



**United States Copyright Office**

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April 13, 2017

Ms. Sherry H. Flax, Esq.  
Saul Ewing, LLP  
500 E. Pratt St.  
Suite 900  
Baltimore, MD 21202-3133

**Re: Second Request for Reconsideration for Refusal to Register “Range,” “Scaffold,” “Innuendo 2,” “Philadelphia,” “TSN,” “With the Grain,” “Mesh,” “Radius,” “Costillia II,” and “Span”; Correspondence IDs: 1-1J47MSN, 1-1J47NE5; SR #s 1-2657613020; 1-2657613114; 1-2657613067; 1-2657613302; 1-2656939402; 1-2656938889; 1-2657612972; 1-2656939030; 1-2656939221; 1-2656939144**

Dear Ms. Flax:

The Review Board of the United States Copyright Office (“Board”) has considered Mannington Mills, Inc.’s (“Mannington’s”) second request for reconsideration of the Registration Program’s refusal to register two-dimensional artwork claims in the works titled “Range,” “Scaffold,” “Innuendo 2,” “Philadelphia,” “TSN,” “With the Grain,” “Mesh,” “Radius,” “Costillia II,”<sup>1</sup> and “Span” (each a “Work,” and collectively, the “Works”). After reviewing the applications, deposit copies, and relevant correspondence, along with the arguments in the second requests for reconsideration, the Board affirms the Registration Program’s denials of registration.

## **I. DESCRIPTION OF THE WORKS**

The Works are designs printed on carpet. The initial deposit for each Work consists of “pattern files,” or files that are “fed into Mannington’s tufting machines to produce each [Work].” Letter from Sherry H. Flax, Saul Ewing, LLP, to U.S. Copyright Office 2 (Dec. 30, 2016) (“Clarification Letter”). The pattern files “contain the directions for the machines but do not depict the [Works] themselves.” *Id.* Because the Office does not accept such files as deposits, Mannington submitted pictures of installed carpet as supplemental deposits for each Work. For Radius, With the Grain, Span, Range, TSN, and Philadelphia, the supplemental deposits consist of pictures of installed carpet tile, which are “squares of identical sizes cut from one long piece of carpet.” *Id.*

The Works are depicted in Appendix A.

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<sup>1</sup> “Costillia II” is sometimes spelled “Costilla II” in correspondence from Mannington Mills. The deposit is listed as “Costillia II.”

## II. ADMINISTRATIVE RECORD

On November 6 and 13, 2015, Mannington filed applications to register copyright claims in the Works. Because the Copyright Office registration specialist was unable to examine the Works properly based on the initial deposits, the Office asked Mannington to provide additional photographs showing the design of each work. Email from Beth Garner, Registration Specialist, to Lori Haynes, Mannington Mills (Nov. 6, 2015); Email from Beth Garner, Registration Specialist, to Lori Haynes, Mannington Mills (Nov. 13, 2015). In response, Mannington submitted supplemental deposits consisting of photographs of installed Mannington carpets for each of the Works. In November 30 and December 1, 2015 letters, an Office registration specialist refused to register the claims, finding that the Works “lack the authorship necessary to support copyright claims.” Letter from Beth Garner, Registration Specialist, to Mannington Mills, Inc. (Nov. 30, 2015) (denying registration of “Span”); Letter from Beth Garner, Registration Specialist, to Mannington Mills, Inc. (Dec. 1, 2015) (denying all other registrations).

Mannington subsequently requested that the Office reconsider its initial refusal to register the Works, arguing that the “placement, arrangement, and overall relative scale of the geometric elements” in the Works rendered them original. Letter from Lori Haynes to U.S. Copyright Office 1 (Jan. 26, 2016); Letter from Donna Morrow to U.S. Copyright Office 1 (Jan. 26, 2016) (collectively, the “First Request”). In response, the Office again refused to register the Works. First, the Office found that carpets generally are useful articles, but also noted that “some of the [Works’] designs may be conceptually separable.” Letter from Stephanie Mason, Attorney-Advisor, to Donna Morrow, Mannington Mills, Inc. 2 (Apr. 25, 2016) (“Morrow Letter”); Letter from Stephanie Mason, Attorney-Advisor, to Sherry Flax, Saul Ewing, LLP 2 (Apr. 25, 2016) (“Flax Letter”) (separate letter sent on same day noting that Span was conceptually separable). The Office then evaluated the separable portions of the Works for originality, and again concluded that they “as a whole contain[] insufficient creative authorship,” and that the Works’ features “are not combined in any way that differentiates them from their basic shape components, and so they cannot rise to the level of creativity necessary for copyright registration.” Morrow Letter at 1, 4; Flax Letter at 1, 4. The Office thus again refused to register the Works.

