariff Act of 1930 (19 U.S.C. 1304) read as follows:

(a) Marking of Articles.--Except as hereinafter provided, every article of foreign origin (or its container, as provided in subsection (b) hereof) imported into the United States shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or container) will permit in such manner as to indicate to an ultimate purchaser in the United States the English name of the country of origin of the article. . . .

* * * * *

(c) Additional Duties for Failure to Mark.--If at the time of importation any article (or its container . . .) is not marked in accordance with the requirements of this section . . . there shall be levied, collected, and paid upon such article a duty of 10 per centum ad valorem . . .

(d) Delivery Withheld Until Marked.--No imported article held in customs custody for inspection, examination, or appraisement shall be delivered until such article and every other article of the importation (or their containers) . . . shall have been marked in accordance with the requirements of this section or until the amount of duty estimated to be payable under subsection (c) of this section has been deposited.

was registered; 1/ whereas, based upon complainant's information and belief, it was not. Complainant further alleged that the dolphin, which appears in respondent's trademark, is intended to inspire the belief in the customer that respondent's product has the sponsorship of those persons associated with the television program "Flipper." It is finally alleged that respondent had generated advertisements for mail-order sales and had adopted the name "UNIROYAL" as a mailing address. Based upon complainant's information and belief, respondent intended to imply sponsorship of the well-known automobile tire company of that name, but in fact had no such sponsorship or consent to use the trademark "UNIROYAL." It is alleged that these acts of false representation as to sponsorship constitute a violation of the Uniform Deceptive Trade Practices Act of the State of Illinois, and, as illegal acts, are acts in unfair competition for which relief may be obtained under section 337.

Allegation of "Palming off".--Complainant alleged that, based upon its information and belief, Sears, Roebuck & Co., through a third party, approached Nichols Pools of Bristol, Pa., to acquire 150 of ATI's convertible game tables trademarked "GAMBIT." These tables were then shipped in ATI's GAMBIT cartons to fill orders for the convertible game table advertised in the Sears catalog. 2/ Complainant also indicated that certain complaints relating to the subject table have come to it as a

1/ A circled "R" appears on this trademark.

2/ The convertible game table shown in the Sears catalog was supplied to Sears by respondent.

result of the shipment by Sears, Roebuck & Co. of tables in the ATI GAMBIT carton. It is alleged by complainant that this constitutes a further unfair act based upon misrepresentation to the trade and supports the relief requested under section 337.

Respondent's Contentions

Respondent's pleading, filed with the Commission on December 26, 1972, consisted of a motion for a postponement (under sec. 201.14 of the Commission's Rules of Practice and Procedure) of all further proceedings before the Commission pending a final decision of the U.S. District Court for the Northern District of Illinois, Eastern Division, on a suit filed by respondent against the complainant. (See section on litigation history.) By letter dated April 27, 1973, respondent submitted to the Commission a legal memorandum pertaining to whether its convertible game tables^s infringed U.S. Patent No. 3,711,099. 1/ This action was followed by a letter from respondent dated May 11, 1973, relating to the economy and efficiency of the complainant's operations.

Motion for postponement

Respondent alleged in its pleading that the litigation in the district court involves the same issues as those referred to in the complaint before the Commission, and that the decisions of the court will be res judicata as between the same parties on the same issues in any proceeding before the Commission. As a consequence, respondent urged the Commission to grant its request for a postponement under section 201.14, and requested oral argument on this request pursuant to section 201.12(d).

1/ Respondent initially requested confidential treatment of this memorandum. During the public hearing respondent's attorney introduced the same memorandum with amendments as nonconfidential exhibit No. 27.

By a submission filed with the Commission on January 8, 1973, complainant opposed the request to postpone and cited In re Von Clemm (229 F2d 44) as being totally dispositive of the subject. 1/

Patent infringement

Prior to the conclusion of the Commission's preliminary inquiry, respondent had taken a formal position before the Commission only with

1/ See the section of this report entitled "Litigation History" for respondent's suit in the U.S. District Court.

The Commission had the discretion either to deny or to grant respondent's motion for a postponement. Under Sec. 201.14, the Commission could on its own motion order a postponement or, upon a showing of good cause, it could order a postponement on the motion of any party.

The provisions in sec. 337(c) which relate to the Commission's obligations to investigate, hear, and review such cases are mandatory in their application and nowhere are they limited in scope by an exception which would permit a suspension of proceedings brought before the Commission merely by virtue of the circumstance that a court of law had concurrent jurisdiction, since the remedies afforded successful complainants before the Commission differed from, and, as indicated in sec. 337(a), were "in addition to any other provisions of law . . ." Complainant correctly cited In re Von Clemm as the authority for continuing Commission jurisdiction in the face of pending litigation of the questions of patent validity and infringement in court.

While the respondent's complaint in the district court is patent related in the sense that there are allegations that complainant has published infringement charges as to a pending patent application and that complainant has misrepresented the outcome of a prior lawsuit pertaining to the design patent, the Commission proceedings could be affected only in the event that the district court concurred with respondent in its conclusion that complainant's acts constituted a misuse of its patent privileges. However, the possibility that the district court may make such a finding at some time in the future would not present any legal impediment to the Commission's acting under sec. 337 now. In re Orion Co., 22 C.C.P.A. 149 (1934).

Insofar as respondent Armac's request for oral argument on its motion for a postponement is concerned, it will be noted that the rules do not provide for oral argument at the preliminary inquiry stage of the proceedings. Sec. 201.12(d) cited by respondent is applicable only after conclusion of the testimony at a public hearing.

respect to U.S. Patent No. 3,711,099. It had not developed a position before the Commission with respect to U.S. Patent No. D233,539, although it supplied a copy of the final judgment rendered by the district court on August 28, 1972, in ATI Recreation, Inc., v. Armac Enterprises, Inc. Sears, Roebuck & Co., on the other hand, had gone on record before the Commission with an opinion relating to whether U.S. Patent No. D233,539 was being infringed by the convertible game tables sold by Sears.

U.S. Patent D233,539.--The information conveyed orally by respondent's attorneys to the Commission 1/ was that respondent's imported convertible game tables did not infringe U. S. Patent No. D233,539.

In its letter to the Commission dated December 22, 1972, Sears, Roebuck & Co. maintained that, in the opinion of its patent counsel, the tables sold by Sears (see fig. 3) in no way infringed complainant's design patent.

U.S. Patent 3,711,099.--In the letter to the Commission 1/ dated April 27, 1973, respondent's counsel concluded that the imported convertible game tables do not infringe U.S. Patent No. 3,711,099. A copy of a legal memorandum was attached to this letter. The author of the memorandum concluded that--

...each of the claims in the Milu patent contains limitations not met by the table sold by Armac Industries, [sic] Inc. (ARMAC). Accordingly, the ARMAC table does not infringe the Milu patent. 2/

1/ Vice Chairman Parker notes that the information referred to was delivered to the Commission's staff.

2/ Legal memorandum from E. F. Friedman to Robert L. Austin dated April 26, 1973, p. 1. The Milu patent is the same as U.S. Patent No. 3,711,099; Ernest Milu is the inventor who assigned this patent to ATI Recreation, Inc.

Specifically, the author stated that (1) the language "consisting essentially of a bumper pool game playing surface" (emphasis supplied) found in all four independent claims precludes the addition of support cushions which support the removable top having the dining and card-playing surfaces, as are found on the convertible game table imported by respondent; (2) the language "obstacle bumper posts positioned substantially centrally . . ." (emphasis supplied) found in all four independent claims must exclude a table such as that imported by respondent which has bumper posts located near its edge; (3) the language "bumper pool game playing surface being substantially imperforate . . ." (emphasis supplied) found in all four independent claims must exclude a table such as that imported by respondent, which has apertures as shown in the prior art; (4) the language in claims 1 and 2 referring to a planar shelf member positioned adjacent to the lower ends of the legs and secured to each of said legs "adjacent the periphery of said planar shelf member" (emphasis supplied) would exclude a table such as that imported by respondent, which attaches four legs to the top of the shelf at a distance from the edge of that shelf; (5) the language in claims 2, 3, and 4, which requires disposition of each ball collection means "between the support means and the outer periphery of said first top" must exclude a table such as that imported by respondent, whereon the ball collection means extend beyond the outer periphery of the pool-table top; (6) the reference to arcuate cutout sections in the lower shelf in claim 9 must exclude a table such as that imported by respondent, which has no arcuate cutout

sections; (7) the requirement of claim 11 that both table tops have a substantially circular configuration must exclude a table such as that imported by respondent, which has an octagonal configuration; (8) the limitation in claim 13 to the effect that the ball collection means must include a bottom wall, side walls, a back wall, and a partial front wall must exclude a table such as that imported by respondent, which includes a single curved wall; (9) the requirement in claim 10 that the four legs for supporting the pool-table top extend "downwardly therefrom to an underlying support surface" must exclude a table such as that imported by respondent, whereon the legs only go to another position of the table rather than extending downwards to an underlying support surface.

The memorandum further disclosed that all of the features shown and claimed by this patent, if given a broad interpretation, are old in the art and have seen use before. Therefore, it is maintained that if the validity of the patent is to be preserved, each feature must be narrowly construed.

Other unfair acts

The allegations of complainant relating to the use of the trademark "TRIO," false pricing, failure to mark with country of origin, false representation of sponsorship, and "palming off" were not formally answered by respondent or by Sears, Roebuck & Co. 1/ Accordingly, during the Commission's preliminary inquiry, information as to respondent's position on

1/ The allegation relating to "palming off" had been directed by complainant in its supplemental complaint against Sears, Roebuck & Co.

these issues was obtained in the course of conversations with its representatives.

Use of the trademark "TRIO".--Respondent denied that it has used the trademark "TRIO" in connection with its tables since August 28, 1972, the date on which the district court ordered it to cease and desist from using this trademark (see section on litigation history). It has since used the trademark "FLIPPER."

False pricing.--Respondent denied that it has established a false regular price for its convertible game tables, and, as evidence thereof, furnished the Commission 1/ with photocopies (see app. B) of four retail sales slips showing sales of the imported convertible game tables for cash in the amount of \$299.00 each. 2/ According to the dates on these sales slips, the sales were made during the period August 15-26, 1972.

Failure to mark with country of origin.--Respondent denied that the subject imports were not marked with the country of origin. 3/

False representation of sponsorship.--Respondent conceded that it acted improperly in representing in its advertisements that the trademark "FLIPPER" was registered when in fact it only had a pending trademark for

1/ See footnote 1, p. A-21.

2/ These receipts did not contain the names of the purchasers; verification of these sales through the purchasers was thus impossible.

3/ The Commission requested the Bureau of Customs (now U.S. Customs Service) to investigate respondent's alleged failure to mark the subject imports with the country of origin. On April 11, 1973, the Commission received a letter from Customs stating that it had found that the underside of each table examined was indelibly marked "Made in Taiwan" in letters approximately three fourths of an inch high, and that the marking was readily legible. Customs was of the opinion that the marking described was sufficiently conspicuous to meet the requirements of 19 U.S.C. 1304 for an article of furniture of that kind.

that name. 1/ Prior to the public hearing respondent had not taken any position with respect to complainant's allegations that it had falsely represented that it had the sponsorship of "UNIROYAL" 2/ and that it had the sponsorship of the persons producing the television program "Flipper."

Allegation of "palming off".--Sears, Roebuck & Co. conceded that it had purchased a number of complainant's convertible game tables to fill orders for the table advertised in its catalog. It maintained, however, that in each subsequent retail sale of this table the customer was fully informed that he was receiving a substitute article which he could, at his election, accept or reject.

1/ Respondent halted the use of the circled "R" in its advertisements. On September 4, 1973, however, the name "FLIPPER" was registered as a trademark for respondent's use.

2/ Complainant's attorney indicated to the Commission (see footnote 1 on p. A-21) on June 5, 1973, at the Commission offices at Washington, D.C., that he had received a letter from Uniroyal indicating that it was possible that Uniroyal might have worked out an arrangement with respondent which would have allowed respondent to use the name "UNIROYAL" in its trade circulars in connection with credit sales of these tables.

Litigation History

Complainant's design patent and the trademarks "TRIO," "THREE IN ONE" 1/, "FLIPPER," "TRIPLET," and "THREE WAY" were the subjects of a final judgment rendered on August 28, 1972, by the U.S. District Court for the Northern District of Illinois, Eastern Division. 2/ The final judgment affirmed an earlier court order dated May 19, 1972, 3/ directing:

1. That defendant Armac Enterprises, Inc., its officers, agents, employees, representatives, controlled subsidiaries, and other persons, firms, or corporations in privity with it, cease and desist from representing to any customer or person in the trade that it is, can, or will market a convertible game table under the trademark "TRIO" or "THREE IN ONE" and,
2. That defendant Armac Enterprises, Inc., immediately cease and desist from the making, using, or selling of any convertible game table in infringement of Exhibit B Des. Pat. 223,539 by the making, using, or selling of a table base substantially identical to Exhibit D (page 4) 4/ attached to the complaint in this action (emphasis supplied), and,
3. That plaintiff ATI Recreation, Inc., shall not be heard to assert against defendant that the trademarks FLIPPER, TRIPLET, or THREE WAY infringe its trademarks, and,
4. That both parties shall pay their own costs, attorney's fees, and other expenses of this action, and,

1/ Complainant, in its complaint before the Commission, does not allege that respondent used the trademark "THREE IN ONE" in connection with its convertible game table.

2/ ATI Recreation, Inc. v. Armac Enterprises, Inc. Civil Action No. 72 C 1129.

3/ Neither party had appealed the order.

4/ See fig. 4.

5. That the parties shall in good faith consult with regard to defendant's proposed non-infringing redesign and report to this Court on June 23, 1972, at 10 a.m. as to the same.

This earlier judgment, in relating only to the base of the convertible game table, left open the question as to whether the table top also infringed the design patent. 1/ In the final judgment the court also decreed that the parties had met the obligations of paragraph 5 of the order of May 19, 1972. 2/

Insofar as the design patent is concerned, the net result was that the court found neither infringement nor noninfringement of the design patent by the imported convertible game tables.

On September 28, 1972, the respondent filed a suit against complainant in the same court alleging the complainant's publication of infringement charges as to a patent application pertaining to the subject

1/ Respondent indicated to the Commission (see footnote 1, on p. A-21) on Apr. 24, 1973, at the time of the staff visit to its facilities, that the table shown in exhibit D (fig. 4) referred to in the court order was actually complainant's table (with an octagonal top) and that the identifying legend "Armac Enterprises, Inc.," and the name "TRIO" which appear thereon were included only to enable ARMAC Enterprises, Inc., to test the market potential for such a table and not to imply that it had imported or sold, or would import or sell, that particular table. There is no evidence which would indicate that respondent did import or sell a convertible game table having a base exactly like that shown on exhibit D. The imports to be seen by the Commission (see footnote 1 on p. A-21) incorporates changes in the design of the base, most apparent of which are the clawlike appendages which appear at the bottom of the legs.

2/ In the course of several conversations with the Commission (see footnote 1 on p. A-21) both complainant and respondent maintained that they did "in good faith" consult with regard to a proposed noninfringing design, that they failed to reach a mutually satisfactory compromise, and that they reported this state of affairs to the court. Since the parties had done all that was required of them by the order, (i.e., consult in good faith) the order was then made final by the court.



" THE TRIO " STOCK NO. 333

ENTERPRISES, INC.

3900 South Union Street

Chicago, Illinois, 60609

Phone : (312) 927 - 3100

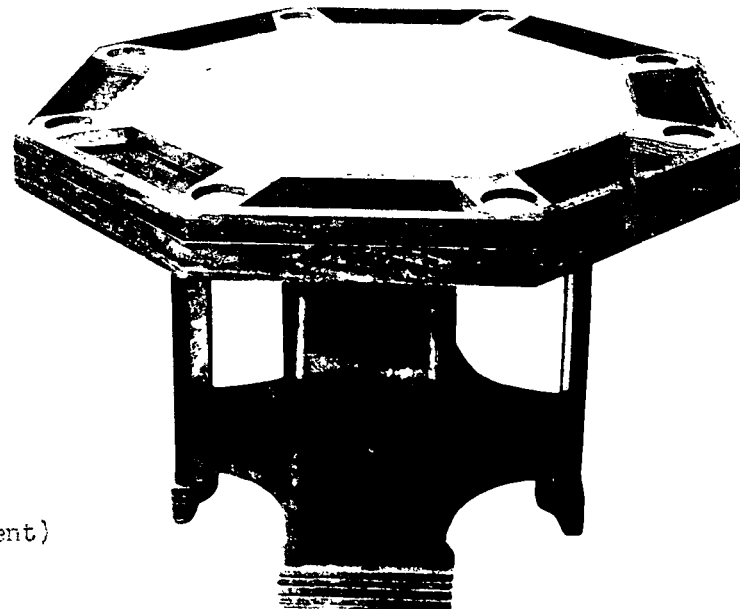
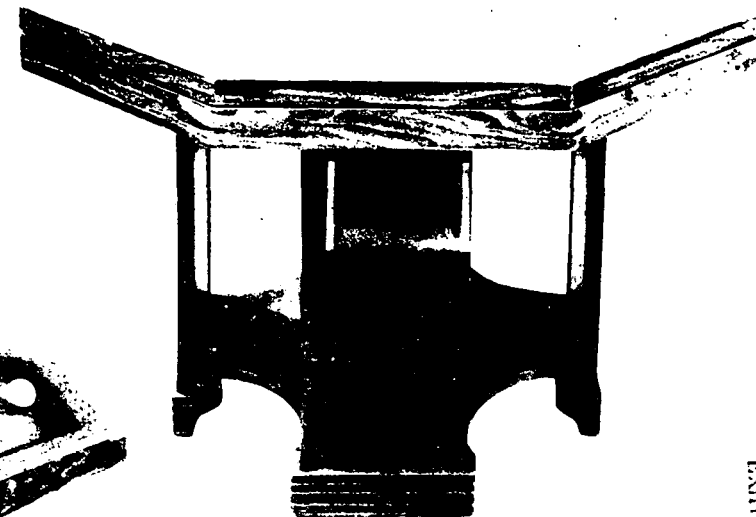
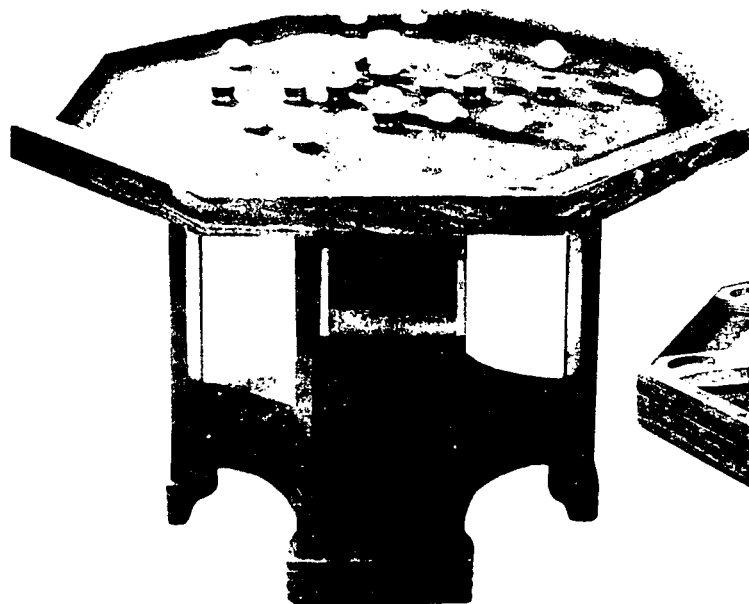


EXHIBIT D

A-28

Figure 4. Armac Enterprises, Inc. (respondent)
Model 333 "TRIO"

convertible game tables and complainant's publication of false descriptions of a prior lawsuit pertaining to the same 1/ constituted, inter alia, unlawful restraint of trade, trade libel, slander, disparagement and unfair competition, deceptive trade practices, misuse of complainant's patent privileges, and misuse and abuse of the district court's jurisdiction. The relief sought by respondent in this suit consisted of an injunction restraining complainant from denying it right of access to a pending mechanical patent application, an injunction prohibiting complainant from filing or prosecuting any patent application, and punitive and treble damages. 2/ On November 6, 1972, the court ordered that pending trial both parties were enjoined from discussing the prior related case except by publication of the final order in that case and that both parties were enjoined from using the threat of a lawsuit on a patent which had not been issued.

