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Filing date: **10/22/2008**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92048271
Party	Plaintiff Rhino Linings USA, Inc.
Correspondence Address	David A., Harlow Nelson Mullins Riley & Scarborough LLP 4140 Parklake AvenueGlenLake One, Suite 200 Raleigh, NC 27612 UNITED STATES david.harlow@nelsonmullins.com
Submission	Other Motions/Papers
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Signature	/Joseph S. Dowdy/
Date	10/22/2008
Attachments	Submission 6.pdf (18 pages)(646930 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Registration No. 1,698,407
Date of Issue: June 30, 1992

RHINO LININGS USA, INC.,)	
Petitioner,)	
)	
vs.)	Cancellation No. 92048271
)	
RAPID RACK INDUSTRIES, INC.,)	
Registrant.)	
)	

**PETITIONER'S BRIEF IN SUPPORT OF ITS
MOTION FOR SUMMARY JUDGMENT**

**EXHIBITS TO BRIEF IN SUPPORT OF PETITIONER'S MOTION
FOR SUMMARY JUDGMENT CONTINUED**

Exhibit J

EXHIBIT J

(to Petitioner's Brief in Support of its Motion for
Summary Judgment)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Registration No. 1,698,407
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RHINO LININGS USA, INC.,)	
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)	
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)	
RAPID RACK INDUSTRIES, INC.,)	
Registrant.)	
)	

AFFIDAVIT OF ROBERT A. FIDEL

Robert A. Fidel, being first duly sworn, states the following:

1. I am over the age of eighteen (18), am under no legal disability, and am otherwise competent to testify to the matters set forth in this Affidavit. The subject matter of this affidavit is set forth based on my personal knowledge.

2. I was employed as a corporate paralegal for Petitioner Rhino Linings USA, Inc. (“Petitioner”) from February 16, 2005 until August 16, 2007. In this position, I had knowledge of and responsibility for Petitioner’s trademark applications in International Classes 2, 20, and 40 for the following trademarks: RHINO (Serial No. 78/855,807, filed 4/6/2006), RHINO STORAGE (Serial No. 78/832,653, filed 3/8/2006), RHINO GARAGE (Serial No. 78/832,237, filed 3/8/2006), and RHINO SHELVING (Serial No. 78/832,703, filed 3/8/2006) (collectively “Petitioner’s Applications” and “Petitioner’s Marks”). On June 25, 2006, the Examining Attorney issued an Office Action with respect to each of Petitioner’s Applications, in which the Examining Attorney cited the RHINO RACK Mark of Registration No. 1,698,407 (the “RHINO RACK Mark”) as a bar to registration of Petitioner’s Marks.

3. Upon receiving the Office Actions referenced above, I conducted an internet search for information concerning whether the RHINO RACK Mark was in use and for information concerning the products distributed by the owner of the RHINO RACK Mark, Rapid Rack Industries, Inc. (“Rapid Rack”).

4. On or about August 3, 2006, I located the company Internet website for Rapid Rack, *www.rapidrack.com*, using the Google search engine. True and accurate copies of print-offs from *www.rapidrack.com*, as it existed on or about August 3, 2006, are attached hereto and Exhibit 1.

5. On or about August 3, 2006, I thoroughly reviewed each link to the homepage for *www.rapidrack.com* to determine whether the RHINO RACK Mark was in use in commerce in connection with any goods distributed by Rapid Rack. The RHINO RACK Mark did not appear anywhere on *www.rapidrack.com*. Further, the term “Rhino Rack” was not used anywhere on *www.rapidrack.com*, generally or in connection with any specific products. No product on *www.rapidrack.com* was referred to as the Rhino Rack.

6. As of August 3, 2006, the upper right corner of *www.rapidrack.com* contained a logo comprised of a red circle overlapping with a drawing of a gorilla and the words “GORILLA RACK products” and the Internet address “www.GorillaRack.com”. The logo was hyperlinked, and by clicking on the logo, I was transferred to *www.gorillarack.com*, which is also identified as being owned by Rapid Rack. True and accurate copies of print-offs from *www.gorillarack.com*, as it existed on or about August 3, 2006, are attached hereto as Exhibit 2.

