



Legal Issues for Flutists

National Flute Association 40th Annual
Convention

August 10, 2012

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Important Areas of the Law for Flutists

- ▶ Intellectual Property (IP) Law
 - Trademark
 - Trade Secret
 - Patent – note America Invents Act (inventions – think useful)
 - Copyright (creative work)
- ▶ Other Related Areas of the Law
 - Rights of privacy/rights of publicity (social media)
 - Contracts and licensing
 - Defamation: libel and slander (social media)
 - Electronic discovery (social media)

Copyright Law Fundamentals

- ▶ Constitution, Article I, Section 8, [8]: *To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Inventions*
- ▶ Original works of authorship
- ▶ Fixed in a tangible medium (includes emails, websites, art work, slides, videos, but not oral communications unless they are preserved in some fashion)
- ▶ Minimal amount of creativity
 - telephone books: *Feist v. Rural Telephone* case
 - forms: *Baker v. Selden* case
 - databases – unsettled, but compilations (selection, arrangement)
- ▶ Expression only, not ideas, data or facts
- ▶ Not words, names, titles, slogans, phrases (trademark)

Other Important Features of Copyright Law

- ▶ Copyright law is a federal matter – handled by federal courts – but there may also be state law claims
- ▶ Importance of keeping good records – searches to determine copyright owner, permissions, your own work (to prove independent creation)
- ▶ U.S. Copyright Office’s website is very helpful – <http://www.copyright.gov/> – includes links to copyright law, forms for registering your creative work, free searchable database of all copyright registrations , etc.
- ▶ Many benefits of registration through the U.S. Copyright Office (statutory damages, attorney fees, presumed the copyright owner)
 - Must register in order to sue for copyright infringement – expedited process is expensive (\$760 versus \$35 online or \$65 for paper filing)
 - Register as single items or a collection
 - May want to register both the composition and the sound recording
- ▶ Benefits of using a copyright notice on all of your work (copyright symbol, year, your name)
- ▶ Seek the advice of an attorney who practices copyright law

U.S. Copyright Office - Windows Internet Explorer

http://www.copyright.gov/

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About News Publications Forms Law Licensing Registration Search Records

Hot Topics

- Designation of OSP Agent
- Discontinuance of Form CO in Registration Practices
- 1201 Notice of Inquiry and Request for Comments
- Copyright Office Releases STELA Section 302 Report
- Maria Pallante Appointed Register of Copyrights
- Register's Testimony: Promoting Investment and Protecting Commerce Online: The ART Act, the NET Act and Illegal Streaming
- Register's Testimony: Promoting Investment and Protecting Commerce Online: Legitimate Sites v. Parasites, Part I
- Gap in Termination Provisions (Comments available for review)
- Study: Federal Copyright Protection for Pre-1972 Sound Recordings (public meeting transcripts posted)
- Facilitating Access to

About Copyright

- Copyright Basics (en Español)
- Frequently Asked Questions (FAQ)
- Current Fees
- Taking the Mystery Out of Copyright (for students and teachers)

Search Copyright Records

- Registrations and Documents
- Search Request Estimate
- Notices of Restored Copyrights
- Online Service Providers
- Vessel Hull Designs

Publications

- Circulars and Brochures
- Forms
- Factsheets
- Reports and Studies

Licensing


- Compulsory and Statutory Licenses

Preregistration

- Preregistration Information
- Preregister Your Work

How to Register a Work

- eCO Login



Electronic Copyright Office

How to Record a Document

- Record a Document

Law and Policy

- Copyright Law
- Federal Register Notices
- Legislative Developments
- Regulations
- Mandatory Deposit
- Rulemaking
- Rulings Regarding the CRB
- More...

Related Links

- Copyright Royalty Board
- Patents and Trademarks
- U.S. Customs and Border Protection
- Intellectual Property Enforcement Coordinator
- More...

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U.S. Copyright Office

and Protecting Commerce Online: The ART Act, the NET Act and Illegal Streaming

Register's Testimony: Promoting Investment and Protecting Commerce Online: Legitimate Sites v. Parasites, Part I

Gap in Termination Provisions (Comments available for review)

Study: Federal Copyright Protection for Pre-1972 Sound Recordings (public meeting transcripts posted)

Facilitating Access to Copyrighted Works for the Blind and Other Persons with Disabilities

Orphan Works

What's New

Register's Testimony: Fiscal Year 2012 Budget Request before Senate Committee on Appropriations

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Legislative Developments





- Regulations
- Mandatory Deposit
- Rulemaking
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- More...

Related Links

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- Patents and Trademarks
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- Intellectual Property Enforcement Coordinator
- More...

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U.S. Copyright Office
101 Independence Ave. S.E.
Washington, D.C. 20559-6000
 (202) 707-3000  or  1-877-476-0778  (toll free)

Revised: 04-Oct-2011 16:37

[+] FEEDBACK

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http://www.copyright.gov/eco/

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Copyright | Electronic Copyright Office

eCO Online System


File a copyright registration for your work through the Copyright Office online system.