Mannington then filed a second request that the Office reconsider its refusal to register the Works requested that, pursuant to 37 C.F.R. § 202.5(c). Letter from Sherry H. Flax, Saul Ewing, LLP, to U.S. Copyright Office (July 12, 2016) (“Second Request”). Mannington did not discuss each Work, but instead generalized that the “original placement of thoughtfully constructed lines of varying sizes, gradations, and curvature for the Works is sufficiently creative to warrant registration.” *Id.* at 4.

On November 1, 2016, the Office followed up on the Second Request by asking four questions related to the Works’ deposits. Letter from John R. Riley, Attorney-Advisor to Sherry Flax, Saul Ewing, LLP (Nov. 1, 2016). Specifically, the Office asked: what the initial deposits depicted; why the design on each initial deposit did not match the supplemental, photographic deposit; and why some patterns appeared to be tiles. *Id.* at 1-2. Finally, the Office asked Mannington to “resubmit a copy of the supplemental deposit (the photographs of carpet) with an outline or other visual indication that clearly shows the exact design being claimed for each work.” *Id.* at 2.

In response, Mannington claimed that the initial deposits consisted of “‘pattern files’ that are fed into Mannington’s tufting machines to produce the [d]esigns.” Clarification Letter at 2. Mannington further stated that some supplemental deposits depicted “broadloom,” described as “when carpet is available on a roll in one long piece,” while other deposits consisted of installed carpet tile. *Id.* Mannington further noted that carpet tiles sometimes divide unevenly, “every tile could conceivably have a slightly different pattern,” and “when carpet tiles are installed, the installer is not required to place them in any specific orientation.” *Id.* Mannington did not respond to the Office’s request to resubmit outlined copies of the supplemental deposits. Instead, Mannington submitted proposed new deposits for the Works.

### III. DISCUSSION

After carefully examining the claims and deposits, the Board finds that the deposits submitted are insufficient to support registration of the Works, and thus upholds the decision to refuse registration.

Copyright law requires that material deposited for registration shall include a “complete copy” of a work.<sup>2</sup> Copyright Office regulations further define the nature of the required deposit for “[w]orks reproduced in or on sheetlike materials,” which includes the requirements for deposits of designs printed on carpet. 37 C.F.R. § 202.20(c)(2)(x). When a visual art work is reproduced solely on sheetlike material, “the deposit shall consist of one copy in the form of an actual swatch or piece of such material sufficient to show all elements of the work in which copyright is claimed and the copyright notice appearing on the work, if any.” *Id.* If the work “consists of a repeated pictorial or graphic design,” then a copy of “the complete design and at least part of one repetition must be shown.” *Id.*; *see also* U.S. COPYRIGHT OFFICE, COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES, § 1509.3(A)(4) (3d ed. 2014) (“COMPENDIUM (THIRD)”). The Copyright Office warns applicants not to submit CAD drawings as the sole form of deposit, “because these types of drawings generally do not show the actual fixed or published design.” COMPENDIUM (THIRD) § 1509.3(A)(4).