Shortly after its receipt of a copy of the complaint filed with the Commission, respondent on December 19, 1972, filed a motion in the District

1/ In a supporting motion to the court for a preliminary injunction respondent alleged that during the period Sept. 25-28, 1972, at a trade show in Chicago, complainant displayed a letter from complainant's counsel indicating that ATI had been "successful" in its suit against Armac for infringement of its design patent and indicating that the four independent claims of the mechanical patent which had been "indicated allowable" were infringed by the present Armac table. In two affidavits attached to this motion there were references to the July 1972 issue of "Sporting Goods Business" in which the court order was characterized as a "cease and desist order . . . issued to . . . Armac" (there is no reference to the cease and desist order issued to ATI) to prevent it from making, using, or selling "any convertible game table or table base" (the court order only referred to the base) substantially identical to "TRIO" or "THREE IN ONE."

2/ Respondent was unsuccessful in its attempts to enjoin complainant from filing or prosecuting the subject mechanical patent application, since U.S. patent No. 3,711,099 was issued on Jan. 16, 1973. Also moot is respondent's attempt to enjoin complainant from denying it right of access to complainant's pending patent application.

Court for the Northern District of Illinois seeking to restrain complainant from further prosecuting its case before the Commission on the grounds that (1) ATI had violated the court order of November 6, 1972, by charging respondent with infringement of a pending patent application in its complaint before the Commission; (2) the district court's jurisdiction was exclusive until the jurisdiction was exhausted; (3) the claims against respondent in the complaint before the Commission were barred by Rule 13, Federal Rules of Civil Procedure, 1/ (4) the new complaint before the Commission contained false representations made in bad faith; and (5) respondent could not even defend itself against the allegations contained in the complaint before the Commission by virtue of the court order of November 6, 1972.

On December 20, 1972, the District Court for the Northern District of Illinois relieved respondent from that portion of the court order of November 6, 1972, which would have prevented it from referring to court litigation in proceedings before the Commission. On February 22, 1973, the court denied respondent motion to restrain complainant from further prosecuting its case before the Commission.

1/ Respondent maintained that the issues presented to the Commission by complainant related to whether competition in the marketing of convertible game tables had been fair or unfair, and related to whether or not there had been infringement of patents and trademarks; as such, these issues should have been presented to the district court as counter claims.

U.S. Tariff Treatment

Imports of convertible game tables are dutiable under tariff item 734.40 of the Tariff Schedules of the United States (TSUS). This item provides for tables of wood specially designed for games. The current rate of duty applicable to item 734.40 is 8 percent ad valorem. This rate became effective January 1, 1972, and reflects the fifth and final stage of a concession granted by the United States in the sixth (Kennedy) round of trade negotiations under the General Agreement on Tariffs and Trade; prior to the Kennedy Round, the rate of duty, which had been in effect since the adoption of the TSUS on August 31, 1963, was 16-2/3 percent ad valorem.

U.S. Imports

To develop data on imports of convertible game tables the Commission sent a questionnaire to Armac Enterprises, Inc., the then only known importer of such tables. In addition, the Commission asked all known domestic producers of pool and billiard tables to indicate whether they were also importers of convertible game tables. One other possible U.S. importer came to light--Sunshine Cover & Tarp. Co. of Los Angeles--but no information had been obtained from this concern prior to the conclusion of the preliminary inquiry.

The nature of respondent's importation

Counsel for respondent reported that "Armac does not import complete tables, but only a kit of parts which is short the hardware for fastening all these parts together." This hardware was added to the kit in the United States. 1/ Respondent reported that its convertible game tables

1/ In response to the Commission's query to known domestic producers of pool tables, Armac reported "domestic production" of convertible game tables for 1972. This response (and the one above) raised the following issues: (1) Could Armac be considered a domestic manufacturer of convertible game tables from imported parts (components) by virtue of its adding hardware to the imported components? (2) Would Armac's alleged violation of sec. 337 of the Tariff Act then involve contributory infringement? Regarding the latter, U.S.C. 35 271 provides that--

Whoever sells a component of a patented machine, manufacture, combination or composition, or a material or apparatus for use in practicing a patented process, constituting a material part of the invention, knowing the same to be especially made or especially adapted for use in an infringement of such patent, and not a staple article or commodity of commerce suitable for substantial noninfringing use, shall be liable as a contributory infringer.

were imported from the Republic of China (Taiwan) and customarily entered through the ports of Chicago, New York, and Los Angeles.

Quantity of imports by respondent

During the course of the preliminary inquiry, the Commission-- despite repeated attempts at clarification--was unable to resolve certain conflicts in respondent's replies to the Commission's questionnaire, in the information obtained in followup inquiries, and in information the Commission had obtained from independent sources. Nevertheless, it was established that respondent did import allegedly infringing convertible game tables during 1972, and that almost all imports of this product took place during the latter part of the year. It was also established that the estimated volume of such imports was substantial when compared with the output of the patented convertible game tables produced by the complainant during calendar year 1972. Most of the tables imported by respondent in 1972 were sold in that year, as was evidenced by the number of retail sales of the allegedly infringing convertible game tables by a major customer of respondent.

The U.S. Industry Involved and its Environs

U.S. producers of billiard and pool tables

About 55 firms in the United States are engaged in the manufacture of pool and billiard tables. Official statistics on U.S. production, shipments, and so forth, are not collected annually. In 1967, however, the last year for which such data are available, U.S. shipments of billiard and pool tables (including interplant transfers, if any) amounted to 364,000 tables. 1/

In connection with its preliminary inquiry, the Commission requested all known manufacturers of billiard and pool tables to report certain economic data, by type of table, for the period 1968-72. Statistical data from this survey were not available during the course of the preliminary inquiry, but were subsequently tabulated as follows:

1/ U.S. Department of Commerce, 1967 Census of Manufacturers, Industry series, Sporting and athletic goods, n.e.c., SIC Code 3949, December 1969.

Multipurpose game tables (including convertible game tables) and
all other types of billiard and pool tables: Sales by
domestic producers, 1968-72 1/

Year	Multipurpose game tables <u>2/</u>	Other billiard and pool tables
Quantity (Units)		
1968-----	<u>3/</u>	472,541
1969-----	<u>3/</u>	498,332
1970-----	<u>3/</u>	637,477
1971-----	21,990	624,021
1972-----	31,483	754,587
Value		
1968-----	<u>3/</u>	\$31,165,313
1969-----	<u>3/</u>	34,463,408
1970-----	<u>3/</u>	34,500,397
1971-----	\$820,643	38,084,951
1972-----	1,907,807	46,040,216

1/ One producer reported data on a fiscal-year basis with the period ending Oct. 31.

2/ Any combination table which by the rearranging of certain of its constituent parts can be converted for different uses, one of which is for playing a game.

3/ Data not shown because it would reveal the operations of an individual concern.

Source: Compiled from data submitted by domestic producers in response to Tariff Commission questionnaires.

U.S. producers of convertible game tables

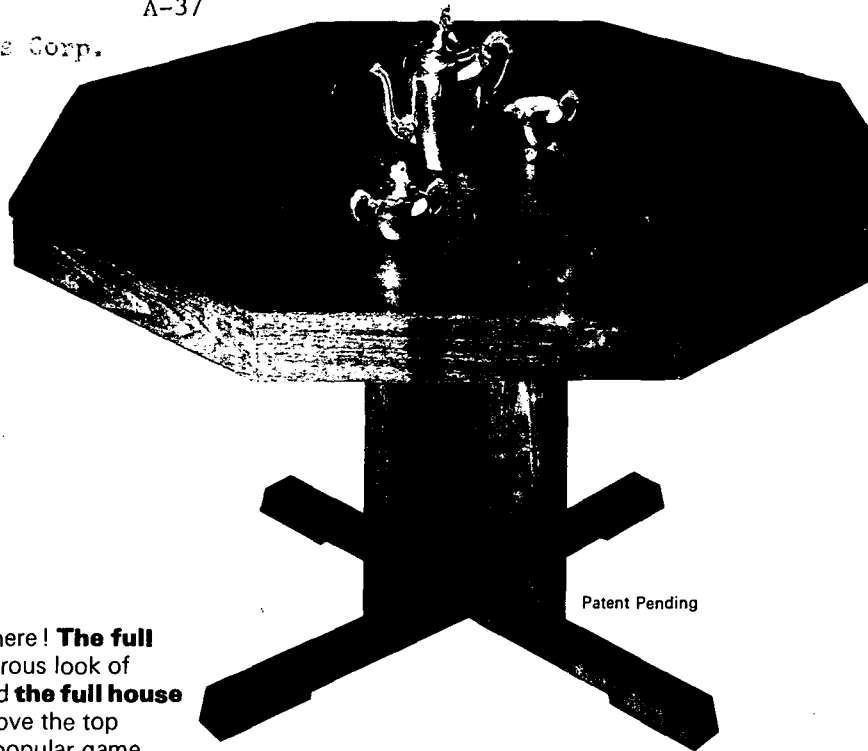
All-Tech Industries, Inc., the complainant and assignee of the subject patents, is one of the larger U.S. manufacturers of billiard and pool tables, and produces convertible game tables manufactured in accordance with U.S. Patent Nos. D223,539 and 3,711,099. As of the conclusion of the preliminary inquiry, the complainant had not licensed

any other firm to produce convertible game tables protected by these patents.

Complainant has sold convertible game table top assemblies Schubert Industries, Inc., and to Chromcraft Corp. (a subsidiary of Mohasco Industries, Inc.). These two firms manufacture furniture apart from pool tables. To the convertible game table tops purchased from the complainant, Schubert and Chromcraft add bases and, in some instances, matching chairs of their own design and sell the completed ensemble. Complainant referred to Schubert and Chromcraft as "effective" licensees; however, inasmuch as no royalties are involved, they more resemble contract purchasers. In collecting data on the U.S. industry manufacturing convertible game tables protected by the subject patents, the Commission directed its inquiry to the complainant and requested separate data for top assemblies sold separately.

In addition to the firms mentioned above, two others, Superior Industries Corp., of New Haven, Conn., and the Fischer Division of Questor Corp., California, Mo., have entered into, or are planning to enter into, domestic production of certain types of convertible game tables. Superior's table, trademarked "THE FULL HOUSE" (fig. 5), was offered for sale and included in Superior's price list effective April 1, 1973. Fischer's table, trademarked "TRIESTE" (fig. 6), entered into production on June 1, 1973. Both tables are based on the same general concept as the patent holder's inasmuch as they are convertible game tables designed for rebound

Figure 5. Superior Industries Corp.
"THE FULL HOUSE"



Patent Pending

the full house™

CUES . . . CARDS . . . CAVIAR all belong here! **The full house** is a graceful dining table with a lustrous look of select furniture. Turn the dining top over and **the full house** becomes a card table that seats eight. Remove the top completely and you are ready to enjoy the popular game of carom pool.

Features:

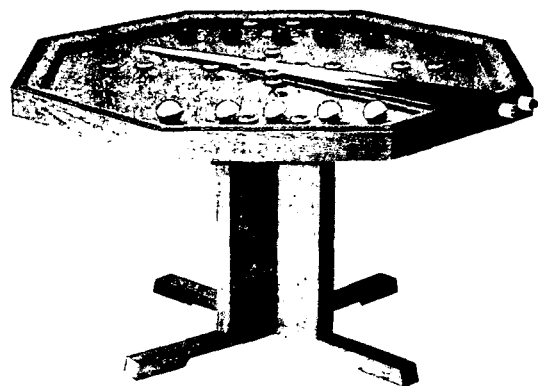
- **Dining Top/Card Table Top** • Constructed of new materials found in quality furniture • The tops are finished in attractive walnut grain.
- **Card Table Top** • Offers built-in ashtray, glass, poker chip and snack tray sections for maximum convenience and enjoyment • Playing surface is covered with top grade fabric.
- **Non-Sliding Dining Table** • Card Table Top locks firmly into carom table frame.

Carom Pool Table

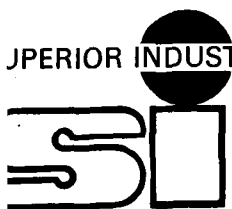
- Exclusive sliding carom ball box can be recessed when not in use.
- Chrome-plated designer-styled bumpers.
- Top grade gum rubber cushions.
- Rich green wool blend cloth.
- New pedestal leg design easily attached to table base
- Deluxe carom balls.
- Two cues.

Specifications: FH-50

Overall Dimensions—50" x 30" high, Weight—170 lbs.



SUPERIOR INDUSTRIES CORP.



"The company that put the pool table into the home"

P. O. Box 1803
New Haven, Conn. 06507

Phone (203) 934-6651
Factory: 351 Morgan Lane, West Haven, Conn.

Company

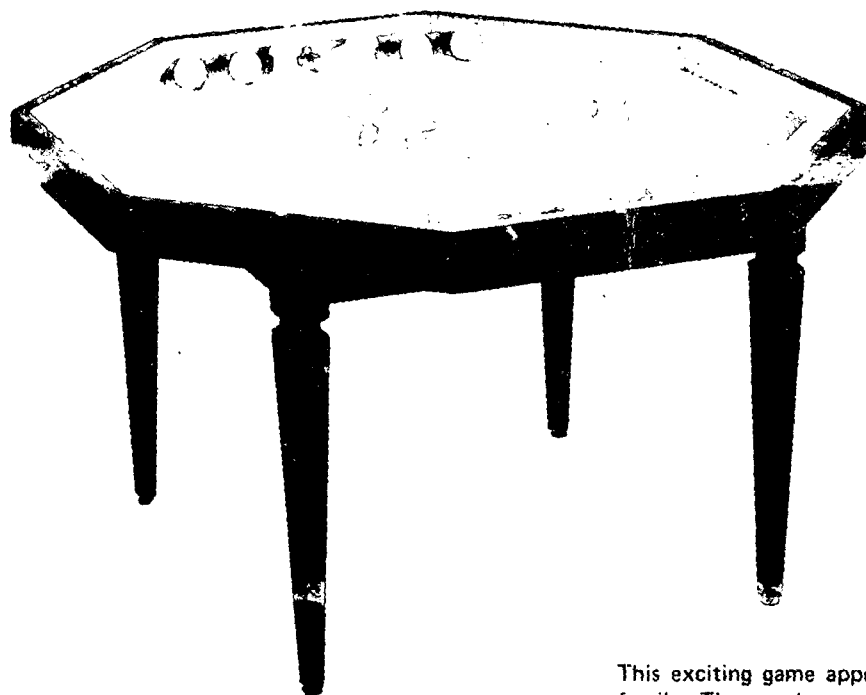


A DIVISION OF QUESTOR CORP.

TRIESTE

CONTEMPORARY FURNITURE DESIGN

Walnut Stained Hand-Rubbed Satin Finish



Includes Matching CONVERTIBLE Top.



SIDE FOR DINING

Attractive Octagonal Top with Wide, Walnut-Stained Wood Perimeter. Durable Black Vinyl Covered Center.

SIDE FOR GAMES

Seats Eight Comfortably. Eight Vinyl-Lined Recessed Chip Trays and 16 Receptacles for Glasses and/or Ash Trays. Matching Black Vinyl Playing Surface

A-38

This exciting game appeals to all members of the family. The requirements for little space makes it ideal for the apartment or homes where indoor recreation space is limited. The quality-furniture craftsmanship and design of the table and convertible top is a pleasing addition to all periods of furniture styling.

Figure No. 1530 (When ordering, specify color)
Rebound Table 52" x 29" High
Convertible Top 55" x 1-7/8" Deep



STD. GREEN



RED



BLUE



GOLD



AVOCADO

Rebound Billiard Table Available in Choice of Standard Green - Avocado - Red - Blue or Gold Wool/Nylon Billiard Cloth. Deluxe Jumbo Plastic Rebound Posts, Rubber Rebound Rings - Large Profile Rubber Rail Cushions. 3/4" Reinforced High-Density Particle Board Playfield. Matching Contemporary Designed Leg with Adjustable Leg Levelers.

OVER ALL MEASUREMENTS:

Model No. 1530 (When ordering, specify color)
Rebound Table 52" x 29" High
Convertible Top 55" x 1-7/8" Deep
Shipping Weight 145 Lbs.

pool, cards, and dining. Moreover, Superior indicated that it has a patent application for its own table.

All-Tech Industries, Inc.