Before using the service, we recommend you first read [eCO Acceptable File Types](#), [eCO Tips](#), [eCO FAQs](#), or [eCO Tutorial \(PowerPoint\)](#) [eCO Tutorial \(PDF\)](#). For recently added features, see [eCO Updates](#).

Advantages include:

- Lower filing fee of \$35 for a basic claim (for online filings only)
- Fastest processing time
- Online status tracking
- Secure payment by credit or debit card, electronic check, or Copyright Office deposit account
- The ability to upload certain categories of deposits directly into eCO as electronic files
- Available 24 hours a day, except for routine maintenance every Sunday from 12:00 midnight to 6:00 AM Eastern Time

Processing Time: The time the Copyright Office requires to process an application varies, depending on the number of applications the Office is receiving and clearing at the time of submission and the extent of questions associated with the application.
[Current Processing Times](#)

Login to eCO:  [Electronic Copyright Office](#)

Alternate Registration Methods

1) Registration with Paper Forms

The **fee** for a basic registration using one of these forms is \$65 payable by check or money order. Form CON (continuation sheet for applications) is also still available in paper. Paper forms are also available by postal mail **upon request**. See below for [Group Registrations](#).

Literary

- [Form TX](#)

[-]
FEEDBACK

2) Registration with Fill-In Form CO

The next best option for registering basic claims is the new fill-in Form CO, which replaces Forms TX, VA, PA, SE, and SR. Using 2D barcode scanning technology, the Office can process Form CO submissions (when properly completed by the submitter) more efficiently than paper forms. Simply complete Form CO on your personal computer, print it out, and mail it along with a check or money order and your deposit. The fee for a basic registration on Form CO is \$50.

Note: Form CO cannot be used for group registrations. [Click here for group registration forms.](#)

Copyright Office application forms are available in PDF format and must be viewed with **version 8** or higher of the free [Adobe Acrobat Reader](#) program.

- [Form CO](#)
- [Form CO Instructions](#)
- [Form CO FAQ](#)

Important Note: Please inspect your printed form to confirm that 2D barcodes like the one below appear on each page. The barcodes must appear clearly and be free of any distortions, smudges, or fading. If such problems appear and cannot be corrected after checking your printer, do not submit the form.



ApplicationForCopyrightRegistration

Processing Time: The time the Copyright Office requires to process an application varies, depending on the number of applications the Office is receiving and clearing at the time of submission and the extent of questions associated with the application.

[Current Processing Times](#)

Please note that our mail service is severely disrupted. [\(Read more details.\)](#)

Please fill out the following form.

Highlight Fields



UNITED STATES COPYRIGHT OFFICE

Form CO • Application for Copyright Registration

Print Form

Clear Form

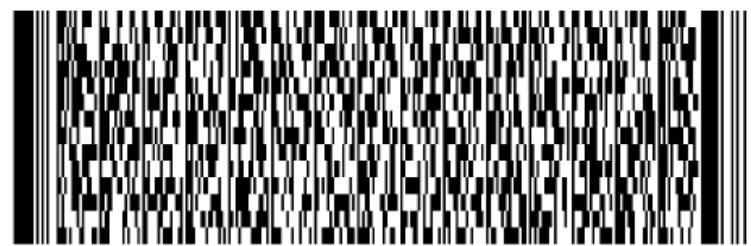
APPLICATION FOR COPYRIGHT REGISTRATION

* Designates Required Fields

1 WORK BEING REGISTERED

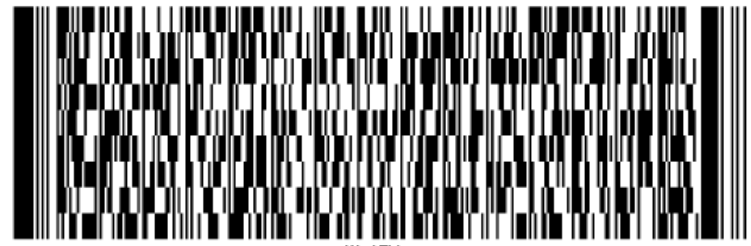
1a. * Type of work being registered (Fill in one only)

- Literary work
- Performing arts work
- Visual arts work
- Motion picture/audiovisual work
- Sound recording
- Single serial issue



ApplicationForCopyrightRegistration

1b. * Title of this work (one title per space)



WorkTitles

Click here to create space to add an additional title

1c. For a serial issue: Volume Number Issue ISSN

Frequency of publication:

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UNITED STATES COPYRIGHT OFFICE Form CO • Instructions

Use this form to register a

- *Literary work*
- *Visual arts work*
- *Performing arts work*
- *Motion picture or other audiovisual work*
- *Sound recording*
- *Single serial issue*

Before you register your work

Review the appropriate circulars on the Copyright Office website, www.copyright.gov, for detailed information about how to register particular types of works and the requirements for what copy or copies of your work to send. Also, consider using the electronic Copyright Office (eCO) for faster service and a lower filing fee.

What may be included

The following may be included in one registration on Form CO:

- **Unpublished works:** works by the same author(s) and owned by the same copyright claimant(s), organized in a collection under a collection title.
- **Published works:** works published in a single unit of publication and owned by the same copyright claimant.