7. On or about August 3, 2006, I thoroughly reviewed each link to the homepage for *www.gorillarack.com* to determine whether the RHINO RACK Mark was in use in

commerce in connection with any goods distributed by Rapid Rack. The RHINO RACK Mark did not appear anywhere on *www.gorillarak.com*. Further, the term “Rhino Rack” was not used anywhere on *www.gorillarak.com*, generally or in connection with any specific products. No product on *www.gorillarak.com* was referred to as the Rhino Rack.

8. On or about August 3, 2006, I also conducted at least the following searches using the Yahoo! and Google search engines:

- a. “Rapid Rack” “Rhino Rack”
- b. “Rapid Rack” “Rhino”
- c. “Rhino Rack”

These searches did not reveal any products in sale in commerce by Rapid Rack that were being distributed in connection with the RHINO RACK Mark. Further, these searches did not identify any use by Rapid Rack of the term “Rhino Rack”, generally or in connection with any specific products, and I was not able to locate any product manufactured or distributed by Rapid Rack that was referred to as the Rhino Rack.

9. After conducting the above-described Internet research, I contacted Rapid Rack’s customer service department at the telephone number listed on *www.rapidrack.com* and *www.gorillarak.com*. I informed the customer service representative who took my call that I had heard about Rhino Rack and wanted more information about it. Rapid Rack’s customer service representative informed me that Rapid Rack had discontinued the product which it had referred to as “Rhino Rack” several years earlier and had replaced that product with the Gorilla Rack product line.

Further Affiant Sayeth Not.



Robert A. Fidel

STATE OF CALIFORNIA

COUNTY OF _____

I, _____, a notary public for the County of _____, California, hereby certify that Robert A. Fidel personally appeared before me on the ____ day of October, 2008 and did swear to and subscribe the foregoing document in my presence.

Witness my hand and notarial seal this ____ day of October, 2008.

My commission expires: _____.

Great Attached.
 10-21-08

EXHIBIT 1

(to Affidavit of Robert A. Fidel)



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[PRODUCTS](#)

[APPLICATIONS](#)

[FIND A DISTRIBUTOR](#)

[WARRANTY](#)

[ABOUT RAPID RACK](#)

[CONTACT US](#)

SHELVING SOLUTIONS



Your Key to
Creative
Storage
Systems



Catwalk



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HISTORY

HOME

For over 50 years Rapid rack has manufactured material handling storage equipment for industrial and commercial applications. Our products include heavy duty boltless shelving, mezzanines, archive shelving, mobile cart shelving and mobile aisle shelving. We offer a variety of workbenches, carts, drawers and other accessories to enhance the use of shelving products.

PRODUCTS

APPLICATIONS

Rapid Rack Industries has the widest depth of components in the industry that satisfy the requirements of most customers with standard parts. Custom parts can be ordered to meet unusual needs.

FIND A DISTRIBUTOR

WARRANTY

Rapid Rack manufactures our products to strict ANSI specifications using steel in various gauges depending on the applications. Our engineering and quality control staff insure that the shelving components meet our high expectations for quality and adhere to our rigorous specifications. All products undergo multiple quality control check points to eliminate defects. Every product is finished with an oven cured powder coat paint system that provides a durable high luster finish.

ABOUT RAPID RACK

CONTACT US

The painting finish is resistant to rust and corrosive materials. Rapid Rack offers tan and grey as standard finish colors in stock with the availability of thousands of other colors and textures.

Rapid Rack Industries has 275,000 square feet of state of the art manufacturing and corporate offices in the City of Industry, California. We ship worldwide from this facility. The company employs over 300 people at the plant. We offer a full range of design capabilities and CAD operations. We can provide customers with detailed floor plans, assembly diagrams and component drawings.