All-Tech Industries, Inc., was incorporated in 1953. Until late 1967 the firm was engaged solely in the manufacture of leisure-time products, of which billiard tables were the most important. In late 1967 All-Tech embarked on an acquisition program and subsequently diversified its activities.

ATI Recreation, Inc., was incorporated in April 1972 as a wholly owned subsidiary of All-Tech. As part of its organizational activity, ATI acquired All-Tech's Leisure Time Products Division. At that time, ATI was expected to become a public corporation; however, the public sale of ATI's common stock did not take place, and on March 1, 1973, ATI was reorganized again as a division of the parent firm. Data relating to All-Tech refers specifically to that portion of All-Tech formerly identified as ATI Recreation, Inc.

Facilities.--All-Tech maintains four leased facilities, each of modern design and construction. The main plant comprises some 90,000 square feet (on one story) and is devoted to the production of home-type, knocked-down pool tables, professional pool tables, and coin-operated tables. The building also contains All-Tech's corporate offices. It is located within the Miami Lakes Industrial Park near Miami, Fla. A 40,000-square-foot warehouse used primarily for storage and shipping of finished goods and a 20,000-square-foot warehouse used principally for storage of raw materials are nearby.

Convertible game tables are manufactured in a separate leased facility about 8 years old situated in Hialeah, Fla. It is about 3 miles from All-Tech's other buildings. The single-story building encompasses 20,000-square-feet of floor space and is well lighted and airy.

Plant and operations.--During March 21-23, 1973, the Commission 1/ visited ATI's convertible game table plant. It was observed that except for small areas devoted to other activities, virtually the entire plant is used to manufacture convertible game tables.

Convertible game tables are manufactured in pre-assembled stages. Playfields, tops, and side walls are cut to size in the main assembly area. Numerous stages and work stations are involved, but, in general, they involve attaching (by screws or glue) various subassemblies in place, finishing, and inspection.

The table is packed into two separate cartons, one containing the top assembly and accessories, and the other containing the pedestal base components. The final purchaser assembles the table in his own home. Most of the tools and equipment employed--radial arm and table saws, miters routers, hand saws, electric and pneumatic hand tools, and glue guns--are of general-purpose design. On the basis of the plant inspection and interviews with company representatives, the impression was that the plant was efficiently and economically operated.

Production and sales.--Complainant reported that it began manufacture of the convertible game table described in U.S. Patents Nos. D223,539 and

1/ See footnote 1 on page A-21.

3,711,099 during the first quarter of 1971. 1/ By October 31, 1971, 2/ All-Tech's production of the subject patented game tables represented only a relatively minor portion of All-Tech's production of billiard and pool tables. During the first full year of production, (fiscal year 1972), the number of convertible game tables and separate top assemblies produced by complainant jumped to almost a third of complainant's total output of billiard and pool tables. Based on data for the first 6 months in complainant's fiscal year 1973, it was estimated that output of convertible game tables and separate top assemblies during the full fiscal year would be significantly higher than during fiscal year 1972. Output during the first 6 months was already well in excess of one-third of complainant's total production of billiard and pool tables during the same period. According to a company representative, the Hialeah plant was operating at about full capacity in fiscal year 1973.

Complainant's sales of billiard and pool tables have generally corresponded with production. The volume of complainant's sales of billiard and pool tables (including the subject patented tables) more than tripled between fiscal years 1968 and 1972. On a value basis,

1/ Complainant's design patent application was dated May 17, 1971, and its mechanical patent application was dated Nov. 3, 1971. In its suit against Armac (Civil action No. 72 C 1129; May 5, 1972), counsel for complainant stated: "Plaintiff [All-Tech] commenced manufacture of its convertible game tables approximately 18 months ago" (p. 3). This statement suggests that production of convertible game tables actually began about November 1970. Complainant's convertible game table, however, underwent considerable prototype development.

2/ Complainant was generally unable to provide economic data except on a fiscal year--November 1-October 31--basis.

however, the sales only doubled. The divergent trends represent a change in product mix; whereas in earlier years sales included large numbers of coin-operated tables, which are larger and more expensive, sales in later years were increasingly composed of less expensive home-type tables.

Complainant reported that the subject patented table was first offered for sale in early 1971; sales in fiscal year 1971 about equaled production. In fiscal year 1972 production exceeded sales, and in the first 6 months of fiscal year 1973, sales exceeded production.

Employment and man-hours.—Based on size of the labor force complainant is classified as a small manufacturing concern. 1/ From fiscal year 1968 to fiscal year 1972 its employment nearly doubled. 2/ In the last 2 years, (fiscal years 1971 and 1972), much of the personnel increase was accounted for by production and related workers employed on the subject patented tables. By virtue of the plant's location and non-unionized workforce, the division probably has a relatively low-wage structure. In October 1972, complainant's average hourly wage rate in the convertible game table plant was thought to be lower than the published average hourly earnings for production workers engaged in the manufacture of furniture and fixtures. 3/

Man-hours worked by production and related workers devoted to the subject convertible game tables increased fourfold from fiscal year 1971

1/ The Small Business Administration classifies manufacturing concerns with 250 to 1,000 employees as a small business.

2/ Based on total number employed as of Oct. 31 of each year.

3/ Conceptual difficulties prevent direct comparisons between complainant's wage rate, computed on the basic hourly rate for a 40-hour week, and, for example, average hourly earnings (\$3.12 in October 1972) for production workers engaged in the manufacture of furniture and fixtures, as published by the U.S. Department of Commerce. Basically, the wage rate represents the pay stipulated for a given unit of time, while earnings refer to the actual return to the worker for a stated period of time. Thus, earnings include, for example, vacation, sick leave, and overtime.

to fiscal year 1972. The latter year, of course, represents the first full year of convertible game table operations. From fiscal year 1971 to fiscal year 1972, output per man-hour increased by about 25 percent.

Financial data.--Complainant submitted profit and loss data for overall division operations and for convertible game tables alone.

Annual net sales for the ATI Recreation Division about doubled from 1968 to 1972. For the 6 months ended April 30, 1973, net sales indicated a further increase.

Net operating profits have fluctuated. In 1969 they were slightly higher than in 1968; they declined substantially in 1970, then sharply increased in 1971. In 1972, a reversal occurred and a net operating loss was reported. Another net operating loss was sustained for the 6 months ended April 30, 1973. In its annual report for fiscal year 1972, 1/ the parent organization offered the following explanation:

Fourth quarter operations continued to reflect the unfavorable operating conditions experienced in the third quarter. As previously reported, third quarter operations were affected adversely by losses sustained by our Leisure Time Products Division "ATI Recreation" . . . [which] posted additional losses in the fourth quarter.

In the last few years our Leisure Time Products Division has captured a major position in the growing home game and billiard table industry. A year ago we reported that sales were ahead 25% in 1971 and over 1970 and that profits improved by 55%. In the first half of 1972, sales and profits continued to climb and after receiving a substantial contract from Montgomery Ward we were encouraged to undertake a public stock offering. A subsidiary corporation - ATI Recreation, Inc. - was

1/ All-Tech Industries, Inc., Annual Report, 1972.

formed for this purpose from the Leisure Time Products Division but later was merged back into All-Tech when we decided it prudent to withdraw the planned underwriting because of market conditions.

Sales in the Leisure Time Products Division increased nearly 40% for the year as a whole. While first half profits were well above the same 1971 period, we sustained substantial losses in the second half due mainly to problems associated with overly ambitious expansion in business volume which resulted in a reduced gross profit margin. Higher manufacturing costs were experienced due to our inability to achieve a satisfactory flow of raw materials to accommodate the increased sales. We also incurred substantial startup costs in new production operations, including those related to a new product line, the Gambit. We already have and further expect substantial future sales and profits from the Gambit line. Finally, cost increases of raw materials, such as lumber, which have already captured national attention, and natural imported slate, which is sensitive to international currency fluctuations, contributed to further shrinkage in our gross profit margins on our fixed price contracts.

As of the first quarter of 1973 . . . the Leisure Time Products Division [is] again profitable - reflecting corrective actions taken earlier by management.

In the Leisure Time Products Division, we have firmed prices and revised variables to cover changes in raw material prices. We have also made several important organizational changes aimed at strengthening operations and internal cost control and assuring lowest possible material and component part prices.

In the first full year of production (fiscal year 1972) net sales of convertible game tables were five times higher than in the previous fiscal year. For the 6 months ended April 30, 1973, net sales of convertible game tables were nearly as large as the previous year's total.

In fiscal year 1971, operations on convertible game tables were almost at a break-even point. In both fiscal year 1972 and the first 6 months of fiscal year 1973 net operating losses were sustained.

The following table presents the change in unit costs to produce three different models of game tables.

All-Tech Industries, Inc.: Indexes of unit costs of production of
Convertible game tables, fiscal years 1971 and 1972 and
Nov. 1, 1972-Apr. 30, 1973

(Fiscal Year 1972 = 100)

Description	Year ended Oct. 31--		Nov. 1, 1972- Apr. 30, 1973
	1971	1972	
48-inch top assembly only--:	-	100.0	103.3
48-inch Gambit-----:	-	100.0	103.3
52-inch Gambit-----:	95.5	100.0	103.2

An official of the firm indicated that one of the major reasons for the increase in the unit costs of production was an extraordinary rise in the price of lumber. He cited as an example that in August 1971, a purchase of lumber was made at nearly \$300 per thousand board feet but in March 1973, the firm purchased lumber at about \$500 per thousand board feet.

Conditions of Competition

Channels of distribution and marketing

Complainant sells its convertible game tables nationwide to sporting goods distributors, to mass merchandisers, to the premium trade, and, regarding top assemblies, to furniture manufacturers. Important customers for convertible game tables include Montgomery Ward & Co., and for top assemblies only, Chromcraft.

Complainant advertises in publications aimed at sporting goods buyers, retailers, and those in charge of sales incentive programs (i.e, the premium trade). Complainant also provides promotional materials to customers for incorporation in their own advertising. In addition, complainant participates in the annual sporting goods and premium trade shows.

Respondent's convertible game tables are also supplied through sporting goods distributors and mass merchandisers (Sears, Roebuck & Co., has been a purchaser of respondent's convertible game tables). Respondent, through a wholly owned subsidiary--Rozel Industries, Inc.--owns and controls the "Minnesota Fats" sporting goods retail stores situated in the Chicago area, which sell the imported convertible game tables directly to the public. Respondent also relies on advertisements in trade publications and participates in trade shows.

U.S. demand and apparent U.S. consumption

At the conclusion of the preliminary inquiry there was no clear indication of how large the market for convertible game tables might be;

it did appear, however, that a considerable market potential existed. Billiards and pool became increasingly acceptable as a form of home entertainment during the 1960's. Moreover, the trend towards smaller housing units favors multifunctional and space-serving furnishings of which the convertible game table is a prime example. On the other hand, convertible game tables have a certain "novel" appeal. Such products normally do not have long market lifespans, and, in this regard, it is significant that the complainant was willing to forfeit 3 years of patent protection by disclaiming that portion of the mechanical patent which would have extended beyond the time period covered by the design patent.

At the conclusion of the preliminary inquiry uncertainty in the import data prevented the calculation of precise data on apparent U.S. consumption of convertible game tables. On the basis of available evidence, however, it was known that U.S. consumption of convertible game tables was growing rapidly and that imports by respondent accounted for a significant and rising share of the market.

Price comparisons

To develop price data on convertible game tables, the Commission requested complainant and respondent to submit all convertible game table price lists issued since they began marketing such tables. In addition, the Commission requested the firms to report the average net selling price (quarterly) for the period January 1, 1970, through March 31, 1973. Average net selling prices were to be computed on the basis of certain sales volume categories with a 2-percent cash discount

on payment within 10 days and less freight (separately reported) when paid by the seller. Specifications included 48-inch and 52-inch convertible game tables, top and base combinations, and 48-inch assemblies sold separately.

Published prices.--Table A on the following page shows published prices (f.o.b. Miami Lakes or f.o.b. Chicago) for convertible game tables sold complete with balls and cues. As shown, complainant increased the published price for the 52-inch table from \$160.00 in November 1971 to \$185.00 in February 1973 (i.e., by 15 percent). The published price for complainant's 48-inch table was stable at \$145.00. The 1972 published price for respondent's imported table, however, was \$135.00; at this level it underpriced complainant's 52-inch table by 25 percent and complainant's 48-inch table by 7 percent. Although complainant raised the list price of both tables in April 1973, the price increases were subsequently rolled back--for the 48-inch table, to \$138.00, the lowest price in the period under consideration. In the April 1973 published list price, complainant's 48-inch table was being offered for \$2.40 per table less than the 1973 published price for respondent's 48-inch table (\$140.40). By comparison, the price of Superior Industries' convertible game table, THE FULL HOUSE, was listed at \$130.00, while the price of Fischer's TRIESTE was \$170.00 (f.o.b. factory).

Convertible game tables: Published prices for ATI Recreation Division's 52-inch and 48-inch convertible game tables (with accessories) and for Armac Enterprises' 48-inch convertible game table (with accessories), specified months November 1971 to April 1973

Month and year of price list	(Price per table)		
	: Complainant ATI	:	: Respondent
	: Recreation Division	:	: Armac Enterprises
	: FOB Miami Lakes, Fla.	:	: FOB Chicago,
	: 52-inch table	: 48-inch table	: 48-inch table
November 1971-----	: 1/ \$160.00	: -	: -
February 1972-----	: -	: -	: \$135.00
July 1972 2/-----	: 3/ 180.00	: 3/ \$145.00	: -
February 1973-----	: 3/ 185.00	: 3/ 145.00	: 140.40
April 1973-----	: 3/ 214.00	: 3/ 151.00	: -
	: 3/ 185.00	: 3/ 138.00	: -

1/ Price for 6 to 50 tables.

2/ In March and July 1972 ATI published special price lists for premium programs. In these price lists ATI was offering retail prices, in effect, to various customers for use as incentive awards or other premium. ATI's 48-inch convertible game table is first listed in such a premium program. Price lists for this "premium program" were as follows:

Mar. 1, 1972--\$170 each for 1/2 truckload of 52-inch tables and \$154 each for 1/2 truckload of 48-inch tables; July 1, 1972--\$217 each for 1/2 truckload of 52-inch tables and \$187 each for 1/2 truckload of 48-inch tables.

3/ Price for 11 to 60 tables.

Source: Compiled by the U.S. Tariff Commission from price list data supplied by the complainant and the respondent.

Average net selling prices.--Average net selling prices were computed on a quarterly basis. Table specifications were the same as above (i.e., a 52- or 48-inch convertible game table complete with accessories). The average net selling prices were for the largest volume sales category reported by the firms. The complainant reported lower prices for sales above a certain quantity; respondent reported no price differential for convertible game tables sold in either large or small lots.

The net selling price for complainant's 52-inch table fluctuated during 1971, the first year of introduction. These price fluctuations probably represent experimentation with various price strategies as complainant sought to develop a market for a new and at that time unique product. During 1972, the selling price of complainant's 52-inch table stabilized and remained the same during the first quarter of 1973. The level of complainant's average selling price during 1972 reflects the premium program, in which complainant in effect retailed its tables to companies for use as incentive awards.

The average net selling price for complainant's 48-inch convertible game table remained the same throughout 1972 and during the first quarter of 1973. The average price, which reflects the actual transactions by complainant, was less than the published price for the same table. At this selling price the allegedly infringing imported table undersold the complainant's table by about 8 percent per table from the time respondent first reported sales in the second half of 1972.

The Tariff Commission also sought price data on complainant's 48-inch top assemblies which were sold to Chromcraft and Schubert. Complainant reported that during the second and third quarters of 1972 top assemblies sold separately were sold in small quantities at a constant price. Beginning in late 1972 and continuing into the first quarter of 1973, the quantity of top assemblies sold separately substantially increased, and complainant's sales were made in larger lots. Complainant's average selling price subsequently decreased in the first quarter of 1973; in conjunction with sales in even larger lots, the price was reduced even further.

Retail prices.--Retail prices displayed wide variation during 1972, depending largely upon whether or not the convertible game tables were ultimately offered with matching chairs. The highest retail prices were upwards of \$700 for complete table and chair ensembles. The lowest retail price for convertible game tables alone (48-inch) was \$187, quoted by complainant in its advertisement in The Counselor (September 1972 issue) a magazine directed to the specialty advertising and premium trade.

Complainant indicated that the respondent's table shown in the Sears catalog and priced at \$195 undersold Montgomery Ward's table (complainant's table) by 12 percent during the prime fall and winter marketing season in 1972, and, as a result, Ward's withdrew its illustration of the complainant's convertible game table from its 1973 fall and winter catalog. Ward's, however, featured complainant's table on a full page of its 1972 Christmas catalog at \$189--one of the lowest retail prices surveyed by the Commission. 1/

1/ See footnote 1 on p. A-21.

Summary of the Legal Issues Presented at the Conclusion
of the Preliminary Inquiry

I. As to the patents involved--

- A. Whether the imported convertible game tables, or components thereof, are embraced or are capable of being embraced (upon final assembly) within the claim(s) of U.S. Patent No. D223,539, and/or U.S. Patent No. 3,711,099.
- B. Whether, under the circumstances of this case, the complainant may be accorded relief under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) against the importation and sale of convertible game tables, or components thereof, which are embraced or are capable of being embraced (upon final assembly) within the claim(s) of U.S. Patent No. D223,539, and/or U.S. Patent No. 3,711,0

II. As to other unfair acts-- 1/

- A. Whether complainant's allegations relating to trademark misuse, false pricing, failure to mark with country of origin, false representation of sponsorship, and palming off, are supported by facts.
- B. Whether, under the circumstances of this case, any one or all of such practice(s), if supported by facts, constitute unfair method(s) of competition or unfair act(s) for which relief may be provided to complainant under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337).

III. Whether, under the circumstances of this case, good and sufficient reason exists for the Commission to order a full investigation.

IV. As to a temporary exclusion order--

- A. Whether the facts as shown indicate a prima facie violation of the provisions of section 337.
- B. Whether, in the absence of a temporary order of exclusion, immediate and substantial injury would be sustained by the complainant.

1/ To Commissioner Ablondi there is an additional issue as to whether there is a violation of section 5(a) of the Federal Trade Commission Act which bears a direct and causal relationship to unfair methods of competition or unfair acts in the "sale" of an imported article under section 337.