What to send

- 1 Completed and signed application
- 2 \$50 filing fee payable to *Register of Copyrights*
- 3 Deposit — the required copy or copies of your work
 - **Unpublished works:** one complete copy.
 - **Published works:** generally, two complete copies of the “best edition.” There are exceptions for certain types of works. See Circular 1, *Copyright Basics*, for details.

Send all three elements in the same envelope or package to:

*Library of Congress
Copyright Office
101 Independence Avenue, SE
Washington, DC 20559-*****

Use the appropriate four-digit zip code extension to expedite the processing of your claim. In place of ****, use the following:

*Literary work: -6222
Visual arts work: -6211
Performing arts work: -6223*

To avoid damage to your deposit from Library security measures, please package the following items in boxes

U.S. Copyright Office - Fees - Windows Internet Explorer

http://www.copyright.gov/docs/fees.html

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U.S. Copyright Office - Fees

Copyright Fees

Shown below are fees for copyright registration, recordation, and other services. Note that there is now a lower filing fee for online registration of basic claims through the electronic Copyright Office.

Effective **August 1, 2009**, some fees changed based on regulations to be issued by the Copyright Office. (Read [Fee Study Report](#).)

Registration, Recordation, and Other Services	Effective Aug 1
Online registration of a basic claim in an original work of authorship (electronic filing)	\$35
Registration of a basic claim in an original work of authorship on Form CO (paper filing with 2-D barcode-generated form)	\$50
Registration of a basic claim in an original work of authorship on Forms PA, SR, TX, VA, SE (paper filing)	\$65
Registration of a claim in a group of contributions to periodicals (Form GR/CP), or database updates (paper filing)	\$65
Registration of a group of published photographs (Form GR/PPh/CON) (paper filing)	\$65
Registration of renewal claim (Form RE) without addendum (paper filing)	\$115
Addendum to Form RE (paper filing)	\$220
Registration of a claim in a group of serial issues (Form SE/Group, per issue, minimum 2 issues) (paper filing)	\$25
Registration of a claim in a group of daily newspapers or newsletters (Form G/DN) (paper filing)	\$80
Registration of a claim in a restored copyright (Form GATT) (paper filing)	\$65
Supplementary registration to amend a completed registration (Form CA) (paper filing)	\$100
Registration of a claim in a vessel hull (Form D/VH) (paper filing)	\$220
Registration of a correction or amplification to a vessel hull design registration (Form DC)	\$100
Preregistration of certain unpublished works	\$115

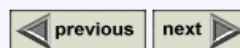
FEEDBACK

Public Catalog

Copyright Catalog (1978 to present)

Search Request: Left Anchored Name = Hook, Sara Anne

Search Results: Displaying 1 of 1 entries



Labeled View

Fiddler's fruit shoulder rests.

Type of Work: Visual Material

Registration Number / Date: V Au000565500 / 2002-10-01

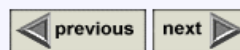
Title: Fiddler's fruit shoulder rests.

Description: Soft sculpture.

Copyright Claimant: Sara Anne Hook, 1956-

Date of Creation: 2001

Names: [Hook, Sara Anne, 1956-](#)



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What Are the Rights?

- ▶ Reproduction (copy)
- ▶ Distribution (sell, rent, donate)
- ▶ Derivative works (translations are an example) – but also putting images on products (trivets, note cards, framed posters, sculpture, balloon animals, costumes)
- ▶ Public performance
- ▶ Public display
- ▶ “Moral rights” (foreign countries, some states, works of visual arts – Visual Artists Rights Act of 1990, but very specific limitations and only for fine art)
- ▶ Important to separate the physical work (CD, book, painting) from the intellectual content – first sale doctrine
- ▶ Individual rights or all of the rights together can be assigned or licensed (must be in writing)
- ▶ Best to seek permission before using someone else’s work!

Duration of Copyright Protection

- ▶ Sonny Bono Copyright Term Extension Act changed this (extended by additional 20 years)
- ▶ For works created after 1978:
 - Life of the author plus 70 years
 - Work-for-hire: 95 years from publication or 120 years from creation
- ▶ But: see also *Golan v. Holder*
- ▶ Caution: even things you think are so old that they are no longer protected, probably still are
- ▶ Legislation for so-called “orphan works” to reduce liability when heirs/copyright owners cannot be located

Fair Use

- ▶ An exception to the exclusive rights of the author
- ▶ Importance of “transformative use” – but no percentage for this (for example, the myth that changing someone else’s work 10% is enough)
- ▶ Again, best to obtain permission or create your own original content (music sampling cases)
- ▶ Parody – must be similar enough for people to get it (criticism, comedy)
- ▶ Four part test: but no “bright line”
 - Purpose: commercial v. scholarly or non-profit, but think ahead
 - Nature: fact-based v. creative (like poetry or music), published v. unpublished
 - Amount: ratio plus “substantiality of the work” – *Harper & Row Publishers, Inc. v. Nation Enterprises*
 - Effect: on the potential market

What is Copyright Infringement?