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Please provide the following contact information:

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[APPLICATIONS](#)

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[WARRANTY](#)

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First Name

Last Name

Work Phone

FAX

E-mail

Your Comment:

Contact Us by Mail

Rapid Rack Industries, Inc.
14421 Bonelli Street
City of Industry, CA 91746

Contact Us by Phone/Fax/E-mail

Tel: (800)736-7225 or (626)
333-7225
Fax: (626)333-5265
E-mail:

customerservice@rapidrack.com

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EXHIBIT 2

(to Affidavit of Robert A. Fidel)



GORILLARACK.COM



RAPID RACK

Manufacturer of Storage Solutions

HOME

PRODUCTS:

- **PACKAGING RACKS**
- **SHELVING RACKS**
- **STORAGE RACKS**
- **WORKBENCHES**
- **INDIVIDUAL PIECES**

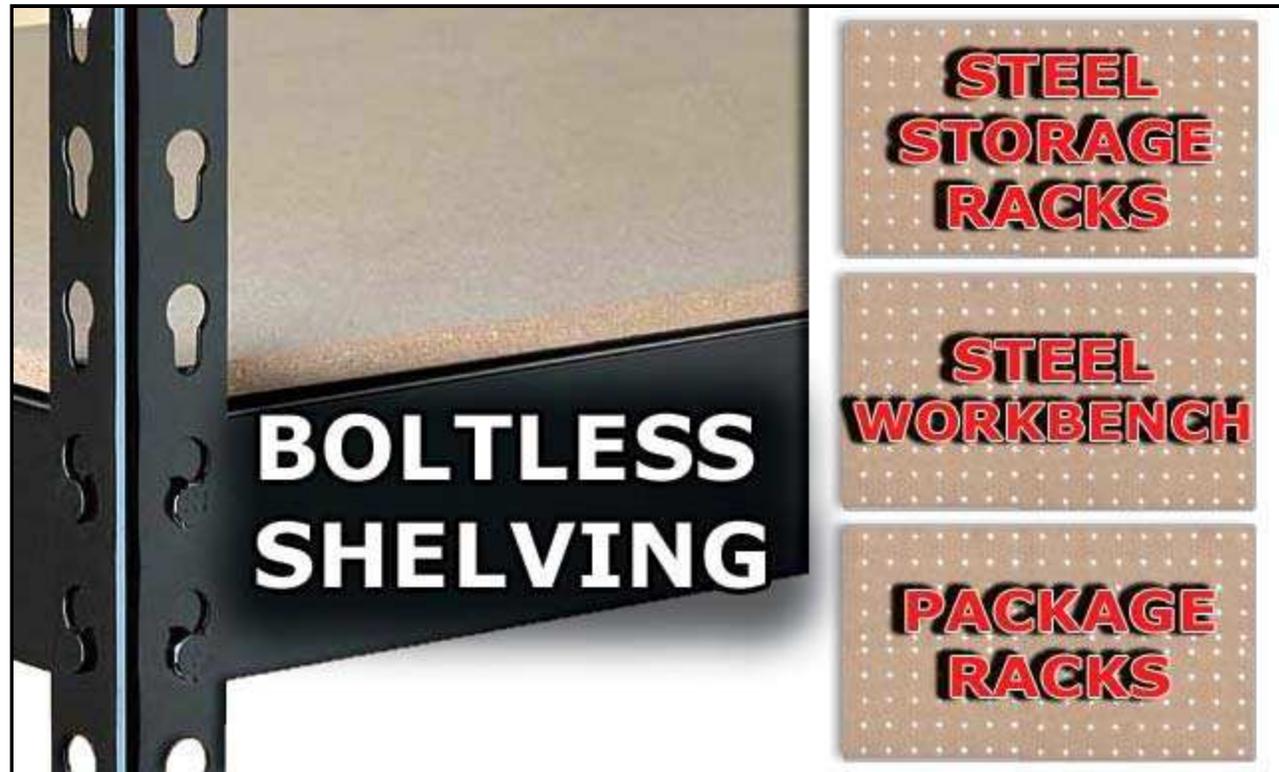
SUPPORT:

- **F.A.Q.**
- **Tips**
- **Assembly Instructions**

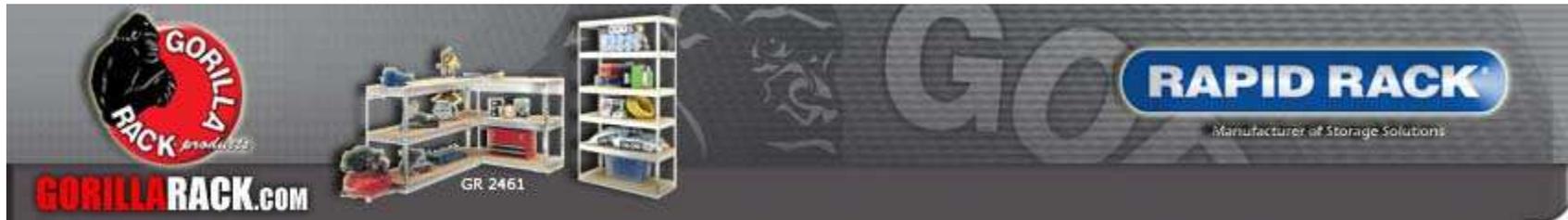
ABOUT GORILLA RACK

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HOME

SHELVING RACK

PRODUCTS:

- PACKAGING RACKS
- SHELVING RACKS
- STORAGE RACKS
- WORKBENCHES
- INDIVIDUAL PIECES

Product Model #: GRL 110

Type: Lite Galvanized Shelving
 Dimensions: 12" X 34" X 66" inch
 Shelf Qty.: 5
 Finish: Galvanized
 Deck Material: Galvanized
 Post Design: Angle Post

SUPPORT:

- F.A.Q.
- Tips
- Assembly Instructions

- Features:
- Adjustable Shelving
 - Corrosion Resistant
 - All Steel Construction
 - Easy Assembly

ABOUT GORILLA RACK

CONTACT US

SITE INDEX

[Click here for assembly instruction](#)



Available at:



or call Gorilla Rack Customer Service at (800) 736-7225 or (626) 333-7225 for location near you.

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Steel Shelving Galvanized Units

GRL100 and GRL110

4 and 5 SHELF UNIT INSTRUCTIONS FOR UNIT ASSEMBLY

PARTS INVENTORY CHECKLIST

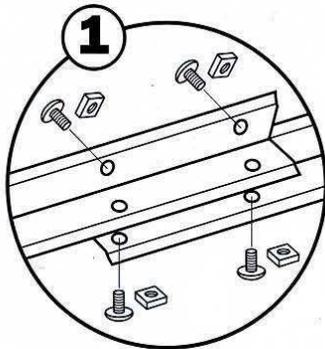
- | |
|--------------------------------------|
| 4 Shelves (4 Shelf Unit Purchase) OR |
| 5 Shelves (5 Shelf Unit Purchase) |
| 8 Angled Side Lengths |
| 4 Safety Feet |
| 1 Bag of Bolts and Nuts |
| 10 Corner Angle Brackets |

TOOLS FOR THE JOB

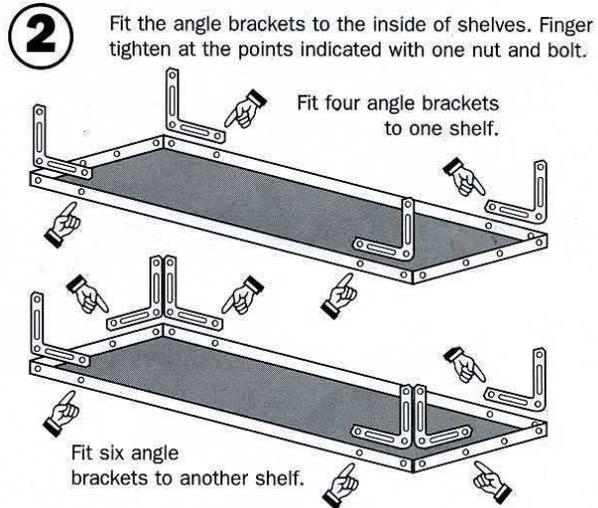
- Phillips Head or Plain Screwdriver
- Small Adjustable Spanner or Pliers

SAFETY TIPS

- Please Handle Sharp Metal Edges Carefully
- Attach Unit to a Wall if Filling to Capacity
- Evenly Distribute Loads Across the Shelves
- Place Heavier Items on the Lower Shelves



Overlap two angled side lengths by two holes and bolt together tightly as illustrated. Follow this procedure with the other six angled side lengths.