The Institution of a Full Investigation

On August 30, 1973, the Commission considered the information which had been assembled during the preliminary inquiry. On the basis of the data before it, the Commission determined that good and sufficient reason existed for it to order the initiation of a full investigation in the matter of certain convertible game tables and components thereof. Notice of the institution of a full investigation and of a public hearing in connection therewith to commence on October 15 was published in the Federal Register.

The Commission decided not to recommend at that time the issuance of a temporary exclusion order to the President. 1/ Pursuant to the provisions of section 333 of the Tariff Act of 1930 (19 U.S.C. 1333), the Commission authorized the issuance of a subpoena to respondent to compel testimony and to compel the production of books, documents, and records relative to the subject matter of the investigation.

The subpoena was issued on September 10, 1973, and was duly served on respondent by registered mail. The response to the subpoena was received by the Commission in respondent's offices at Chicago, Ill. on October 1 and 2, 1973.

The first hearing on this matter was held before the Commission pursuant to notice in the Tariff Commission Building, Washington, D.C., on October 15-17, 1973. The second hearing was held on February 5, 1974.

1/ Commissioner Moore voted at that time to recommend the issuance of a temporary exclusion order by the President.

The Commission determined that U.S. Patents Nos. D 223,539 and 3,711,099 were proper subjects of a full investigation, on the ground that respondent had imported and sold, without license from the U.S. patent owner, certain convertible game tables manufactured abroad which were similar in general configuration and construction to those manufactured by the complainant and which were, as such, probably made in accordance with the invention(s) disclosed in these patents, neither of which had expired or been adjudicated invalid.

The Commission defined the scope of the full investigation as follows:

That, for the purposes of section 337 of the Tariff Act of 1930, an investigation be instituted with respect to the alleged violations in the importation and sale in the United States of convertible game tables made in accordance with the claims of U.S. Design Patent No. 223,539 and U.S. Patent No. 3,711,099 and components thereof; with respect to the allegation that complete sets of the imported product are the subjects of unfair pricing; and with respect to the allegation that complete sets of the imported product are the subject of false representations as to sponsorship.

The Commission determined that the allegations pertaining to the trademark "TRIO", failure to mark with country of origin and "palming off" were not to be included within the scope of the investigation.

INFORMATION DEVELOPED SUBSEQUENT TO THE INSTITUTION
OF THE FULL INVESTIGATION

Response to the Commission's Subpoena

The response to the Commission's subpoena, which was made on October 1 and 2, 1973, in Chicago, Ill., established that respondent's imports of convertible game tables accounted for a far greater portion of domestic consumption in 1973 (through July 31, 1973) than they did in 1972; that significant inroads had been made by these imports into the domestic market; and that the penetration was being maintained by repeated importations of large volumes of this product. The number of convertible game tables imported by respondent during the first 7 months of 1973 alone was more than three times the number it had imported during calendar year 1972. There were indications that the rate of importations of this product would increase even further in the months ahead.

The response to the Commission's subpoena also indicated that there were significant discrepancies between the advertised and actual regular price of respondent in its marketing of the subject convertible game tables through its retail outlets, the "Minnesota Fats" stores in the Chicago area. The response to the Commission's subpoena failed to disclose the name of a single purchaser of a FLIPPER table from these stores for a price of \$299, and did not reveal any supporting documentation to the four retail sales slips provided to the Commission's staff earlier by the respondent (see section on respondent's contentions).

The Information Developed at the Commission Hearing
held on October 15-17, 1973

The evidence submitted by complainant as to the patents

Complainant introduced one of its convertible game tables and one of the allegedly infringing imported convertible game table into evidence as physical exhibits (see app. D) and then proceeded to apply the claims of its U.S. Patent No. 3,711,099, first to its own product, and then to the imported product. 1/ In this manner, complainant's attorney, who had qualified himself as an expert witness, testified that all claims of U.S. Patent No. 3,711,099 except claims 9 2/ and 11 3/ found substantial response in the imported product. Having earlier established that the domestically produced product introduced into evidence at the hearing was representative of the product marketed and sold by complainant, complainant's attorney then attempted to establish, through adverse questioning of respondent's witness, that the sample of allegedly infringing imported product introduced into evidence at the hearing was representative of the product marketed and sold by respondent. 4/

Complainant did not proffer evidence as to infringement of U.S. Patent No. D223,539 (its design patent) at the hearing.

1/ Transcript of the hearing, pp. 176-210.

2/ Ibid., p. 204. Claim 9 refers to a plurality of arcuate cutout sections in the planar shelf which was not found on the copy of respondent's table introduced into evidence at the hearing.

3/ Ibid., p. 205. Claim 11 refers to each of the table tops being circular in configuration. The table tops on the copy of respondent's table introduced into evidence at the hearing were octagonal.

4/ Ibid., pp. 216-220.

The evidence submitted by complainant as to false pricing

Complainant introduced into evidence an affidavit executed by a certain Mr. Anthony Morelli, of 1005 Belleforte St., Oak Park, Ill., and then elicited testimony from Mr. Morelli pertaining thereto. The affidavit in question indicated that on December 26, 1972, Mr. Morelli, a high school principal, visited eight "Minnesota Fats" stores in the Chicago area at the request of the office of complainant's counsel. The affidavit also indicated that Mr. Morelli made notes after his visit to each store, which notes were expressly made a part of the affidavit and incorporated therein.

At the hearing Mr. Morelli identified the affidavit in question as being the affidavit that he had executed. After refreshing his recollection by referring to the affidavit, he identified the names of all eight stores as well as the salesmen he had talked to in seven of these stores. 1/ Mr. Morelli's testimony as to the regularly established price of the FLIPPER table, based on his inspection of each store, was summed up by the following statements:

It simply depended on which store you were in.
The established price went from \$229 to \$249 to \$299 and it simply varied from store to store.
This was told to me either by a salesman or I saw it in an ad, that is a flyer, that they may have had on the window or on a table. 2/

1/ There appears to be some discrepancy in the testimony as to the number of retail stores operated by the respondent through its subsidiary, Rozel Industries, Inc., in Chicago. See the statement by Mr. Marcus (respondent's counsel) contained on p. 48 of the transcript of the hearing: "Rozel Industries is a subsidiary of Armac Enterprises. There are six local stores in the Chicago area" (Emphasis supplied.) The answer Mr. Slotky (president of Armac Enterprises and Rozel Industries) gave to Chairman Bedell's question, "There are six Rozel retail stores in the Chicago area?" was "In the Chicago area only." Ibid., p. 341.

2/ Ibid., p. 39.

I could not form a definite opinion or conclusion as to what the regular price would be because it would depend on the store that I visited. As I indicated, it would vary from store to store. 1/

Mr. Morelli's testimony as to what the sales price was in these stores on December 26, 1972, was exemplified by his statement: "The sale price in all of the eight stores was the same. That was \$199." 2/

Mr. Morelli's testimony as to when the sale would be over was summed up by the following statement:

It depended on who you talked to. In general, none of the sales personnel really knew when the sales would be over and in essence some said a week, some said two weeks, some said when we hear from the main office. When I asked, well, when will that be, they simply indicated they really did not know. 3/

Complainant then introduced into evidence an advertisement appearing on page 4, section 3, of the Chicago Sunday Tribune of September 30, 1973. This advertisement referred to the "Fabulous Flipper Table" and stated "Regular \$299, save \$99.12. Ten days only." Mr. Morelli testified that on Friday, October 12, 1973, two days subsequent to the date advertised in the paper for the end of this sale, he visited the Oak Park store and once again viewed a FLIPPER table. He testified that there was a tag that had a sale price on it of \$199.98 and also a tag to the effect that the regular price was \$299. 4/

1/ Ibid., p. 40.

2/ Ibid., p. 39.

3/ Ibid., p. 40.

4/ Ibid., p. 38.

Complainant's counsel alleged at the hearing that the particular prices with regard to which testimony was given showed an effect or tendency to destroy or substantially injure an efficiently and economically operated industry in the United States in that respondent selected prices which were representative of the regularly established prices of complainant's product and then offered the imported product at a lower price, leading the public to believe they now had a real bargain. This, it is alleged, fostered the sales of the imported item to the detriment of the domestic product. 1/

The evidence submitted by complainant as to false representation of sponsorship

Complainant's attorney had raised the issues as to the use of the terms "FLIPPER" and "UNIROYAL" in his supplemental complaint. However, at the hearing complainant's attorney did not pursue the issue he had raised as to the use of the term "FLIPPER", nor did he offer any evidence at the hearing which controverted respondent's explanations as to the circumstances surrounding the use of the name "UNIROYAL." 2/

The evidence submitted by complainant as to whether the domestic industry was efficiently and economically operated

There was testimony at the hearing by the general manager of complainant's ATI Recreation Division to the effect that there was a conscious effort on the part of management to increase the number

1/ Ibid., p. 74.

2/ Ibid., pp. 355-356.

of convertible game tables produced against the man-hours worked, that attention was constantly given to balance, work flow, and the geography of work stations to achieve optimum output of this product, that performance of complainant's employees was kept at the desired level by continuous observation and supervision, that the output of new employees was kept at a certain minimum, that an independent roving quality inspector routinely checked one out of every hundred finished tables for mechanical defects, and that employee turnover had not increased significantly within the last 12 months. 1/

The general manager of complainant's ATI Division also testified at the hearing that--

I feel we are at the optimum compromise which I am confident to recommend to the Board at this moment in terms of capital investment against certainty of market, against, therefor, reasonable probabilities of sale and giving the amortization base to recover the equipment 2/

The evidence submitted by complainant as to immediate and substantial harm

There was testimony by complainant's vice president of finance, ATI Recreation Division, to the effect that complainant and a company listed on the New York Stock Exchange were engaged in negotiations looking toward the licensing of the patent covering the subject convertible game table but competition from imports had significantly forced down the price perimeters and royalty fees complainant could reasonably expect to get in any such agreement; 3/ imports of convertible

1/ Ibid., pp. 79-87.

2/ Ibid., p. 89, 90.

3/ Ibid., p. 238.

game tables continued unabated; 1/ 2,000 convertible game tables were being manufactured in Taiwan for shipment to Sunshine Cover & Tarp Co., another importer; 2/ imports were primarily responsible for a decline of \$10 per unit in the selling price of the domestic product, which, if projected into 1973, would result in a total revenue loss of \$170,000 for 1973 alone; 3/ by virtue of intense competition from imports, Montgomery Ward, a major customer of complainant, demanded a decrease in price, or, as an alternative, a cutback in the number of convertible game tables ordered from complainant; complainant had reduced prices, but this was not enough to stave off a cutback of some orders; 4/ intense price competition from imports was causing at least one other large customer of complainant, Chromcraft, to seriously question the prices it was paying to complainant for components (tops) of convertible game tables, in view of a newspaper advertisement for a FLIPPER table of which Chromcraft had been made aware. 5/

The same witness maintained that complainant should also count as its lost profit the opportunities for sales it would have had from respondent's convertible game tables or at least the royalties attendant thereto. 6/

The evidence presented at the hearing indicated that there was a history of ever-increasing sales by complainant (albeit with a decrease in profit), that there was an increase in employment of 6 to 10 people,

1/ Ibid., p. 230.

2/ Ibid., p. 229.

3/ Ibid., p. 231.

4/ Ibid., p. 231.

5/ Ibid., pp. 232-238.

6/ Ibid., p. 240.

and that complainant had been operating at maximum capacity; nevertheless, the complainant's plans for increasing its physical plant facilities, for increasing capital expansion, for further increasing employment at the plant, and for pursuing a more vigorous research and development effort were being shelved because of intense competition. 1/

The evidence submitted by respondent as to the patents

At the hearing respondent introduced a copy of its application to the U.S. Patent Office for a design patent covering the imported convertible game table, which bore a notation by the examiner that "since this application appears to be in condition for allowance except for formal matters prosecution is closed" 2/

Respondent then introduced into evidence a copy of the April 26, 1973, memorandum it had submitted to the Commission's staff earlier (see section on respondent's contentions) relating to the question of infringement of U.S. Patent No. 3,711,099. 3/

After qualifying himself as an expert witness, respondent's attorney proceeded to contend (1) that two forms of the invention were referred to in the abstract of the patent, rather than one; 4/ (2) that the language "said second and third tops comprising a single top" (emphasis supplied) did not preclude the addition of still another top, (a third top, which would result in a table with three separate tops),

1/ Ibid., pp. 254-56 and pp. 263-69.

2/ Ibid., p. 410.

3/ Ibid., p. 413.

4/ Ibid., p. 415.

for the reason that "comprising" is never followed by a singular; 1/ (3) that elsewhere in the claims of this patent there are references to a "second top" and a "third top," which would be unnecessary if all that was intended was to incorporate two surfaces into one top (the second top); 2/ that, by virtue of the foregoing, the claims of this patent were contradictory 3/ and ambiguous; 4/ that such clarity or consistency as was found in the claims of this patent existed only if the claims were read on a table with three separate tops; 5/ and that respondent had not imported or sold any convertible game tables having three separate tops. 6/

Respondent's attorney contended that U.S. Patent No. 3,711,099 covered an aggregation rather than a combination, since there was no demonstrable cooperative action between the various elements of the table, 7/ and that the indefiniteness of the claims of this patent effectively preclude his challenging of the validity of this patent. 8/ Respondent's attorney also pointed out that certain claims of this patent covered matters that were quite obvious and old in the art. 9/

The evidence submitted by respondent as to false pricing

Respondent's retail pricing practices insofar as they related to sales of the FLIPPER table were explained by the following statements

1/ Ibid., p. 423.

2/ Ibid., p. 423.

3/ Ibid., p. 422.

4/ Ibid., p. 418.

5/ In support of its position respondent referred to a newspaper advertisement that had been introduced into evidence earlier wherein complainant's table was shown as having three separate tops. Ibid., p. 416.

6/ Ibid., pp. 366 and 423.

7/ Ibid., p. 430.

8/ Ibid., p. 433.

9/ Ibid., pp. 425-430 and 433.

made by Mr. Slotky in response to questions placed by his attorney:

Mr. MARCUS: Would you comment as to your knowledge of our use of the term "regularly advertised manufacturer's list price," and the use of those types of things in the advertising that we do through the Rozel stores?

MR. SLOTKY: When we take a new item especially that has not been proven as to what the ultimate consumer acceptance is going to be, you have to fish around to find out what price is going to move the item.

Specifically, we took our FLIPPER table, we put the table on our floor at \$299. We had mild or limited success at \$299. Shortly thereafter, and I believe I have a copy of one of the ads, we noticed that the predominant price for this table, in the Chicago area, not ours but the GAMBIT, was \$249.

So, we subsequently lowered the price in our ads to \$249. At this particular point, we are at \$199.

MR. MARCUS: Would you then state that we would have offered to the retail trade, through the Rozel subsidiary, tables at the specific prices if we had advertised them at those prices?

MR. SLOTKY: Yes. 1/

Respondent then submitted in confidence data showing the total number of FLIPPER tables sold in the "Minnesota Fats" stores each month from September 1972 through September 1973 in relation to the total dollar volume for all sales of FLIPPER tables in the "Minnesota Fats" stores at the end of this period. Respondent also submitted in confidence data showing the relation of the total number of FLIPPER tables sold in the "Minnesota Fats" stores to the total of respondent's sales of FLIPPER tables to wholesalers. Respondent's counsel alleged at the hearing that even if he was unable to prove that respondent's advertised regular prices existed, the amount and number of sales by Rozel of tables alleged to be falsely priced pursuant to such practices

1/ Ibid., pp. 335-36.

were so miniscule and minor, both as to the total imports of respondent as well as to total sales of Rozel, that they would not indicate any type of injury to a U.S. business within the meaning of section 337. 1/

Respondent also submitted an advertisement from the Chicago Tribune dated September 11, 1971, in which a GAMBIT table was advertised for sale at \$249, and elicited testimony from Mr. Slotky to the effect that the original price of the FLIPPER table was \$299. 2/

The evidence submitted by respondent as to false representation of sponsorship

Respondent's attorney maintained that FLIPPER is a generic term 3/ and, through the introduction of a copy of the registered trademark, established that the name FLIPPER had been registered as a trademark for respondent's use. Respondent's attorney also elicited statements from both Mr. Slotky and Mr. Bernstein (executive vice president, Armac Enterprises, Inc.) to the effect that neither of them, in their respective sales and business experiences at Armac Enterprises, Inc., had heard anyone make any statements which would in any way tie FLIPPER table sales to the television program "Flipper." 4/

Mr. Bernstein also testified at the hearing that the use of the name UNIROYAL in an advertisement was a one-time promotion for Uniroyal, and that Uniroyal personnel had asked respondent if they could use respondent's address in the advertisement so that their customers would know from where the product would be coming. Mr. Bernstein further

1/ Ibid., p. 326.

2/ Ibid., pp. 336-337.

3/ Ibid., p. 327.

4/ Ibid., p. 332.

testified that orders were sent to respondent from the Uniroyal people, and that respondent "drop shipped" the tables to each of Uniroyal's customers and billed Uniroyal for each shipment. 1/ Finally, Mr. Bernstein testified that he had not used the name UNIROYAL in order to promote the sales of other FLIPPER tables. 2/

The evidence submitted by respondent as to whether the domestic industry was efficiently and economically operated

Respondent's attorney maintained that the industry in question encompassed more than complainant's facilities for construction of the Gambit table, 3/ and that, assuming the viability of complainant's plant facilities and an increase in the market demand for convertible game tables, complainant was capable of participating in any increase in the market for convertible game tables. 4/

Respondent's attorney alleged that the demand for complainant's convertible game tables has heretofore been equal to their production, 5/ that the trucking of material between different facilities added to the cost of the product and as such decreased its profitability, 6/ and that complainant had the right to vacate the premises on which its GAMBIT tables were being produced upon 30 days advance written notice to the lessor. 7/

1/ Ibid., p. 355.

2/ Ibid., p. 356.

3/ Ibid., pp. 103-105 and pp. 157-159.

4/ Ibid., p. 109.

5/ Ibid., p. 155.

6/ Ibid., p. 282.

7/ Ibid., p. 166.