Mannington’s deposits for the Works do not meet these standards. As acknowledged by Mannington, each initial deposit does *not* depict the design that Mannington wishes to register; instead, the initial deposits contain “‘pattern files’ that are fed into Mannington’s tufting machines to produce the [d]esigns.” Clarification Letter at 2. These deposits are comparable to CAD drawings that, as acknowledged by Mannington, do not show the actual design of each work, and are not eligible as deposits for copyright registration. *See id.*

The supplemental deposits provided on November 20-21, 2015 also do not support registration because those deposits do not do not show a complete copy of the work. The Office cannot register the Works that consist of broadloom, because the design on these Works are obscured by furniture and, further, the Office cannot determine where any pattern begins and ends. The supplemental deposits consisting of installed carpet tile, including Radius, With the Grain, Span, Range, TSN, and Philadelphia also are fatally deficient. As noted by Mannington itself, deposits depicting installed carpet tile “may not provide a complete representation of the [work’s] [d]esign[.]” *Id.* For these Works, the design created by Mannington was cut into pieces

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<sup>2</sup> *See* 37 C.F.R. § 202.20(b)(2)(i)-(ii) (A copy must be “complete” for both published or unpublished works.).



and rearranged by a carpet installer without direction before Mannington took a picture of the installed carpet and submitted that picture as a deposit. The supplemental deposits for these Works do not consist of complete copies and do not show all elements of the work in which copyright is claimed.

The Office will not consider the photographs submitted with Mannington's December 30, 2016 letter as deposits. Reconsiderations are based on the "applicant's written submissions." 37 C.F.R. § 202.5(b)(1) (first reconsideration), § 202.5(c)(1) (second reconsideration). The Review Board considers the deposits made during examination, but generally does not consider deposits submitted after examination. Mannington declined to indicate on its supplemental deposits where "the complete design and at least part of one repetition" were shown. *Id.* § 202.20(c)(2)(x). The Board cannot evaluate works that may be partially blocked by office furniture (or, as with the photos in the Clarification Letter, pieces of paper with the title of the work obstructing the design) or works with a repeating design where it cannot determine where the design begins or ends.


In the future, if Mannington wishes to submit works for possible registration that are consistent with Copyright Office regulations, it needs to provide deposits of uncut carpet or an unobstructed photograph that clearly shows the complete design.

While the Board is rejecting the claims in the Works based on the insufficient deposits, we also have some concerns regarding the Works' originality. In its Clarification Letter, Mannington notes that the Mesh and Scaffold designs are "derived from a creative exercise that was conducted with the students from the Ron Clark Academy in Atlanta, GA." Clarification Letter at Ex. R, S. Mannington explains that photographs of physical objects were taken during this exercise, and the Mannington Design Studio "did an abstract interpretation of the object . . . ." *Id.* Similarly, for Philadelphia and Span, Mannington notes that those patterns are "derived from a creative exercise that was conducted with a group of interior designers" in different "Design Local" exercises and the pattern was "inspired" by or copied from a photograph. *Id.* at Ex. L, O. Mannington's comments suggest more inquiry is needed into the authorship of its designs, both because these Works appear to be derivative works (where the fabric or the photographs would be the original work) and because it is unclear who authored both the photographs and resulting carpet pattern.

Finally, the Office notes that even in the proposed deposits that were not accepted as being untimely, some of the Works appear to be simple geometric patterns or familiar symbols or designs, which are ineligible for copyright protection. 37 C.F.R. § 202.1(a); *see also* COMPENDIUM (THIRD) §§ 313.4(J), 906.1.

**IV. CONCLUSION**

For the reasons stated herein, the Review Board of the United States Copyright Office affirms the refusal to register the copyright claims in the Works. Pursuant to 37 C.F.R. § 202.5(g), this decision constitutes final agency action in this matter.