3

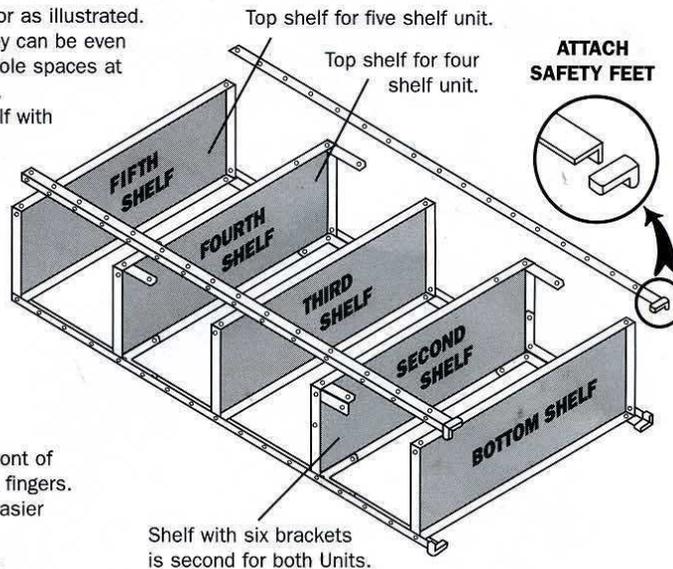
Place two assembled side lengths on the floor as illustrated. Position your shelves to suit your needs. They can be even or at different distances apart, leaving two hole spaces at the bottom for shelf clearance from the floor.

For the **four shelf unit assembly** use the shelf with the four angle brackets as the top shelf and the shelf with six angle brackets as the shelf second from the bottom.

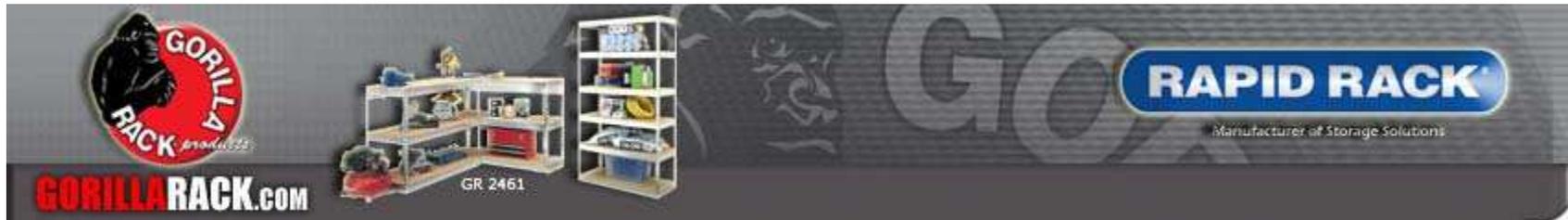
For the **five shelf unit assembly** use the shelf with the four angle brackets as the fourth shelf from the bottom and the shelf with six brackets as the second shelf from the bottom. Attach other shelves and tighten nuts and bolts with your fingers.

4

Fit the two remaining angle lengths on the front of the unit with nuts and bolts and tighten with fingers. Stand the unit upright but upside down for easier access and firmly tighten all nuts and bolts. Finally fit the plastic feet to the bottom legs.