- ▶ Using the copyrighted work of someone else without seeking permission – not the same as plagiarism
- ▶ If infringement found: actual v. statutory damages, injunctions (permanent and temporary), take down or destroy, attorney fees, court costs, punitive damages if willful
- ▶ If you are accused of infringement, the Court will first look at your access to the other person's work as well as evidence of copying
- ▶ The Court will then look at whether there is substantial similarity between the works – can be both an objective (experts) and a subjective (lay audience) analysis
- ▶ Defenses: Independent Creation, Fair Use
- ▶ Vicarious and contributory liability
- ▶ First action: probably cease-and-desist letter

Digital Millennium Copyright Act (DMCA)

- ▶ Signed into law on October 28, 1998
- ▶ Provisions:
 - Liability for OSPs (Online Service Providers) or ISP (Internet Service Provider)
 - Circumvention of technological measures – access and copying
 - Removal, alteration, falsifying of CMI – goes to the ease of cutting and pasting from digital materials
 - Can be liable for both copyright infringement and violation of the DMCA

Patents – Flutists are Inventors, Too!

- ▶ Constitution, Article I, Section 8, [8]: *To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Inventions*
- ▶ Exchange “publication” of patent for extra protection
- ▶ Matter of federal law – significant revisions with the America Invents Act – moved U.S. to first-to-file system
- ▶ Three types of patents: utility (think *useful*), design (ornamental, non-functional), plant
- ▶ Allows the owner of a patent to stop anyone else from making, selling, offering to sell or using the invention for up to 20 years (patent infringement)
- ▶ In order to get this robust protection, the inventor must apply to U.S. Patent and Trademark Office and the invention will undergo a rigorous evaluation process before a patent is granted
- ▶ It is highly recommended that you hire an experienced patent attorney if you want to apply for a patent



US007396984B2

(12) **United States Patent**
Straubinger

(10) **Patent No.:** US 7,396,984 B2
(45) **Date of Patent:** Jul. 8, 2008

(54) **FLUTE PADS**

(76) **Inventor:** David J. Straubinger, 5220 S. East Street, Indianapolis (IN) 48227

(*) **Notice:** Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 33 days.

(21) **Appl. No.:** 11/270,437

(22) **Filed:** Nov. 9, 2005

(65) **Prior Publication Data**
US 2006/0096442 A1 May 11, 2006

Related U.S. Application Data
(60) Provisional application No. 60/626,719, filed on Nov. 10, 2004.

(51) **Int. Cl.**
G01D 7/08 (2006.01)

(52) **U.S. Cl.** 84/385 P

(58) **Field of Classification Search** 85/385 A, 85/385 R, 385 P; 84/385 A, 385 R, 385 P
See application file for complete search history.

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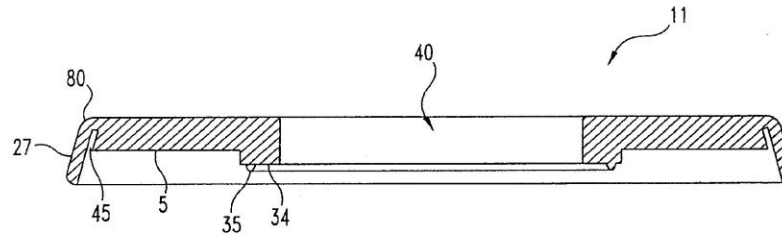
(Continued)

Primary Examiner—Brigitte R. Hammond
(74) *Attorney, Agent, or Firm*—Woodard, Emhardt, Moriarty, McNett & Henry LLP

(57) **ABSTRACT**

Self-leveling pad assemblies are described having novel backing disks, a cushion layer in contact with the backing disk and a skin covering the cushion and at least one surface of the backing disk. The novel backing disks have an outer collar and a channel at the collar's base about the collar's inner circumference that provides the disk with an enhanced flexing region. The outer collar provides sufficient support for the pad's sealing surface, maintains an even tension on the pad's skin, has sufficient flexibility to allow the pad's surface to conform to an imperfect tone hole and to seal with only a cursory leveling procedure and reduces the number of tears in the pad's skin resulting from repeated contacts with the tone hole and from fluctuations in the skin's moisture content.

27 Claims, 6 Drawing Sheets





US00D652443S

(12) **United States Design Patent** (10) **Patent No.:** **US D652,443 S**
Drelinger (45) **Date of Patent:** **** Jan. 17, 2012**

(54) **FLUTE CAP**

(76) **Inventor:** **Sandford Drelinger**, White Plains, NY (US)

(**) **Term:** **14 Years**

(21) **Appl. No.:** **29/393,306**

(22) **Filed:** **Jun. 2, 2011**

(51) **LOC (9) Cl.** **17-02**

(52) **U.S. Cl.** **D17/13**

(58) **Field of Classification Search** **D17/10,**

D17/13, 99; 84/330, 380 R, 384, 453; 215/316
See application file for complete search history.

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Primary Examiner — Rashida Johnson

(74) *Attorney, Agent, or Firm* — Robert S. Smith

(57) **CLAIM**

The ornamental design for a flute cap, as shown and described.

DESCRIPTION

FIG. 1 is a bottom view of the flute cap showing my new design;

FIG. 2 is a top view of the flute cap.