**BY:**   
Catherine Rowland  
Copyright Office Review Board

# **APPENDIX A**



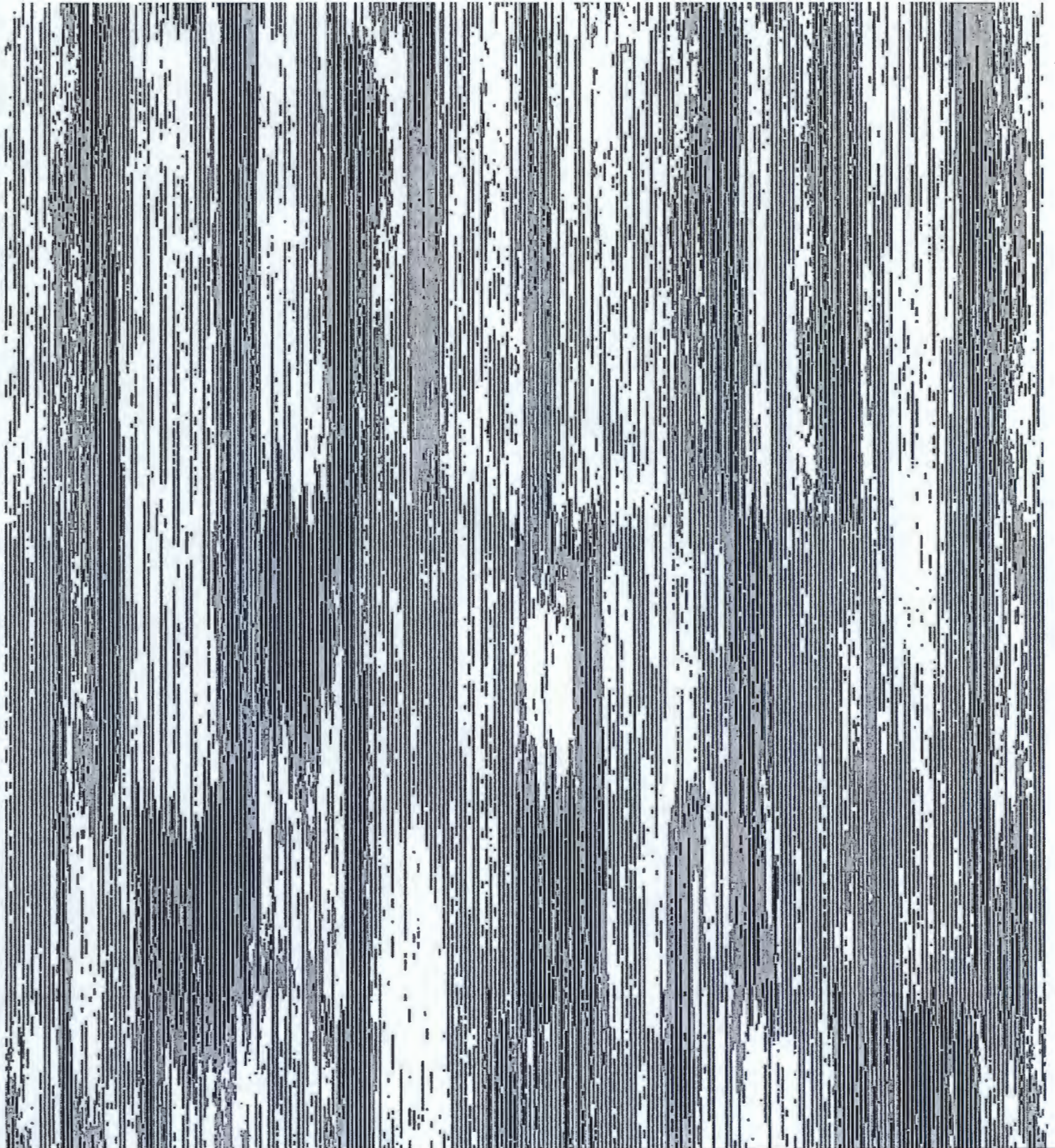
SPAN

2E41-B



Date: 7/2/2015 Time: 16:11

Pattern Width: 480 Pattern Length: 924 Pattern Gauge: 1/4 Stitch Rate: 8.000  
Stitch Dimensions (Pixels) Stitch Width: 2 Stitch Length: 2