Need Assistance?
Call Gorilla Rack Customer Service.
1-800-736-7225
8:00 a.m. to 5:00 p.m. Weekdays (Pacific Time)



HOME

ABOUT GORILLA RACK

PRODUCTS:

- **PACKAGING RACKS**
- **SHELVING RACKS**
- **STORAGE RACKS**
- **WORKBENCHES**
- **INDIVIDUAL PIECES**

SUPPORT:

- **F.A.Q.**
- **Tips**
- **Assembly Instructions**

ABOUT GORILLA RACK

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Rapid Rack Industries, Inc has been providing the industrial and commercial industry with the highest quality material storage solutions for over half a century. As Rapid Rack became a leader of storage solutions, we recognized the need for the same type of high quality product in the retail marketplace, thus, Gorilla Rack Product line was formed in 1988. Gorilla Rack has developed a wide variety of storage solution products. We currently offer the following extensive product line to our customers depending on their unique requirements.

1. Storage Rack - has a multitude of sizes, designs and material specifications. Wood and steel shelves are available.
2. Wire Rack - that may be used in home for kitchen, bedroom, storage and bath. Chrome or powder coated finishes available. Industrial strength or home décor styles.
3. Workbenches - a versatile design with widths from 42" to 72". Features full length single drawers, multi-drawers or different depth drawers; cantilever shelves and pegboard back make storing and retrieving tools convenient and simple. Gardening benches are also available.
4. P-Rack-is designed for the customer with extra heavy duty requirements. Welded end frames provide enormous support. Welded end clips on the cross beams add capacity.
5. Toolboxes-Gorilla Rack has designed a new line of tool boxes featuring steel construction with ball bearing drawer glides at every drawer. We offer multiple drawer configurations including mobile trolleys. Each drawer contains a rubber foam matting to protect and contain your finest tools.
6. Storage containers - Newly introduced line of nesting storage containers in galvanized steel or stainless steel.

Rapid Rack Industries provides our customers with flexibility, on time delivery, 100% line fill and a limited lifetime warranty. You can be confident when purchasing a Gorilla Rack Product you are buying a high quality product that will meet or exceed you and your customer's expectations. Gorilla Rack will get you organized.

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HOME

PRODUCTS:

- **PACKAGING RACKS**
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- **INDIVIDUAL PIECES**

SUPPORT:

- **F.A.Q.**
- **Tips**
- **Assembly Instructions**

ABOUT GORILLA RACK

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Please Provide the following contact information:

First Name:

Last Name:

Work Phone:

Fax:

E-mail:

Your Comment:

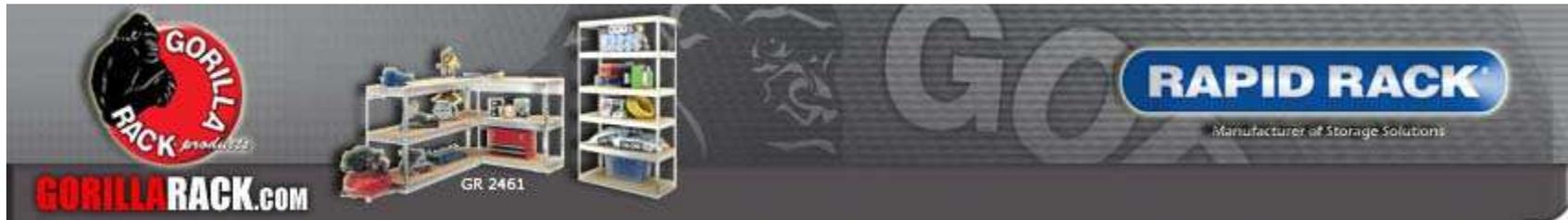
Contact Us by Mail

Rapid Rack Industries, Inc.
14421 Bonelli Street
City of Industry, CA 91746

Contact Us by Phone/Fax/E-mail

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- **Assembly Instructions**

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PRODUCTS

Packaging Racks

- GR 7304
- GR 7201
- GR 7300
- GR7400

Shelving Racks

- GRL 100
- GRL 110

Storage Racks

- GR 1000 B
- GR 2461
- GR 800 B
- GR 8120
- GR 8440
- GR 900 B
- GRZ 8460-5
- GR 2000
- GR 2463
- GR 2463
- GR 2440 B
- GR 2560 B

Workbenches

- GRB 1580-T
- GR 1902 B
- GR 2102 B
- GR 4824
- GRB 7560

SUPPORT

- FAQ**
- Tips**
- Assembly Instructions**

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