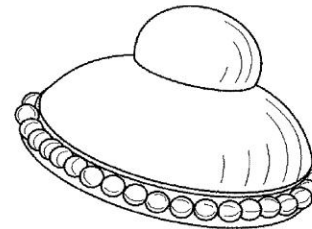
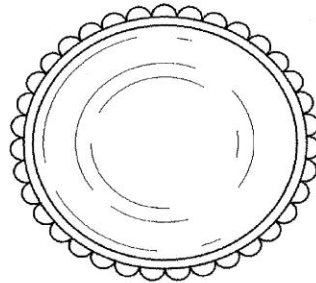
FIG. 3 is a side view of the rotationally symmetrical flute cap.

FIG. 4 is a perspective view of the flute cap.

FIG. 5 is a perspective view of the flute cap installed on an associated flute. The broken lines form no part of the claimed invention; and,

FIG. 6 is a side view of the flute cap installed on an associated flute. The broken lines form no part of the claimed invention.

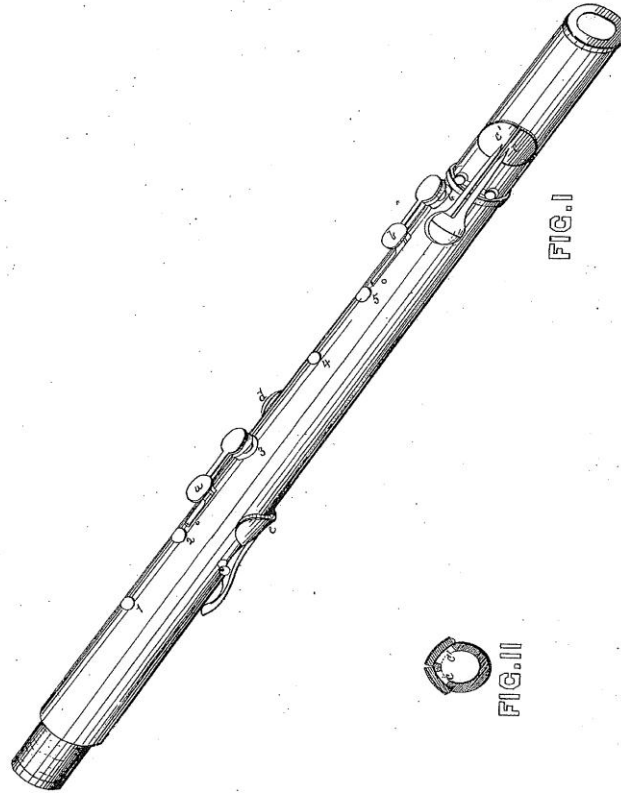
1 Claim, 2 Drawing Sheets



C. G. Christman
Flute.

N^o 6,968.

Patented Dec. 25, 1849.



THE MORRIS PETERS CO., WASHINGTON, D. C.

UNITED STATES PATENT OFFICE.

CHARLES G. CHRISTMAN, OF NEW YORK, N. Y.

FLUTE.

Specification of Letters Patent No. 6,968, dated December 25, 1849.

To all whom it may concern:

Be it known that I, CHARLES G. CHRISTMAN, of New York, in the county of New York and State of New York, have invented a new Improvement in Flutes; and I do hereby declare the following to be a full, clear, and exact description of the same, reference being had to the annexed drawings, making a part of this specification, in which—

Figure 1 is perspective view of the flute. Fig. 2 is a section of one of the double keys.

My invention consists in certain improvements in the musical instrument called the flute, whereby certain notes are produced which are wholly unknown in the old instrument and secondly, the improvement in the quality, power and significance of certain other notes which, although produced on common flutes are yet of a very defective and unsatisfactory character. It is well known that there is a very great drawback in the pleasure derived from playing or hearing this popular instrument which arises from the fact that previous to my improvements, in almost every key it is out of tune, as for instance the E and A holes on the old flute are known to produce very poor, weak, and indistinct notes, whereas in my flute, these notes are full, clear, and powerful, and as satisfactory as the best notes formerly produced. Secondly, it is well known that in ascending and descending it is perfectly impossible to produce perfect semitones both ways, on the old flute, as for instance D sharp and E flat, G sharp and A flat, A sharp and B flat, whereas by my improvements I am enabled to give the variations required to sound these with as much delicacy and perfection, as they can be produced on the violin, so that I have the power to give all the various shades of pitch (enharmonics) requisite to give the major and minor chromatic scales in perfect tune.

My flute is constructed as follows. In Figure 1, is a view of the flute; the piece having the embouchure is omitted as that is of common construction, also are omitted several keys which are of like common construction, and are employed by me as in the old flute—these I have omitted, to avoid complexity of parts in the description.

My flute is made generally after the ordinary manner, using for that purpose materials well known.

1, 2, 3, 4, 5, 6, represent six holes common to every flute, and it is by opening and closing these in various combinations that the successive sounds or notes are produced, but in some of these combinations very imperfect notes are given as in the notes E and A, which are produced by the third and sixth holes. The manner in which I improve the tone of these notes is by changing the position of the holes by which they are produced and removing them a greater distance down the flute, thus widening the spaces between them and the next nearest hole, and reaching the said holes by a key formed to be actuated by the finger at the place where the said holes were formerly put, and are commonly played as at (a, b). By this means these notes are given in full volume and perfection, a thing which could not be accomplished before, without great skill in execution, and then with much uncertainty.

