

F U L W I D E R • P A T T O N LLP
INTELLECTUAL PROPERTY LAW

Vern Schooley
James W. Paul
John S. Nagy
Craig B. Bailey
Stephen J. Strauss
Thomas H. Majcher
Thomas A. Runk
Michael S. Elkind
Gary M. Anderson
I. Morley Drucker
David G. Parkhurst
John K. Fitzgerald
Paul Y. Feng
Gunther O. Hanke
James Juo
Michael J. Moffatt
David J. Pitman
Scott R. Hansen
Kenneth C. Cheney
Yasmine O. Abdel-Aal
Senior Counsel
Richard A. Bardin
Of Counsel
Leonard D. Messinger
Katherine L. McDaniel
Robert W. Fulwider
(1903-1979)
Warren L. Patton
(1912-1985)
F.A. Utecht (Ret.)

vschooley@fulpat.com

December 14, 2009

VIA E-MAIL
Linda.Trang@longbeach.gov

Linda Trang, Esq.
Deputy City Attorney
Long Beach City Attorney Office
333 W. Ocean Blvd., 11th Floor
Long Beach, CA 90802

Re: City-wide Bike Parking Equipment - Plans & Specification No. R-6821
Item 37. 09-1330 – City Council Agenda December 15, 2009
Our Docket No. NEWCL.0000

Dear Linda:

Thank you for forwarding a copy of the December 10, 2009 letter from Jorgenson, Siegl, McClure & Flegel, LLP, attorneys for BikeArc, LLC objecting to inclusion of the Design-Plus product "Bike Petal" in the award of R-6821 City-wide bike parking equipment to Dero Bike Racks.

As we discussed, I have undertaken a review of the design of the Bike Petal design submitted by Dero Bike Racks and conducted some searching at the United States Patent and Trademark Office to determine what relevant patents might be issued to BikeArc, LLC.

We located design patent nos. D604,206 and D604,207 directed to the particular appearance of a design rack including parallel disposed, upwardly curved tracks incorporated in bike racks.

I have reviewed those patents and some of the prior art patents which would effect any scope given to these patents should there be a claim of infringement. On this brief study, I am of the opinion that the Bike Petal design is of a sufficiently different appearance so as to avoid any reasonable likelihood that the sale of racks incorporating the Bike Petal design would be found to be an infringement or that any use by the City of Long Beach would be deemed an infringement.

Linda Trang, Esq.
December 14, 2009
Page 2

This opinion is based on my study of the designs shown in the patents, analysis of the prior art and a fact that the features of the subject bike rack are, to the great extent, functional and not entitled to protection as a design patent.


There exists the possibility that BikeArc, LLC could have sought copyright protection on its design but, again, any such protection would be of extremely limited scope. Additionally, it is possible BikeArc could have a utility patent application pending on its construction but under certain circumstances, such applications are not available to the public for 18 months following the initial filing date. In that regard, the applications for the design patents were filed in January 2009 so, assuming a utility patent application was filed about that time, it likely not be available for review by the public until mid 2010.

In any event, the functional features of construction of the Bike Petal rack and BikeArc design are so different that there is little likelihood that any utility patent would issue with a scope sufficiently broad to cover a Bike Petal design.

I plan to attend the council meeting on December 15, 2009 and will, in the event the council believe it necessary, be available for any questions.

Sincerely,

FULWIDER PATTON LLP


Vern Schooley

VS:rmk
376768.1