The evidence submitted by respondent as to immediate and substantial harm

Respondent's attorney alleged that the decline in the profitability of complainant's overall operation from 1971 to 1972 was not exclusively attributable to competition involving GAMBIT-type tables, 1/ nor, for that matter, was it "heavily related" to such competition during 1971 and 1972; 2/ that, at least as of the date of the hearing, respondent was not complainant's only competitor in the convertible game table market; 3/ that complainant's witnesses had no knowledge that respondent had actually approached Montgomery Ward with reference to sales of the subject product; 4/ that the price for the GAMBIT table in the Montgomery Ward catalog in 1972 was lower than the price of respondent's FLIPPER table in the 1972 Sears catalog; 5/ that, to some extent, complainant's "effective" licensees were in competition with it in its sales of convertible game tables; 6/ and that complainant's own estimate of the size of the market for convertible game tables in 1973, i.e., 50,000 units, 7/ when coupled with its projected output of convertible game tables in 1973, i.e., 12,000 complete sets (exclusive of tops sold separately), 8/ would seem to indicate that complainant could not in any event fill the domestic demand for the product.

1/ Ibid., p. 274.

2/ Ibid., p. 275.

3/ Ibid., pp. 278-280.

4/ Ibid., p. 301.

5/ Ibid., p. 309.

6/ Ibid., p. 301.

7/ Ibid., p. 291.

8/ Ibid., p. 101.

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Appendix A

U.S. Patents D223,539 and 3,711,099
and additional materials

A-69

United States Patent Office

Des. 223,539

Patented May 2, 1972

223,539

CONVERTIBLE TABLE FOR UTILITY, GAMES, AND BUMPER POOL

Ernest Miller, Hollywood, Fla., assignor to All Tech
Industries, Inc., Miami, Fla.

Filed May 17, 1971, Ser. No. 144,382

Term of patent 14 years

Int. Cl. D21—G2

U.S. Cl. D34—3

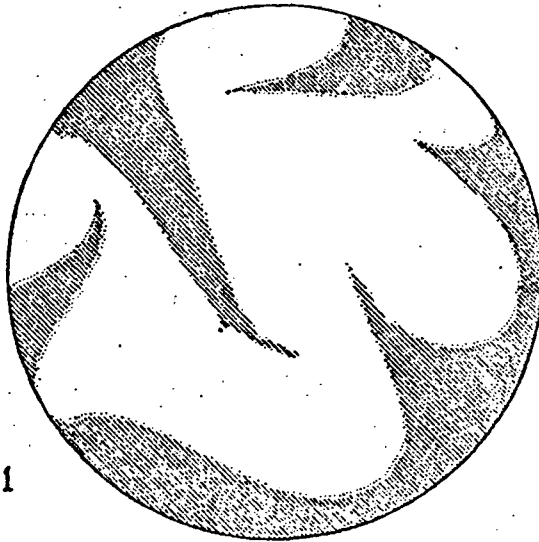


FIG. 1

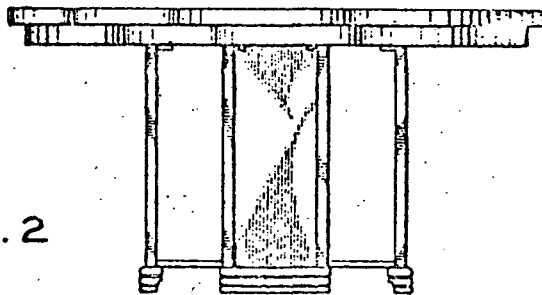


FIG. 2

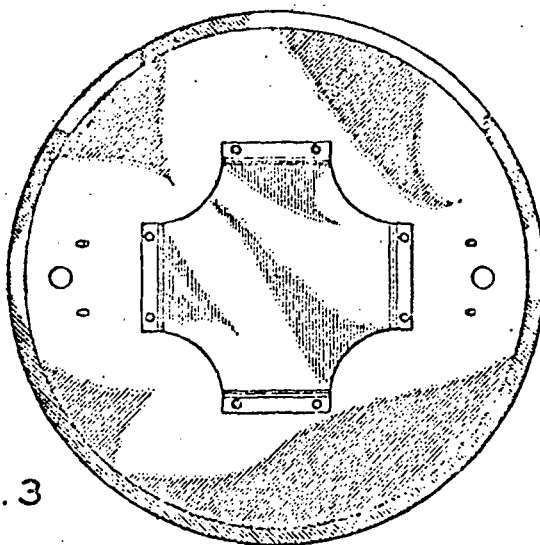


FIG. 3

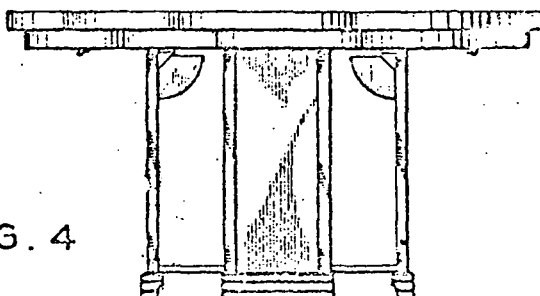


FIG. 4

FIG. 5

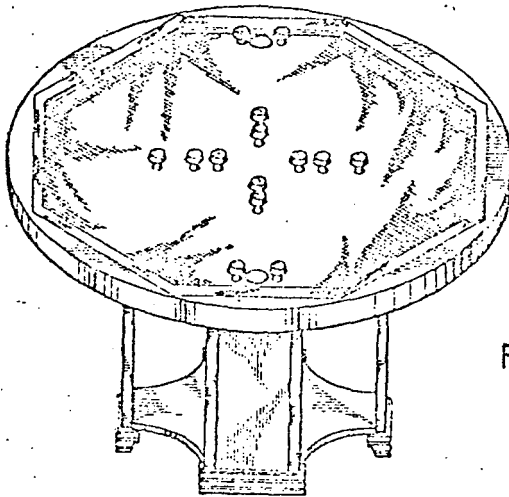
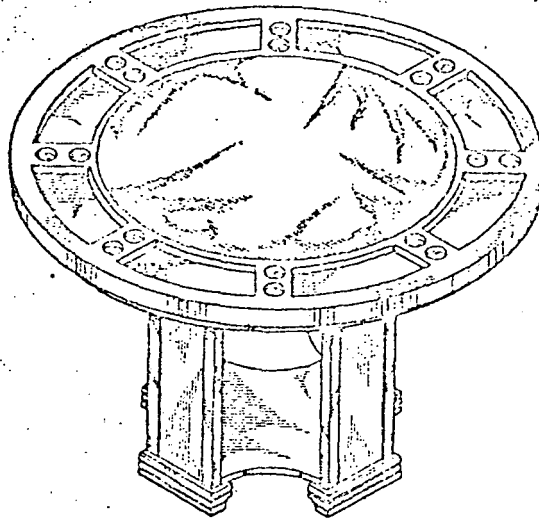


FIG. 6

FIG. 1 is a top plan view of a convertible table for utility, games, and bumper pool, showing my new design. FIG. 2 is a side elevation thereof.

FIG. 3 is a bottom plan view thereof.

FIG. 4 is a side elevation of the table at right angles to that shown in FIG. 2.

FIG. 5 is a perspective oblique view of the table with top shown in FIG. 2 inverted.

FIG. 6 is a perspective view of the table shown in FIG. 2.

The table shown is convertible to form three top surfaces and shows ball receiving receptacles in storage position in FIG. 4, which may be removably secured under holes shown in FIG. 3.

claim:

The ornamental design for a convertible table for utility, games, and bumper pool, as shown on the accompanying

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MELVIN B. FEIFFER, Primary Examiner

[54] **CONVERTIBLE TABLE FOR UTILITY GAMES AND BUMPER POOL**

[75] Inventor: Ernest Milu, Hollywood, Fla.

[73] Assignee: A.T.J. Recreation Inc., Miami, Lakes, Fla.

[*] Notice: The portion of the term of this patent subsequent to May 2, 1986, has been disclaimed.

[22] Filed: Nov. 3, 1971

[21] Appl. No.: 195,098

Related U.S. Application Data

[63] Continuation-in-part of Ser. No. 65,196, Aug. 19, 1970.

[52] U.S. Cl. 273/123 R, 108/150, 278/3 C, 278/12, 273/5 R

[51] Int. Cl. A63d 15/04

[58] Field of Search..... 273/3 C, 4 R, 4 A, 4 B, 4 C, 273/5 R, 5 A, 5 B, 5 C, 11 R, 11 C, 12, 22, 123 R, 136 Z; 108/59, 150, 156, 159; 297/157; D6/29, 177, 179; D34/3, 5 J

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Primary Examiner—Richard C. Pinkham

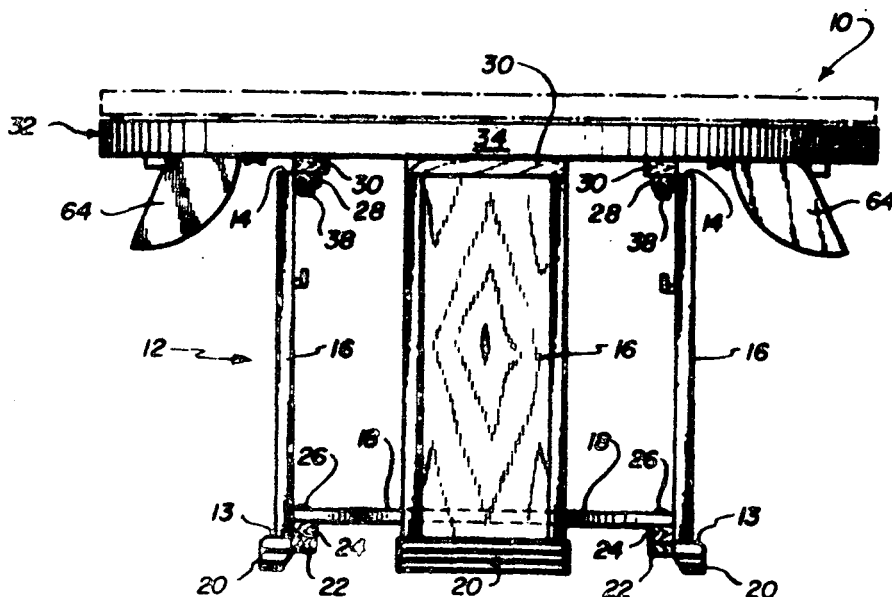
Assistant Examiner—Richard T. Stouffer

Attorney—Dominik, Knechtel, Godula & Demeur

[57] **ABSTRACT**

There is disclosed a combination flat top and game table assembly, the combination including a leg support for supporting the table arrangement, the first top secured to the leg support and forming a first type of game table surface a second top constructed for removable seatment upon the first top, the second top forming a second type of game table surface and a third top formed into a flat table surface which may be positioned on the first top for converting the assembly into a normal flat top table. In the preferred embodiment, the second and third tops are formed from a single top having one surface formed into a flat table top, and the reverse surface forming a second game means, the second top being reversibly positionable upon the first top thereby to expose either the flat table top or when reversed, to expose the second type of game table surface. Included in the game table assembly are removably positionable ball collection compartments which are positioned directly under pockets in the first game table surface when the assembly is to be used as a pool table.

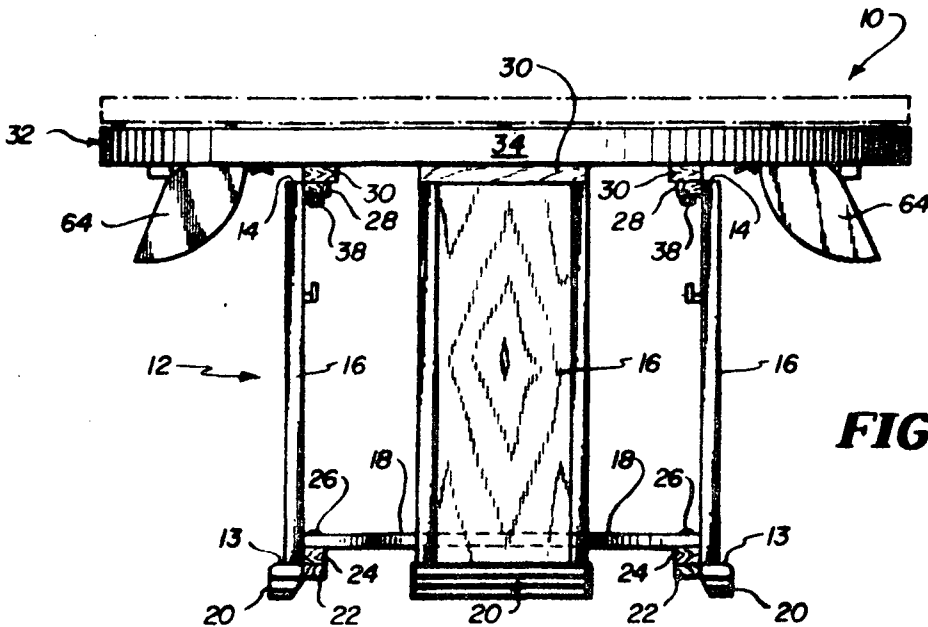
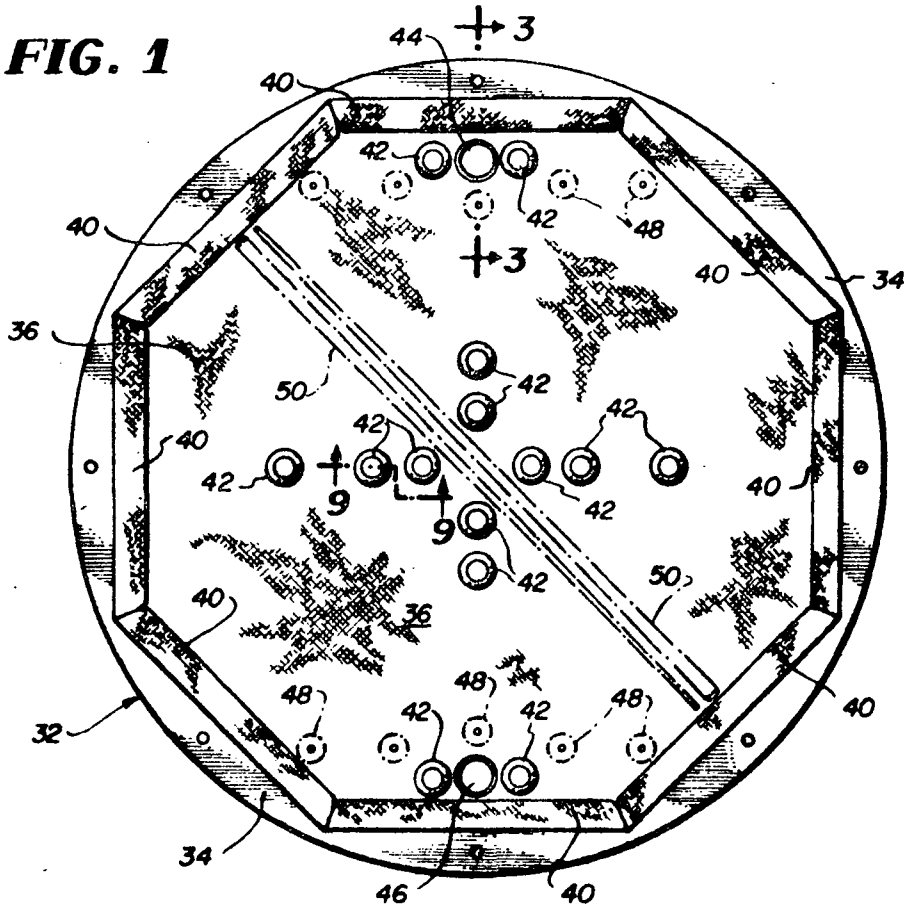
15 Claims, 9 Drawing Figures



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FIG. 1**FIG. 2**

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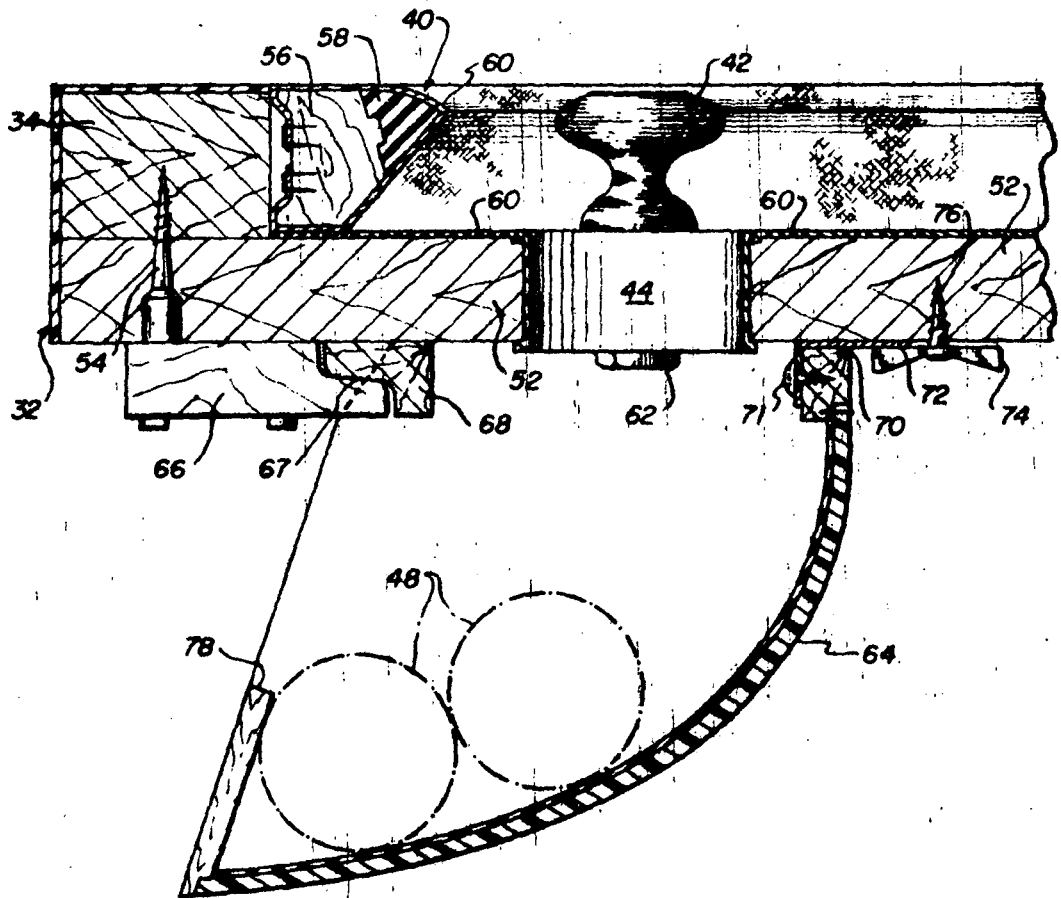
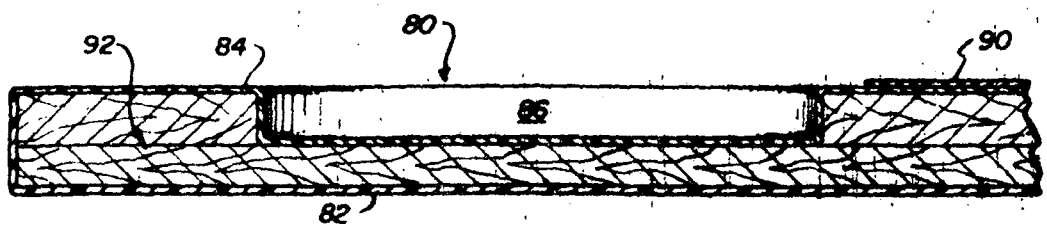
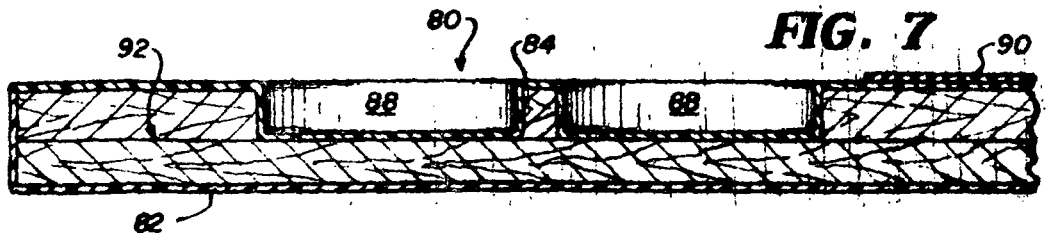
FIG. 3**FIG. 6****FIG. 7**