The next head of my invention consists in producing perfect semitones on the sharp and flat keys. It is well known that in a stringed instrument a certain length of string which produces D sharp will require a slight variation in length to produce E flat, or any other sharp and flat. Although in ascending or descending by semitones, both notes are indicated at the same place. In the violin and kindred instruments the difficulty is easily met by a slight shift of the finger, but in instruments where the notes are arbitrarily fixed, the difficulty is not so easily overcome, and in many instruments cannot be at all. This was the case with the flute, until I overcame it by the device I shall now describe. At the point (c) is produced on the old flutes, by one key, the notes D sharp and E flat, now as is well known these notes were never perfect but discordant. In order to make this part perfect I produce two holes, as seen at (c, c') Fig. 2, one of which holes shall be larger than the other, these I then cover with a double key (c, c') Fig. 1 and construct them by interlocking their handles or operating ends, so that (c') can be worked without the other, but so that (c) cannot be operated without also opening (c'). Now by opening (c') a perfect E flat is sounded, and by opening the combined keys (c, c') D sharp is given. At (d) and (e) are placed two more sets of keys covering pairs of holes on the same principle as those at (c,



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(12) **United States Patent**
Abernethy

(10) **Patent No.:** **US 7,375,270 B2**
(45) **Date of Patent:** **May 20, 2008**

(54) **TRANSVERSE WHISTLE FLUTE AND METHOD OF PLAYING**

(76) **Inventor:** Daniel L. Abernethy, 7320 20th Ave. NE., Seattle, WA (US) 98115

(*) **Notice:** Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 36 days.

(21) **Appl. No.:** 11/039,752

(22) **Filed:** Jan. 19, 2005

(65) **Prior Publication Data**

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Related U.S. Application Data

(60) Provisional application No. 60/554,293, filed on Mar. 18, 2004.

(51) **Int. Cl.**
G10D 9/04 (2006.01)

(52) **U.S. Cl.** 84/380 R; 84/384

(58) **Field of Classification Search** 84/380 R, 84/384; D17/10, 13
See application file for complete search history.

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Primary Examiner—Lincoln Donovan

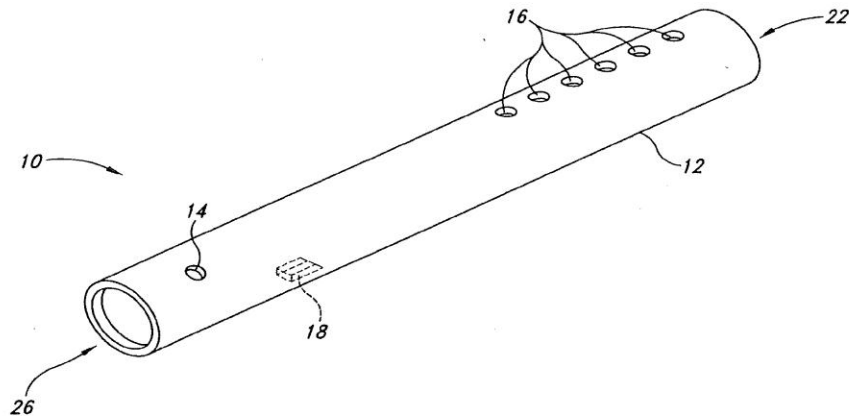
Assistant Examiner—Jianchun Qin

(74) *Attorney, Agent, or Firm*—Polly L. Oliver

(57) **ABSTRACT**

A musical instrument similar to the traditional flute but easier to play and master has been designed as an introductory flute. The whistle flute can also be used by those who have had difficulty with traditional flute embouchure and/or for recreation, education, music therapy, and stage performance. With greater range, easier handling, and simpler fingering, the whistle flute will augment or replace the recorder style flutes now used in elementary schools. In addition, the whistle flute's inner whistle design could be utilized as a training or transitional mouthpiece for any type of transverse flute.

19 Claims, 2 Drawing Sheets



Trade Secret – Consider for Work in Development

- ▶ Matter of state law – but Uniform Trade Secrets Act
- ▶ Intent is to provide an ethical marketplace
- ▶ Most famous trade secret: Coca-Cola
- ▶ This is why you may be asked to sign non-disclosure agreements (NDA) when you take a new job: may cover trade secrets as well as other confidential information
- ▶ Even without a NDA, courts will probably impute to employees a duty not to reveal trade secrets
- ▶ May be better to protect your work as a trade secret in the development phase (composing, inventing, etc.)
- ▶ Importance of reading any employment or freelance agreement you sign – and using them yourself!
- ▶ In order for information to qualify as a trade secret:
 - Must be confidential information (recipe, formula, business strategy, financial plan, customer list, marketing plan)
 - That gives you a competitive advantage in the marketplace
 - That you take reasonable measures to keep secret