■ High Pile Height

■ Medium Pile Height

□ Low Pile Height





SPAN  
2E4



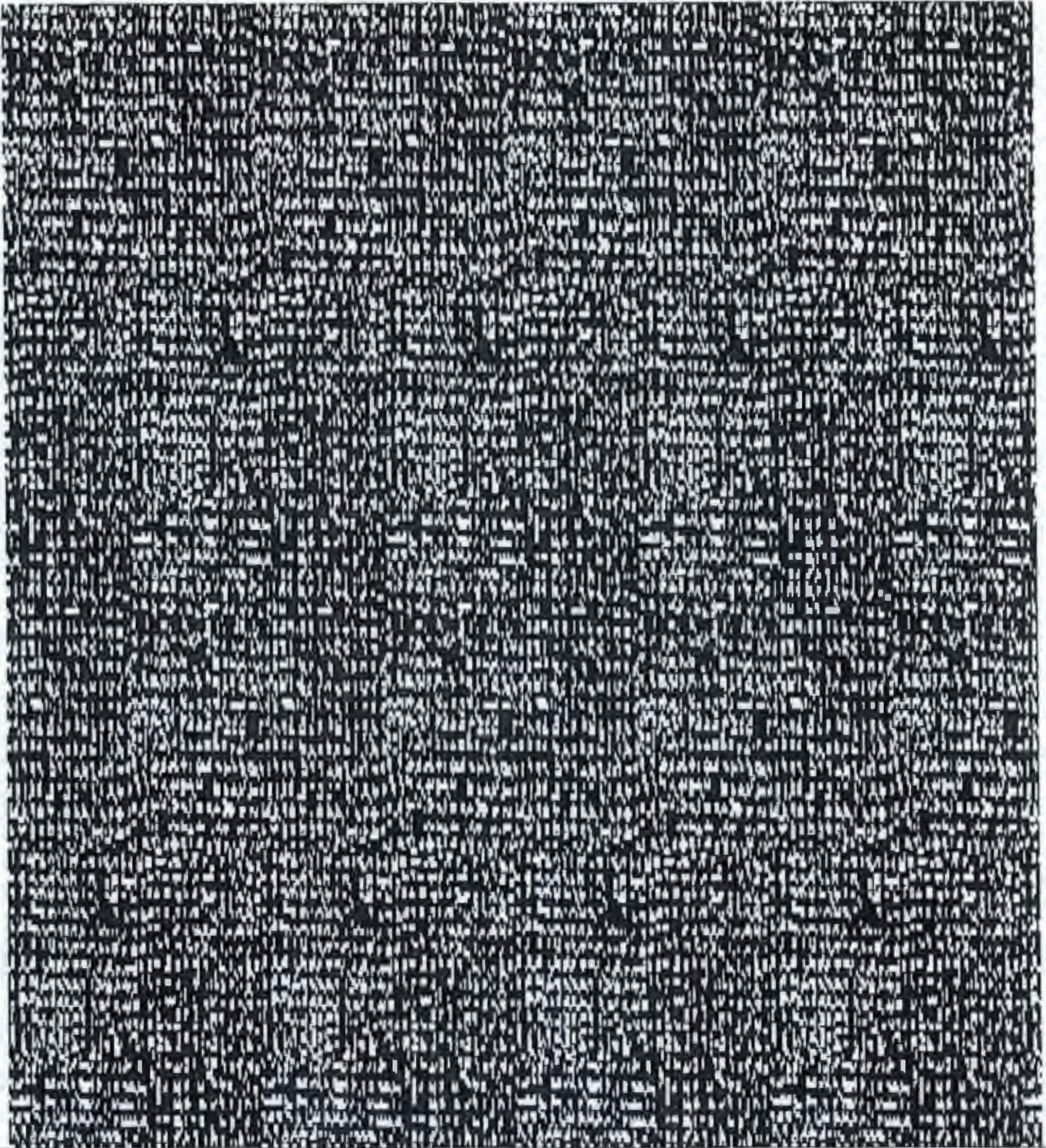
**INNUENDO 2**

MT4388-B SR# 1-2657613067



Date: 7/2/2015 Time: 16:12

Pattern Width: 120 Pattern Length: 520 Pattern Gauge: 1/4 Stitch Rate: 8.000  
Stitch Dimensions (Pixels) Stitch Width: 2 Stitch Length: 2