FIG. 4

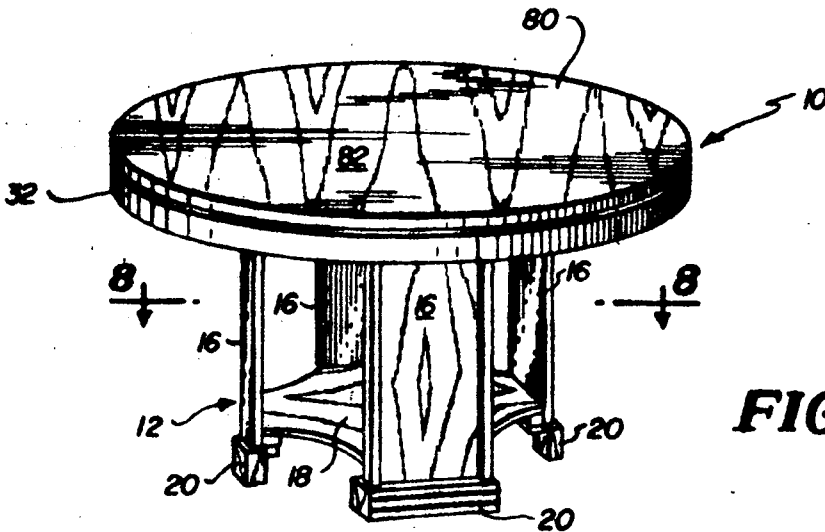
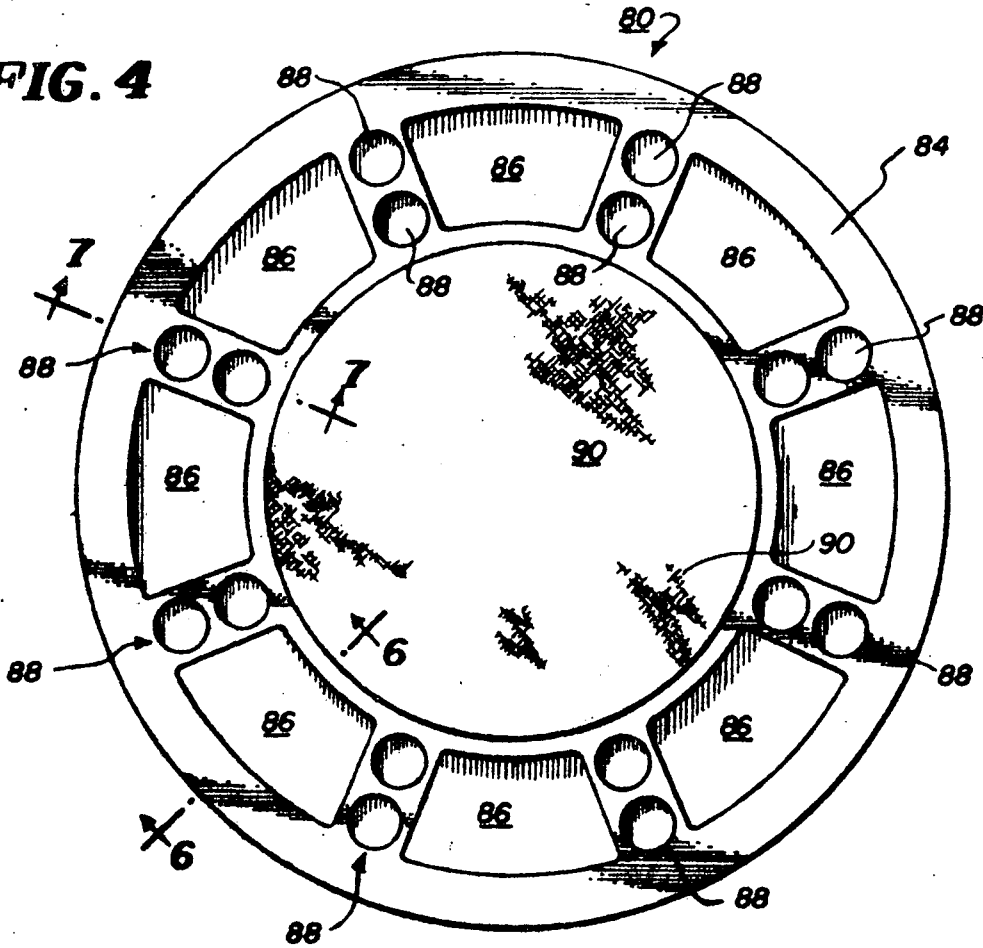
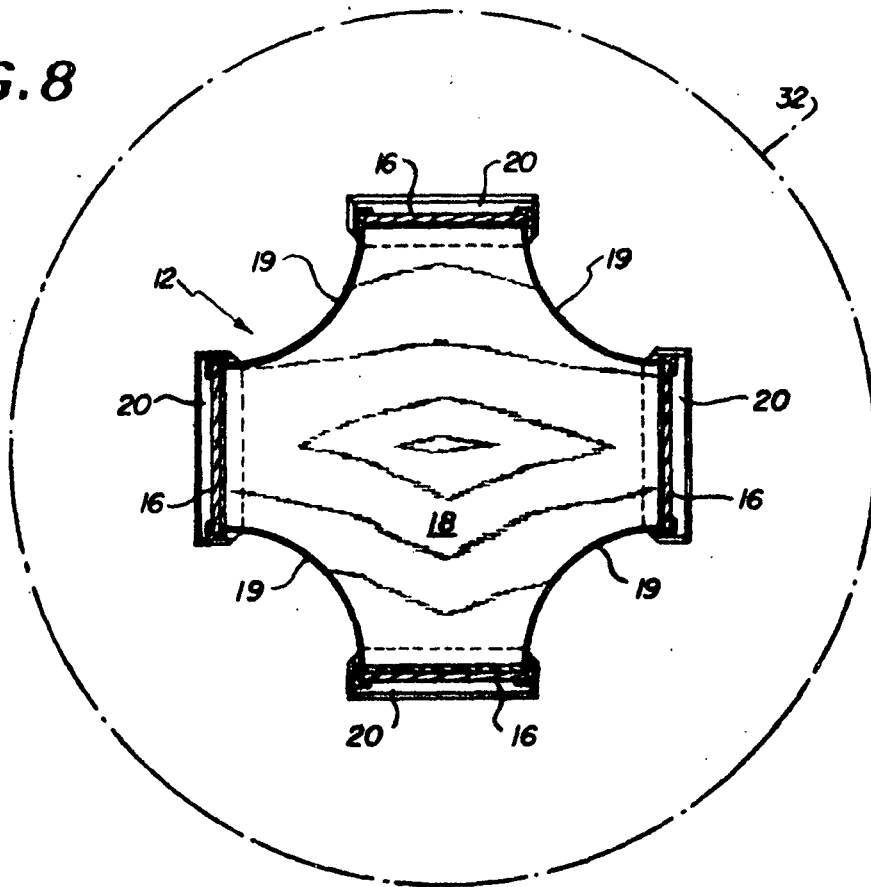
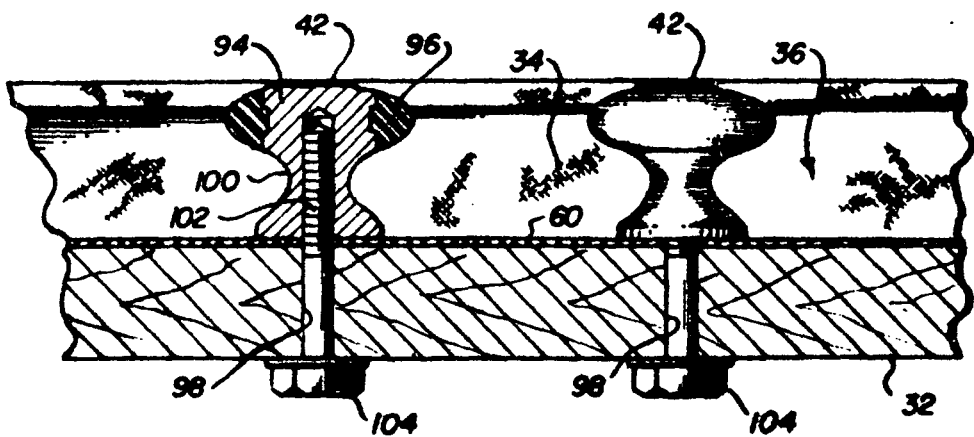


FIG. 5

FIG. 8**FIG. 9**

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CONVERTIBLE TABLE FOR UTILITY GAMES AND BUMPER POOL

CROSS REFERENCE TO RELATED CASE

This application is a continuation-in-part of application Ser. No. 65,196, entitled CONVERTIBLE TABLE, filed on Aug. 19, 1970, in the name of Ernest Milu and assigned by mesne assignment to A.T.I. Recreation Inc. of Miami Lakes, Fla.

BRIEF DESCRIPTION OF THE INVENTION

The present invention is directed to a novel table assembly which includes, in combination, a single table having a plurality of tops thereby to permit the utilization of the table as a normal flat top type table as well as a game table, having at least two different game playing surfaces. More specifically, the table assembly of the present invention includes a single pedestal arrangement supporting thereon a first top which is formed into a first game means, and, in the preferred embodiment, a second top having reverse surfaces, one surface being formed into a flat top table and the reverse surface formed into a second game playing surface, the second top being removably positionable upon the first top, whereby the user may select either of two game playing surfaces, or the normal flat top type table surface without the need of having to employ three different tables. Once again, in the preferred embodiment, the first top is formed into a pool ball game playing surface, and the second top has a first flat planar surface for use as a normal table and a reverse surface which is formed into a card game playing surface, the second top being proportioned so as to seat directly over the first top, thereby to provide a compact and convenient combination table arrangement.

BACKGROUND OF THE INVENTION

Heretofore in the prior art, where a person has desired the convenience and enjoyment of a game table, it has been necessary to purchase or acquire a separate table assembly embodying the particular game which the person desired. For example, card game playing tables have been known, and generally take the form of the playing surface having a fabric covered central portion and with a plurality of player convenience cavities disposed around the periphery of the table, the cavities usually taking the form of a large cavity for game related articles, and either one or two circular apertures to accommodate a beverage container. However, such tables serve only the particular function or purpose described, and hence, usually such tables are provided with foldable or collapsible legs in order to permit the user to store the same when it is not in use.

Another example of such game tables has been the current advent of home pool or bumper pool tables. Presently, such sport has become very popular with the public and many of such types of game tables are being currently sold throughout the United States. However, is quite apparent that such tables are again separate entities unto themselves, and therefore, it is necessary for the particular purchaser to have the physical facilities to accommodate such tables. In the usual case, a pool or bumper pool table is disposed or positioned in one's family room or basement, and while several of such

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types of tables are collapsible, in the usual case, such tables are rather bulky and heavy and therefore, once installed, tend to remain in a permanent installation. This particular aspect of such game tables therefore must, of necessity, diminish the numbers of such tables which are sold, since today's environment, many people do reside in apartments and condominium type units and such abodes do not usually have sufficient room to accommodate card playing tables, or pool or bumper pool tables.

With respect to the patented art, there are many patents which show game tables, such as for example, U.S. Pats. No. 3,522,778, which is directed to a pool type game table; No. 3,489,409, which is also directed to a six sided pool table; and No. 3,544,108, which is again directed to another variety of a pool game table. Other patents which relate to game tables includes Pats. No. 3,360,265, which is directed to a simulated golf course of billard like tables; and No. 1,625,265, which is directed to a golf course game table which may be employed for indoor use. It is apparent that various other patented game tables are known in the art without need of further recitation herein. However, all of such game tables share one common drawback and that is the fact that such tables serve strictly one function or purpose, and that is, providing a game playing surface for the particular game involved.

As has been set forth hereinabove, one of the principal drawbacks of such tables is that the user must have the space available to install such tables, since in most cases, such tables are not collapsible, or if they are, present a very bulky package for storage. Furthermore, where the user desires to have more than one type of game table, such problems are accentuated since it is virtually impossible to find any home having the necessary space to have a plurality of game tables set up. This problem is even more accentuated in the case of persons who reside in either apartments or condominium type units since usually space is simply not available to permit the permanent installation of a game table having no other utilitarian function.

At best, some of such game tables have been provided with a separate solid cover, peripherally registering with the periphery of the game table, such that the user may place the hard cover over the game table when not in use thereby to utilize the table as a normal flat top table. However, in most cases, it is the consumer or the user who must manufacture such tops as a do-it-yourself project, which is not only time consuming, but in most cases, such tops are not well-fitted and cannot usually be finished to match the particular wood or veneer finish of the game table.

It is therefore the principal object of the present invention to provide a combination flat-top table and game table which may be arranged in such manner as to embody a plurality of game playing surfaces as well as a flat top, thereby to function as a normal flat top type table, as well as a game table.

Another object of the present invention is to provide a table assembly which in combination includes leg means for supporting a top, a first top affixed to the leg means which is formed into a first game means, a second top which is formed into a second game means, and a third top which provides a smooth flat planar surface to function as a normal table, each of the tops

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being removably positionable upon the first top thereby to permit great versatility as well as the convenient storage for all of the game means as well as the normal flat top type table.

In connection with the foregoing object, it is another object of the present invention to find a table assembly which in combination, includes a first top disposed upon leg means, the first top being formed into a pool ball game playing surface, and a second top which has two surfaces, one surface thereof formed into a planar flat table top, and having the reverse surface thereof, formed into a second game playing surface, the second top being removably positionable upon the first top, the user having the ability to select either the smooth flat top surface for exposure, or the reverse game playing surface thereof for exposure.

Still another object of the present invention in connection with the foregoing object, is to provide a table assembly in combination wherein the second game means formed in the second top comprises a card game playing surface, having a plurality of player convenience cavities, disposed thereabout, which, nevertheless, continues to permit the second top to be removably positionable upon the first top while still affording the user the opportunity to select either of the two surfaces of the second top for placement upon the first top.

Yet a further object of the present invention is to provide a table assembly combination of the type set forth above, wherein each of the tops is circular in configuration with each of the tops having substantially the same diameter thereby to permit the respective peripheries thereof to be in substantially identical registry or with the uppermost top having a slight overhang, one with respect to the other, thereby to permit the user to conserve space.

Still a further object of the present invention is to provide a table assembly which in combination permits the user to obtain the advantages of having a plurality of game tables, while at the same time providing the user with a table which has a flat top surface thereby to function as a normal dining table, and hence, permitting the user to permanently install such table in a particular location avoiding the necessity of having a plurality of such tables in order to provide at least two different game tables as well as a normal type dining table.

Further features of the invention pertain to the particular arrangement of the elements and parts whereby the above outlined and additional operating features thereof are attained.

The invention, both as to its organization and method of operation, together with further objects and advantages thereof, will best be understood by reference to the following specification, taken in connection with the accompanying drawings in which:

FIG. 1 is a top plan view of the pool ball playing game surface of the table of the present invention;

FIG. 2 is a side elevational view of the table assembly of the present invention showing also the pool ball catcher racks removably positioned under the first top of the present table;

FIG. 3 is a side cross-sectional view showing a portion of the pool ball game playing surface taken in the direction of the arrows along the line 3—3 of FIG. 1;

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FIG. 4 is a top plan view showing one surface of the second top which is formed into a card game playing surface in accordance with the present invention;

FIG. 5 is a plan view of the table assembly of the present invention showing the first top disposed on the pedestal assembly and the second top removably positioned thereon and having the normal flat table top in the exposed position;

FIG. 6 is a cross-sectional view of a portion of the second top of the table combination of the present invention showing the card game playing surface formed in the one surface thereof and the flat top surface formed along the other surface thereof, taken in the direction of the arrows along the line 6—6 of FIG. 4;

FIG. 7 is a side cross-sectional view through a portion of the second top showing a pair of player convenience cavities formed in the card playing surface of one side of the top and again, the smooth flat surface on the other side of the second top, taken in the direction of the arrows along the line 7—7 in FIG. 4;

FIG. 8 is a cross-sectional view showing the arrangement of the legs and the leg support shelf taken in the direction of the arrows along the line 8—8 in FIG. 5; and,

FIG. 9 is a cross-sectional view showing the mounting of the obstacle bumpers on the pool ball game playing surface taken in the direction of the arrows along the line 9—9 in FIG. 1.