Trademark Law

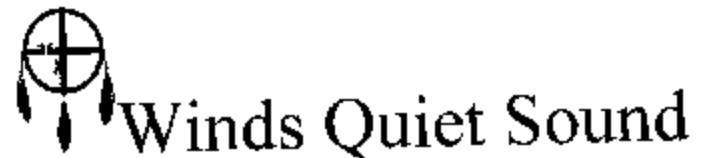
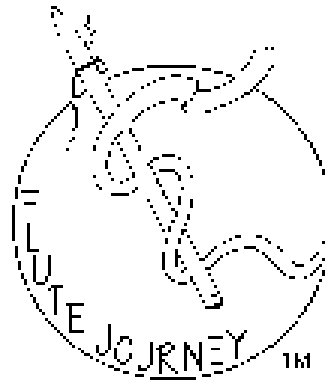
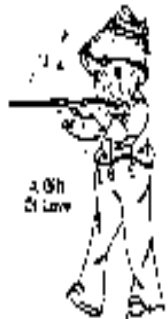
- ▶ Word marks
- ▶ Design marks
- ▶ Trade dress
- ▶ Colors
- ▶ Smells
- ▶ Sounds
- ▶ Phrases
- ▶ Product features if not functional
- ▶ Domain names – protected under TM and other laws (anti-cybersquatting)
- ▶ Your goal should be consistency in branding – logo, performance name, domain name, same color scheme and font on website, blog, letterhead, business cards. Here the name of person does not match his domain name: <http://www.infotapes.com/>



Trademark Law

- ▶ Roots are in Commerce Clause of the Constitution and the Lanham Act (federal) – but also state law
- ▶ Want to reward companies for building a strong brand and quality products or services and avoid consumer confusion in the marketplace
- ▶ Piracy/counterfeit goods – terrible problem for legitimate commerce – physical items and digital materials (SOPA, PIPA)
- ▶ Best to get permission before using someone else's product name, logo, etc. in any of your creative work
- ▶ Use care in selecting a trademark, logo or domain name if you are going to brand yourself (inherently distinctive)
- ▶ Be sure to do thorough research – free database through the U.S. Patent and Trademark Office plus newspapers, Internet, directories, state trademark and DBA databases
- ▶ Careful selection of a trademark should be part of your overall branding strategy (avoid tired themes and images)
- ▶ Consider registering at the federal level for maximum protection

Some Trademarks Using Flutes (and not just for flute-related activities)



Rights of Privacy/Right of Publicity

- ▶ Example: photograph
- ▶ Photographer owns the copyright
- ▶ Rights of privacy – ordinary people – *Taster's Choice* example
- ▶ Right of publicity – famous people (both living and deceased in some states)
 - Extends to image, likeness, persona, voice, other distinguishing features (*Midler v. Ford Motor Co.*; *Carson v. Here's Johnny Portable Toilets, Inc.*)
- ▶ Permissions and releases needed from all parties
- ▶ Also for audio and video – any other kinds of materials
- ▶ Beware of social media, especially the rights of privacy
- ▶ Agent or rights organization, such as CMG Worldwide:
<http://www.cmgworldwide.com/>

Contracts and Licensing

- ▶ Most contracts and agreements should (must) be in writing (*Statute of Frauds*) – those that are for \$500 or more, those that require more than one year to complete
- ▶ Licenses: printed, shrink-wrap, click-wrap – generally valid and enforceable unless *unconscionable*
- ▶ Read any agreement before you sign: choice of law, choice of jurisdiction, ownership of intellectual property (past, current, future), non-disclosure, non-compete, non-solicitation of employees, outside freelance activities, mediation and arbitration
- ▶ Important to note that contracts and licenses can take away rights you would have otherwise enjoyed
- ▶ Purchasing versus licensing software, books with CDs

Useful Templates: Must Comply with Your State's Law

- ▶ From Fishman, Stephen. *Legal Guide to Web & Software Development*. (Nolo)
 - Acknowledgment of Obligations (trade secrets, confidential information)
 - Independent Contractor Agreement – with choice of provisions
 - License Agreement
 - General Nondisclosure Agreement
 - Employment Agreement for Nontechnical Employee
 - Multimedia Publicity/Privacy Release
 - Website Development Agreement – if someone is going to develop a website for you
- ▶ Business plan template – from *Entrepreneurship*
- ▶ From Stim, Richard. *The Craft Artist's Legal Guide*. (Nolo)
 - Work–Made–For–Hire Agreement
 - Nondisclosure Agreement
 - Limited Personal Release Agreement
 - Unlimited Personal Release Agreement

Defamation

- ▶ Defamation is the publication of anything injurious to the good name or reputation of another, or which tends to bring him/her into disrepute.
 - Slander – spoken or by gestures; transitory statements
 - Libel – written, broadcast, images, other forms of communication
- ▶ Defense: what I said or printed is the truth
- ▶ Watch what you say about people, companies and organizations on websites, in multimedia presentations, podcasts, social media (employer cases), etc.
- ▶ Be sure you have done thorough research and can prove your claims – or at least show reasonableness/good faith
- ▶ Some freedom of the press under the First Amendment, especially when the publication is about famous people or current events of interest