Referring now to the drawings, and more specifically FIGS. 1 and 2 thereof, there is shown a table assembly, generally referred to by the numeral 10 which consists of a pedestal leg arrangement 12 having a bottom end 13 for seatment upon an underlying support surface such as a floor or the like, and a top end 14, for supporting thereon the table top. The pedestal leg arrangement 12 is shown to consist of a series of four legs 16, each of the legs 16 assuming a rectangular configuration, the length of the rectangular configuration comprising the height of the leg 16 and the width of the rectangular configuration forming a side to side elongated leg support. The four legs 16 are interconnected and supported adjacent the bottom end 13 thereof by means of a leg support shelf 18. Each of the legs 16 is provided with a support block 20 for supporting the legs 16 on the ground or floor, each of the support blocks 20 including an inwardly extending shoulder 22, having a spacer element 24 mounted thereon. The leg support shelf 18 is shown to be mounted to each of the four spacer elements 24 by means of a bolt 26, thereby to fixedly secure the support shelf 18 to each of the four legs 16.

The top ends 14 of each of the legs 16 includes an inwardly extending flange shoulder 38 upon which is supported a second spacer element 30.

As shown in FIGS. 1 and 2, the table assembly 10 includes a first top 32, which is generally circular in configuration and is provided with peripheral side wall 34, thereby to form a well 36 internally of the peripheral side wall 34. The well 36 forms the playing surface for a pool ball game, of the type generally known as a bumper pool game. The first top 32 is mounted on, and supported by, the series of four second spacer elements 30, which are, in turn, mounted upon and supported by the inwardly flange shoulder 28, the first top 32 being mounted thereon by means of a bolt and nut arrange-

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ment 38 extending downwardly from the first top 32 and through the second spacer elements 30 and inwardly extending flange shoulders 28.

With reference to FIG. 1 of the drawings, the pool ball game playing surface is illustrated. It is observed that a plurality of resilient cushions 40 are mounted on the peripheral side wall 34 internally thereof, the resilient cushions 40 forming an octagonal interior playing boundary. The well 36 forming the playing surface of the pool ball game is provided with a plurality of obstacle bumper posts 42, a pair of such obstacle posts 42, guarding the first ball pocket 44, disposed adjacent one edge of the playing surface, and a second pair of obstacle bumper posts 42 guarding a second ball pocket 46, adjacent an opposed side of the game playing surface. In addition, a cross-shaped configuration of obstacle bumper posts 32 are provided in a generally centralized region of the table, in the manner well understood in connection with bumper pool games. The bumper pool game is played with a plurality of pool balls 48 (shown in phantom in FIG. 1) and with pool cues 50, all in the manner which is well understood in the art.

In FIG. 3 of the drawings, the construction of the first top 32 is more clearly shown. It will there be observed that the first top consists of a support base 52, which in the preferred embodiment is formed of wood, and having the peripheral side wall 34 mounted thereon by means of a wood screw 54. The resilient cushions 40 are shown to be formed of a backing elements 56 generally formed of wood, to which is secured a resilient element 58 which thereby forms the resilient cushion 40. The complete resilient cushion 40 as well as the surface of the support base 52 is covered with a fabric such as felt 60 in the manner well understood with respect to such games.

Each obstacle bumper post 42 is secured to the support base 52 of the first top 32 by means of a threaded bolt which extends downwardly from the obstacle bumper post 42, through the support base 52, and held in position by a nut 62, along the undersurface of the support base 52.

As illustrated in FIG. 3, the first top 32 is provided with a pair of pool ball catcher racks 64, one rack 64 being provided for each of the two ball pockets 44 and 46 respectively. It will be noted that the pool ball catcher rack 64 is removably mounted to the undersurface of the support base 52, whereby the racks 64 may be removed when the table is to serve other functions and purposes as will be more fully described hereinafter. The means of removably attaching the pool ball catcher rack 64 to the undersurface of the table includes a support block 66 which is mounted to the undersurface of the support base 52, the support block 66 having an inwardly extending shoulder 67. The support block 66 and shoulder 67 cooperate with a support ledge 68 which is formed as part of the pool ball catcher rack 64, the inwardly extending shoulder 67 and support ledge 68 each being so shaped and constructed so as to be disposed in mating relation when the pool ball catcher rack 64 is mounted thereon. The rear end of the catcher rack 64 is provided with a right angle clip 70, which is secured to the rear end of the catcher rack 64 by means of a wood screw 71, the right angle clip 70 having a flanged portion 72 which extends

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outwardly with respect to the catcher rack 64. The under side of the support base 52 is provided with a wing nut 74, held in position by means of a wood screw 76, whereby the rear end of the catcher rack 64 is removably secured to the undersurface of the support base 52 by merely revolving the wing nut 74 until one of the wings makes contact with the outer surface of the flanged portion 72 of the right angle clip 70.

Finally, it will be noted that the pool ball catcher rack 64 is provided with an opening 78 which permits the user to insert his hand therethrough to have access to the pool balls 48 as the same are caught in the pool ball catcher rack 64 during the playing of the bumper pool game.

With reference to FIGS. 4 through 7 of the drawings, the construction and configuration of the second top 80 of the table assembly 10 of the present invention is illustrated. In FIG. 5 the manner in which the second top 80 may be removably positioned upon the first top 32 is illustrated with the one surface of the second top 80 which forms the flat table top 82 in the exposed position. The second top 80 is also circular in configuration and in the preferred embodiment, the diameter of the second top 80 is slightly larger than the diameter of the first top 32 whereby the outer periphery of the second top 80 slightly overhangs the periphery of the first top 32.

In FIG. 4 of the drawings, the reverse surface of the second top 80 is illustrated. It will be observed that the second top 80 has a reverse surface 84 which is formed into a card game playing surface. The card game playing surface includes a series of eight player convenience cavities 86, which are used in association with retaining game incident paraphernalia, such as cards, chips or the like, and is further provided with a series of eight pairs of circular cavities 88 which may be utilized either in connection with retaining game associated paraphernalia, or may be utilized to hold beverage containers. The central portion 90 of the reverse surface 84 is, in the preferred embodiment, covered with a fabric such as felt or the like in a manner which is customary with game tables of the type referred to herein.

With respect to FIGS. 6 and 7 of the drawings, the specific construction of the second top 80 is illustrated. The internal portion 92 of the second top 80 is preferably formed of a wood material and includes a covering formed of a plasticized material, such as a phenolic sheet of the type generally sold under the trade name Formica, thereby to form a very smooth and stain resistant table top surface. The reverse surface 84 of the top 80, which includes the player convenience cavities 86 and circular cavities 88 may ideally be formed of a molded plastic such that the cavities 86 and 88 respectively are preformed in a molding operation either by an injection molding process or a blow molding process, and thereafter secured to the reverse surface 84 by any appropriate means such as an adhesive or the like.

FIG. 8 of the drawings illustrates the pedestal leg arrangement 12 and shows the manner in which the series of four legs 16 supports the first table top 32. As has been indicated hereinabove, each of the legs 16 is rectangular in configuration, the width of the rectangular configuration thereby forming a side to side elon-

gated support structure for supporting the first top 32. In this manner, a very pedestal leg arrangement 12 is formulated. In addition, FIG. 8 illustrates the manner in which the leg support shelf 18 interconnects and supports the four legs 16. Hence, since the top end 14 of the legs 16 is fixedly secured to the under side of the first top 32, and the lower end of each of the legs 16 is fixedly secured to the leg support shelf 18, it will be appreciated that the pedestal leg arrangement 12 forms a very secure and stable support for the table. In addition, FIG. 8 illustrates the configuration of the leg support shelf 18 in the preferred embodiment. It will be observed that the support shelf 18 includes a series of four arcuate cut-outs 19, each of which is disposed between adjacent legs 16. The arcuate cut-outs 19 thereby provide a convenient space for the user to position his or her legs while seated at the table, regardless of the manner or function which the table serves, whether being used as a dining table, or whether the user is utilizing one of the game playing surfaces.

FIG. 9 of the drawings illustrates the simple construction of the obstacle bumper posts 42 and the manner in which each of the same is secured to the first top 32. It will be observed that each obstacle bumper post 42 has an internal portion 94 formed of a wood material to which is circumferentially secured a circular resilient element 96 which may be formed from a rubber or foam cushion material. The first top 32 is provided with a plurality of bores 98 which are positionally located thereby to locate an obstacle bumper post 42 at the positions as illustrated in FIG. 1 of the drawings, and each of the obstacle bumper posts 42 is centrally bored and threaded as shown at 100, whereby the bumper post 42 may be secured to the top 32 by means of a threaded bolt 102 extending upwardly through the corresponding bore 98 in the top 32 and into the threaded bore 100 of the bumper post 42. The threaded bolt 102 includes a hexagonal head 104, which permits the installer to conveniently thread and secure the bolt 102 into position, thereby to fixedly secure the bumper post 42 to the first top 32.

The second top 80 is shown to be removably positionable upon the first top 32, and in the preferred embodiment, merely seats against the first top 32 and is held in position only by gravity. If desired, the table assembly 10 may be provided with a series of felt spacers adhesively secured to the upper surface of the first top 32 thereby to prevent the tops from scratching one another as the second top 80 is positionally disposed upon or removed from the second top 80.

The method of utilizing the table assembly of the present invention now becomes clear. Where the user desires to utilize the table as a bumper pool table, he need only remove the second top 80 from positional engagement with the first top 32, thereby to expose the pool ball game playing surface. The second top 80 may be stored in any convenient place, and in this connection, in the preferred embodiment, the second top 80 has a thickness of less than 1½ inches whereby the second top 80 may be stood on end and stored in any convenient place, such as behind bookcases, a break-front, or other similar large piece of furniture. Obviously, where the user desires to have the card game playing surface exposed, he need only position the reverse surface 84 of the second top 80 on top of the

first top 32, and the table is then ready for use as a card game playing surface. Alternatively, where the user desires to utilize the table as a dining table, or the like, he need only reverse the second top 80 by positioning the card game playing surface downwardly over the pool ball game playing surface, which thereby exposes the flat table top 82.

It is furthermore clear that due to the simplified construction of the table assembly of the present invention, a manufacturer may employ any popular furniture style in order to enhance the aesthetic characteristics of the table assembly. It is therefore apparent that a user may employ the table assembly of the present invention as a formal dining room table while still obtaining the advantages of having a pair of game tables available to him for subsequent use. In this manner, the user is provided with the convenience of being able to install the table in one location in his place of abode, and utilize the table for whatever purpose is desired, without either having to purchase a plurality of tables, or without having to move the table in order to gain access to the game playing surfaces.

It will be understood by reference to the above description, that it would not be completely necessary to have a reversible top, such as second top 80, in order to achieve the advantages of the present invention. Where desired, one could manufacture a table obtaining most all of the advantages of the present invention by supplying a table having a series of three tops thereby fulfill the objects and advantages herein. For example, in such construction, the first top would comprise a bumper pool game and would be fixedly secured to the pedestal arrangement. The second top could be the card game playing surface and would be so constructed as to be positionally engageable with the first top merely seating the same atop. A third flat, smooth table top could then be provided which would in turn seat upon the second top, in sandwich arrangement, thereby to complete the assembly. Obviously, such construction would have the inherent disadvantage of forcing the user to handle two removable tops rather than one as illustrated in the present invention, and hence, while such an assembly does provide many of the advantages of the present invention; nevertheless, the advantages of compactness and storageability is somewhat diminished. Hence, in the preferred embodiment of the present invention, it is considered to be desirable to have a second top which includes a first surface which is formed into a flat table top and a second surface which is formed into a card game playing surface, thereby to expose one surface or the other by merely reversing the top and eliminating the need for storing the top while another one is in use.

It will be apparent from the above description and drawings, that by virtue of the present invention, a table assembly has been provided which permits the user to have the convenience and enjoyment of a formal dining room table, as well as a pair of tops forming first game playing surfaces and second game playing surfaces. Furthermore, the table assembly of the present invention is compact and eliminates the need for the storage of a plurality of tops, as well as eliminating the need for requiring the user to purchase a number of tables in order to obtain the advantages of having game playing tables as well as a dining table.

table in one's place of abode. In addition, the table assembly of the present invention is constructed in an aesthetically presentable manner which may nevertheless be manufactured and sold at a cost substantially less than the cost of formal dining room sets, and indeed, eliminates the need of the purchaser have to purchase a plurality of tables in order to obtain the benefits of card game playing tables, pool tables, and dining room tables. It will therefore be appreciated that all of the above objects and advantages have been accomplished by means of the table assembly depicted herein and the various embodiments thereof to provide an extremely compact and easily convertible combination table.

While there has been described what at present is considered to be the preferred embodiments of the present invention, it will be understood that various modifications may be made therein and it is intended to cover in the appended claims all such modifications as fall within the true spirit and scope of the invention.

What is claimed is:

1. A combination flat top, game table and bumper pool game table assembly comprising in combination, leg support means having an upper end and a lower end,
a first top having a lower surface fixedly secured on said upper end of said leg support means and an upper surface consisting essentially of a bumper pool game playing surface,
said bumper pool game playing surface being bounded by a plurality of opposed rectilinear surfaces and including a plurality of obstacle bumper posts positioned substantially centrally on said bumper pool game playing surface,
said bumper pool game playing surface being substantially imperforate and having a pair of opposed ball apertures, one each of said ball apertures being disposed adjacent one of said rectilinear surfaces,
a pair of ball collection means mounted on the lower surface of said first top and each of said pair of ball collection means being in a position in open communication with and directly below one of said ball apertures,
said ball collection means being removable from said position in open communication with and directly below each of said ball apertures to a position removed therefrom such that the lower surface of said first top is unobstructed to occupants seated at said table,
said leg support means including a plurality of legs,
a substantially planar shelf member positioned adjacent the lower ends of said legs and secured to each of said legs adjacent the periphery of said planar shelf member,
a second top forming a second game means and being removably positionable upon said first top,
a third top forming a flat smooth surface and being removably positionable upon said first top,
said second and third tops comprising a single top having one surface formed as a flat smooth top and the opposed surface formed into said second game means,
whereby said table assembly may be utilized as a flat top table with said third top positioned and sup-

ported upon said first top, and said assembly may be utilized as a second game means when said second top is exposed, and may be utilized as a bumper pool game when said first top is exposed.

2. A combination flat top, game table and bumper pool game table assembly comprising in combination, leg support means having an upper end and a lower end,

a first top having a lower surface fixedly secured on said upper end of said leg support means and an upper surface consisting essentially of a bumper pool game playing surface,

said bumper pool game playing surface being bounded by a plurality of opposed rectilinear surfaces and including a plurality of obstacle bumper posts positioned substantially centrally on said bumper pool game playing surface,

said bumper pool game playing surface being substantially imperforate and having a pair of opposed ball apertures, one each of said ball apertures being disposed adjacent one of said rectilinear surfaces,

a pair of ball collection means mounted on the lower surface of said first top and each of said pair of ball collection means being in a position in open communication with and directly below one of said ball apertures,

said ball collection means being removable from said position in open communication with and directly below each of said ball apertures to a position removed therefrom such that the lower surface of said first top is unobstructed to occupants seated at said table,

said leg support means including a plurality of legs, each of said ball collection means being disposed between a corresponding leg and the outer periphery of said first top,

each of said legs having a length dimension extending downwardly from said lower surface of said first top, and a width dimension which is substantial but less than one-half the length dimension,

a substantially planar shelf member positioned adjacent the lower ends of said legs and secured to each of said legs adjacent the periphery of said planar shelf member,

a second top forming a second game means and being removably positionable upon said first top,

a third top forming a flat smooth surface and being removably positionable upon said first top,

said second and third tops comprising a single top having one surface formed as a flat smooth top and the opposed surface formed into said second game means,

whereby said table assembly may be utilized as a flat top table with said third top positioned and supported upon said first top, and said assembly may be utilized as a second game means when said second top is exposed, and may be utilized as a bumper pool game when said first top is exposed.

3. A combination flat top, game table and bumper pool game table assembly, comprising in combination, support means having an upper end and a lower end,
a first top having a lower surface fixedly secured on said upper end of said support means and an upper surface consisting essentially of a bumper pool game playing surface,

a bumper rail surrounding said bumper pool game playing surface defining a plurality of opposed equal rectilinear surfaces,
 a plurality of obstacle bumper posts positioned substantially centrally and symmetrically on said bumper pool game playing surface,
 said bumper pool game playing surface being substantially imperforate and having a pair of opposed ball apertures,
 each of said ball apertures being disposed adjacent one of said rectilinear surfaces,
 a pair of ball collection means mounted on the lower surface of said first top and each of said pair of ball collection means being in a position in open communication with and directly below one of said ball apertures,
 said ball collection means being removable from said position in open communication with and directly below each of said ball apertures to a position removed therefrom such that the lower surface of said first top is unobstructed to occupants seated at said table,
 each of said ball collection means being disposed between the support means and the outer periphery of said first top,
 a second top removably positionable upon said first top, and second top having a game playing surface,
 a third top forming a flat smooth surface and being removably positionable upon said first top,
 said second and third tops comprising a single top having one surface formed as a flat smooth top and the opposed surface containing said second game means,
 whereby said table assembly may be utilized as a flat top table with said third top positioned and supported upon said first top, and said assembly may be utilized as a second game means when said second top is exposed, and may be utilized as a bumper pool game when said first top is exposed.

4. A combination flat top, game table and bumper pool game table assembly comprising in combination, leg support means having an upper end and a lower end,
 a first top having a lower surface fixedly secured on said upper end of said leg support means and an upper surface consisting essentially of a bumper pool game playing surface,
 said bumper pool game playing surface being bounded by a plurality of opposed rectilinear surfaces and including a plurality of obstacle bumper posts positioned substantially centrally on said bumper pool game playing surface,
 said bumper pool game playing surface being substantially imperforate and having a pair of opposed ball apertures, one each of said ball apertures being disposed adjacent one of said rectilinear surfaces,
 each of said ball apertures being bounded on opposed sides thereof by an obstacle bumper post,
 a pair of ball collection means mounted on the lower surface of said first top and each of said pair of ball collection means being in a position in open communication with and directly below one of said ball apertures,
 said ball collection means consisting of a pair of ball racks, each of said ball racks being removable

from said position in open communication with and directly below each of said ball apertures to a position removed therefrom such that the lower surface of said first top is unobstructed to occupants seated at said table and permitting utilization of said table for other functions,
 said leg support means including a plurality of legs, each of said ball collection means disposed between a corresponding leg and the outer periphery of said first top,
 each of said legs having a length dimension extending downwardly from said lower surface of said first top, and a width dimension which is substantial but less than one-half the length dimension,
 a second top forming a second game means and being removably positionable upon said first top,
 a third top forming a flat smooth surface and being removably positionable upon said first top,
 said second and third tops comprising a single top having one surface formed as a flat smooth top and the opposed surface formed into said second game means,
 whereby said table assembly may be utilized as a flat top table with said third top positioned and supported upon said first top, and said assembly may be utilized as a second game means when said second top is exposed, and may be utilized as a bumper pool game when said first top is exposed.

5. The combination flat top, game table and bumper pool game table assembly, as set forth in claim 3 above, wherein, each of said apertures is flanked by a pair of bumpers.

6. The combination flat top, game table and bumper pool game table assembly, as set forth in claim 1 above, wherein said planar shelf member is positioned horizontally with respect to each of said legs.

7. The combination flat top, game table and bumper pool game table assembly, as set forth in claim 1 above, wherein said bumper pool game playing surface is recessed and is bounded by said plurality of opposed rectilinear surfaces, and each of said rectilinear surfaces is provided with resilient bumper means secured thereto.

8. The combination flat top, game table and bumper pool game table assembly, as set forth in claim 3 above, wherein said game playing surface of said second top is formed into a card game playing surface including a plurality of player convenience apertures.

9. The combination flat top, game table and bumper pool game table assembly, as set forth in claim 1 above, wherein said planar shelf member includes a plurality of arcuate cut-out sections positioned between adjacent legs, thereby to provide occupant convenience sitting positions about said table.

10. The combination flat top, game table and bumper pool game table assembly as set forth in claim 3 above, wherein said support means comprises a series of four legs for supporting said first top, each of said legs being fixedly secured to the lower surface of said first top and extending downwardly therefrom to an underlying support surface.

11. The combination flat top, game table and bumper pool game table assembly as set forth in claim 1 above, wherein each of said first and second tops are substantially circular in configuration.

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12. The combination flat top, game table and bumper pool game table assembly as set forth in claim 1 above, wherein said pair of ball collection means is positioned between a corresponding leg and the outer periphery of said first top.

13. The combination flat top, game table and bumper pool game table assembly as set forth in claim 1 above, wherein each of said pair of ball collection means comprises a ball rack formed by a bottom wall, side walls, a back wall, and a partial front wall.

14. The combination flat top, game table and bumper pool game table assembly as set forth in claim

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3 above, wherein said bumper pool rail surrounding said bumper pool game playing surface defines an overall octagonal configuration thereby to provide an octagonally shaped bumper pool ball game playing surface for said bumper pool ball game.

15. The combination flat top, game table and bumper pool game table assembly as set forth in claim 3 above, wherein said third top forming said flat smooth surface is covered with a plasticized material, thereby to form a smooth and protected table top.

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Appendix B

Sales Slips Supplied By
Armac Enterprises, Inc.

Minnesota Pats

POOL TABLES

EQUIPMENT

MANUFACTURED BY ROZEL INDUSTRIES, INC.

ACCESSORIES

LINCOLNWOOD

6501 N. Lincoln Ave.
Lincolnwood, Ill. 60045
Suburbs - 877-0050
Chicago - 463-8140

LOMBARD

21 W. 251 Roosevelt Rd.
Lombard, Ill. 60148
827-6722

WAUKEGAN

1923 W. Grand
Waukegan, Ill. 60095
244-0077

BEVERLY

2106 W. 95th
Chicago, Ill. 60643
233-5477

OAK PARK

6945 W. North Ave.
Oak Park, Ill. 60302
771-6060

PALATINE

630 E. Northwest Hwy.
Palatine, Ill. 60067
359-7510

Customer's
Order No.

MBL

Phone
No.

Date

8/15

1972

Sold To

Address

City

QUAN.	DESCRIPTION	PRICE	AMOUNT
1	Flipper		299 00
Customer TAKEN			
FULL FACTORY EQUIPMENT			
\$313 ⁹⁵			
Paid Full			
MBL			
			299 00
		TAX	14 95
		TOTAL	313 95

DELIVERY INSTRUCTIONS:

TAKEN

DATE DELIVERED

DELIVERED BY:

DELIVERY ACCEPTED BY:

No. 38164

UARCO INCORPORATED

MBL

ACCESSORIES

630 E. Northwest Hwy.
Palatine, Ill. 60067
359-7510

Date June 18 1912

Address

City

QUAN.	DESCRIPTION	PRICE	AMOUNT
1	Flipper Table Equipped		299 00
<p>PD 313.95</p> <p><i>(Signature)</i></p>			
<p>DELIVERY INSTRUCTIONS:</p> <p>Customer Pickup.</p>		<p>TAX 14 95</p> <p>TOTAL 313 95</p>	
DATE DELIVERED	DELIVERED BY:	DELIVERY ACCEPTED BY:	
No. 36893	7/1/12 Cashmere		

UARCO INCORPORATED

ACCESSORIES

830 E. Northwest Hwy.
Palatine, Ill. 60067
353-7510

Date _____

City

DELIVERY INSTRUCTIONS:

TOTAL

DELIVERY ACCEPTED BY:

UARCO INCORPORATED

Minnesota Fats

POOL TABLES

ACCESSORIES

PALATINE
630 E. Northwest Hwy.
Palatine, Ill. 60067
359-7510

Date _____

City

QUAN.	DESCRIPTION	PRICE	AMOUNT
1	3-WAY FLIPPER FULL FACT. EQUIP.		299.00
	Paid		
	Taken		
	Dash		

DELIVERY INSTRUCTIONS:

TAX

TOTA

DATE DELIVERED

DELIVERED BY:

DELIVERY ACCEPTED BY

No. 42647
MARCO INCORPORATED

NARCO INCORPORATED

Appendix C

Background Information on
Armac Enterprises, Inc.

Background Information on Armac Enterprises, Inc. 1/

Armac Enterprises, Inc. is engaged in the fabrication and distribution of pool tables, bumper pool tables, poker tables, and table tennis tables and tops, and the distribution of pool table accessories and vinyl boats. These products are sold principally to discount, premium, department, sporting goods and furniture stores. A wholly-owned subsidiary, Rozel Industries, Inc., sells pool tables and accessories at retail through six outlets located in the Chicago metropolitan area. Most adult-size pool tables and substantially all of the accessories sold by Armac Enterprises, Inc. and Rozel Industries, Inc. carry the "Minnesota Fats" endorsement which is used as a trade name by the Company. 2/ Another wholly-owned subsidiary, Sutra Import Corporation, distributes imported pool table equipment and supplies through the United States. . . .

The Company's executive offices and principal manufacturing facilities are located at 3900 South Union Avenue, Chicago, Illinois 60609. . . .

Armac Enterprises, Inc. was incorporated in April 1969 as a Delaware Corporation. In May 1969 it succeeded to the business conducted prior thereto by Armac Service Products, Inc., Telequip Radio Company, and Stratford Products, Inc., all of which predecessor companies were engaged in various aspects of the business presently carried on by Armac Enterprises, Inc. On the same date it acquired as a wholly-owned subsidiary Rozel Industries, Inc., a corporation engaged in the retail sale of pool tables and the distribution of pool table equipment and supplies.

In August 1970, the Company acquired Leisure Sports, Ltd., a manufacturers' representative engaged in the distribution of recreation equipment and sporting goods.

As of June 30, 1970, the Company acquired Sutra Import Corporation, a principal supplier of the Company. Sutra now operates as a wholly-owned subsidiary of the Company.

1/ The following information was extracted from a prospectus published by the company on Aug. 30, 1972, and obtained from the files of the Securities and Exchange Commission.

2/ ". . . the Company believes that its use of the trade name 'Minnesota Fats' is of value in identifying its product. This trade name has been registered with the United States Patent Office."

The following table shows the percentage of whole-sale and retail sales 1/ and income before income taxes and extraordinary item to total sales and total income before income taxes and extraordinary item:

Fiscal Year Ended December 31	<u>Wholesale</u>		<u>Retail</u>	
	<u>Distribution</u>		<u>Distribution</u>	
	<u>Sales</u>	<u>Income</u>	<u>Sales</u>	<u>Income</u>
1969	82%	54%	18%	46%
1970	84	61	16	39
1971	90	89	10	11

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Prior to 1971, the Company's order backlog for pool tables and accessories did not develop substantially until the second half of the year. In January 1971, the Company received its first major purchase order from Sears Roebuck and Co. ("Sears"). The Company's sales to Sears during 1971 were \$3,268,000 and for the six months ended June 30, 1972 were about \$760,000. As of June 30, 1972 the Company had purchase orders from Sears in the amount of approximately \$4,198,000 and a total company backlog (including Sears) of approximately \$6,135,000.

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The Company has entered into separate arrangements with Sears Bank and Sears for the financing of the Sears production prior to sale and delivery to Sears. Under these arrangements, goods fabricated for the Sears purchase orders are placed in a bonded warehouse . . . and the Company receives a warehouse receipt therefor. The Company then pledges the warehouse receipts with Sears Bank as security for loans equal to 90% of the Sears purchase order price for the warehoused goods, up to a maximum of \$3,750,000 in loans outstanding at any one time. These loans bear interest at one percentage point over Sears Bank prime rate and are repayable from the sale proceeds when Sears takes delivery and the sale is completed.

1/ Armac's net sales rose from \$4.3 million in 1969 to \$12.5 million in 1971.

Substantially all of the junior-size and adult-size low-priced pool tables fabricated by the Company are sold nationally to chain, department, premium, discount, sporting goods and furniture stores. During 1971, approximately 75% of its sales were to multi-store retailers. During 1971, Sears and the largest other single customer accounted for approximately 26% and 12% of the gross sales of the Company, respectively, and the 15 largest customers including Sears accounted for approximately 62% of gross sales. The Company estimates that the Sears business . . . will continue to account for a substantial portion (in relation to other customers) of 1972 sales. Wholesale sales are effected through both sales employees and manufacturers' representatives.

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The Company has a written agreement with Minnesota Fats Enterprises, which owns the name "Minnesota Fats," for the use of that name. Pursuant to this contract, which terminates December 31, 1978, the Company will pay Minnesota Fats Enterprises annual royalties equal to 1/2 of 1% of net sales by Armac Enterprises, Inc. of certain of its lines of pool tables and accessories bearing that trade name. During the three year period from the commencement of the agreement through December 31, 1971, these payments totaled \$78,789. Royalty payments in 1972 through June 30 totaled \$20,500. The Company's subsidiary, Rozel Industries, Inc., also has a written contract with Minnesota Fats Enterprises permitting it to use the "Minnesota Fats" name on all of its products for a period of 50 years from February 1, 1969. No royalties are to be paid by Rozel pursuant to this contract. Minnesota Fats Enterprises is a corporation wholly owned by Philip Zelkowitz. Mr. Zelkowitz and his wife are major shareholders of the Company . . .

Appendix D
Complainant's Physical Exhibits

A-94



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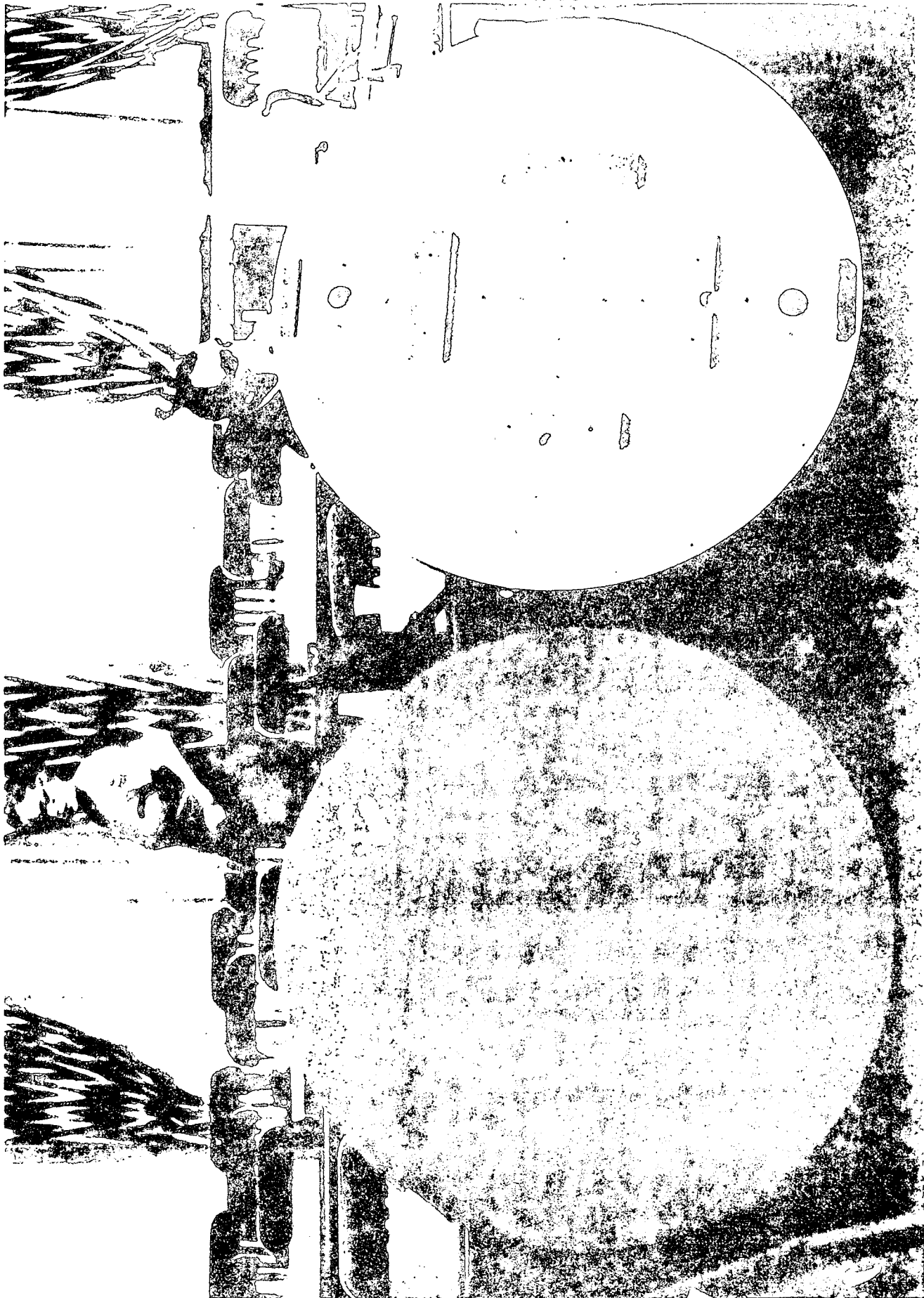
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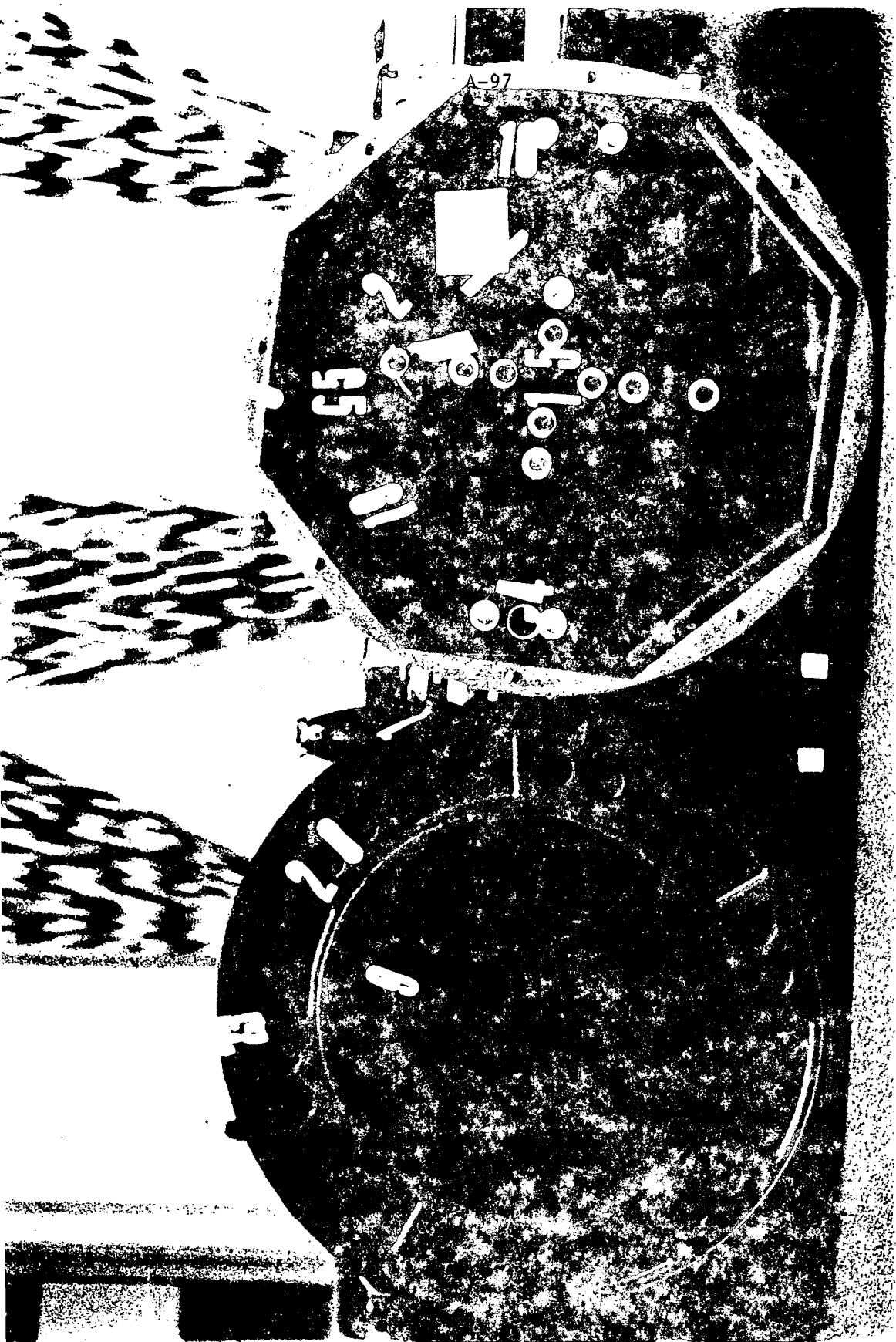
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