Special Issues with Social Media

- ▶ Rights of privacy/right of publicity
- ▶ Defamation – libel (professional reputation)
- ▶ Copyright infringement
- ▶ Trademark infringement
- ▶ Trade secret/patent (confidential information)
- ▶ Electronic discovery – nearly 100% of what is posted on social media (Facebook, YouTube, LinkedIn, Twitter, email, blogs, etc.) is discoverable and admissible in court and you are under a duty to preserve it once you reasonably anticipate litigation or some sort of investigation – significant sanctions for spoliation, especially if intentional (Evidence Eliminator)
- ▶ Read service provider’s privacy policies – and delete does not mean that the material you posted is gone – ever
- ▶ Consider your professional reputation and long-term career

Important Considerations for Freelance Musicians

- ▶ If you are otherwise employed, know your employer's policies on intellectual property – and who owns what related to your creative work and inventions – past, current and even future work
- ▶ Get everything in writing – misunderstandings happen
- ▶ Be careful what you share in email, through the Internet, on social media, etc.
- ▶ Keep good records
- ▶ Approach freelancing in a professional manner – keep it separate from personal and other employment-related activities – recommended that you have a business plan
- ▶ Choose a proper organizational structure (for-profit, non-profit, sole proprietorship – consider personal liability)
- ▶ Don't use your employer's resources (i.e. email, website hosting) for your freelance work – read Acceptable Use Policy

Important Considerations, cont.

- ▶ Be clear on the differences between employee versus independent contractor status, especially if you will subcontract work to other freelancers
- ▶ Read – many good books on legal and business issues for musicians and other creative arts professionals
- ▶ Keep up with developments in the law and advocate through your professional organizations – especially copyright law
- ▶ Seek legal advice when needed – a problem will likely get worse and will cost even more than addressing it proactively at the beginning – some law schools have clinics for non-profit organizations, entrepreneurs, IP law, etc.
- ▶ Consider purchasing insurance – be mindful of personal liability – work with a reputable insurance company
- ▶ Pay your taxes – not dischargeable in bankruptcy

Useful Websites and Other Resources

- ▶ U.S. Copyright Office: <http://www.copyright.gov/> – includes free database of all registered copyrights
- ▶ U.S. Patent and Trademark (USPTO) Office: <http://www.uspto.gov/>
- ▶ For patents: <http://www.uspto.gov/patents/index.jsp> – includes free database of all U.S. patents since 1790
- ▶ For trademarks: <http://www.uspto.gov/trademarks/index.jsp> – includes free database of trademarks registered with USPTO
- ▶ For information on starting a company: U.S. Small Business Administration: <http://www.sba.gov/> and SCORE: <http://www.score.org/>
- ▶ Free sheet music: Library of Congress American Memory Project: <http://memory.loc.gov/ammem/index.html> and IMSLP: http://imslp.org/wiki/Main_Page

Useful Websites and Other Resources

- ▶ For tax information and forms: <http://www.irs.gov/>
- ▶ Rights organizations:
 - ASCAP: <http://www.ascap.com/>
 - BMI: <http://www.bmi.com/>
 - SESAC: <http://www.sesac.com/>
 - The Harry Fox Agency (HFA): <http://www.harryfox.com/public/FAQ.jsp>
- ▶ How to Write a Business Plan:
<http://www.sba.gov/category/navigation-structure/starting-managing-business/starting-business/writing-business-plan>
- ▶ Resources in your state (Indiana Secretary of State's office):
<http://www.in.gov/sos/business/3783.htm>
- ▶ Public/university libraries (librarians love to help!); WorldCat:
<http://www.worldcat.org/>

Useful Websites and Other Resources

- ▶ Nolo (legal books and forms for non-lawyers):
<http://www.nolo.com/>, also has lots of free information (be sure to use the most recent editions):
 - *Choose the Best Legal Entity for a One-Person Business* (Fishman)
 - *The Copyright Handbook: What Every Writer Needs to Know* (Fishman)
 - *Nolo's Patents for Beginners* (Pressman)
 - *Music Law: How to Run Your Band's Business* (Stim)
 - *Patent, Copyright & Trademark: An Intellectual Property Desk Reference* (Stim)
 - *The Craft Artist's Legal Guide* (Stim)
- ▶ Joy, Felicia. *Hybrid Entrepreneurship*. Atlanta, GA: Joy Group Press, 2009.
- ▶ Lambing, Peggy A. and Kuehl, Charles R. *Entrepreneurship*, 4th ed. Upper Saddle River, NJ: Pearson/Prentice Hall, 2007 (Mostly devoted to how to write a business plan, with template, checklists, sample financial statements, etc.)

Summary

- ▶ Many legal issues for flutists to think about.
- ▶ Knowing the basics can really help you protect yourself, your professional reputation and brand, your future career and your own creative work and avoid infringing on the rights of others.
- ▶ Also remember that just because something is “legal” (or not illegal) still does not mean it is ethical – the law cannot account for every instance of human behavior – maintain your own code of professionalism.
- ▶ Note: Please contact me via email at sahook@iupui.edu if you would like copies of the templates that are listed on slide 30.



Any Questions?

Thank you for attending the National Flute Association Annual Convention!

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