■ High Pile Height

□ Low Pile Height



INNUEUDO 2  
MT 4388





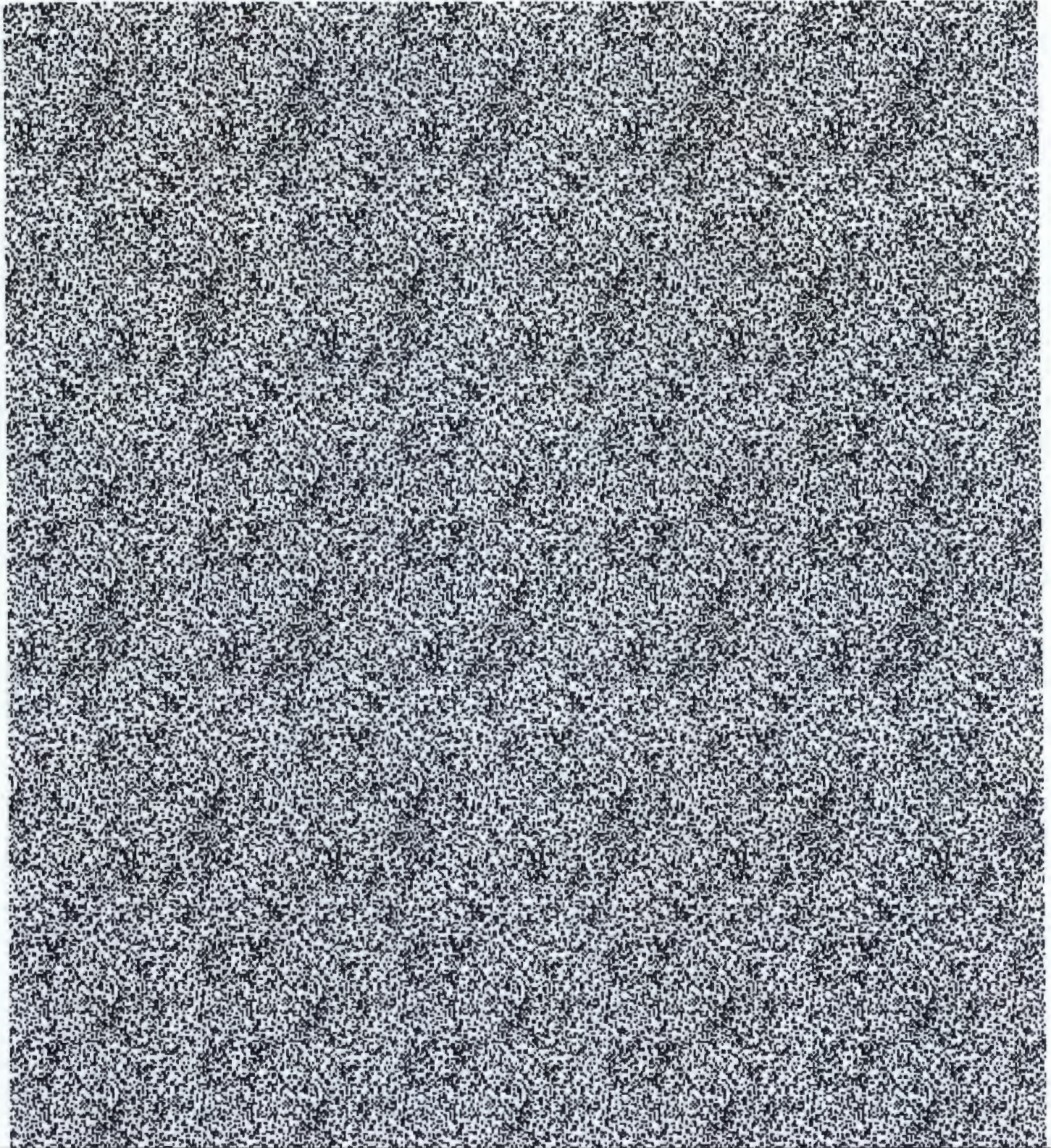
KANGE

SC7945-R SR#1-2657613020



Date: 7/2/2015 Time: 16:09

Pattern Width: 96 Pattern Length: 240 Pattern Gauge: 1/4 Stitch Rate: 8.000  
Stitch Dimensions (Pixels) Stitch Width: 2 Stitch Length: 2



■ High Pile Height

□ Low Pile Height



RANGE-  
SC7945





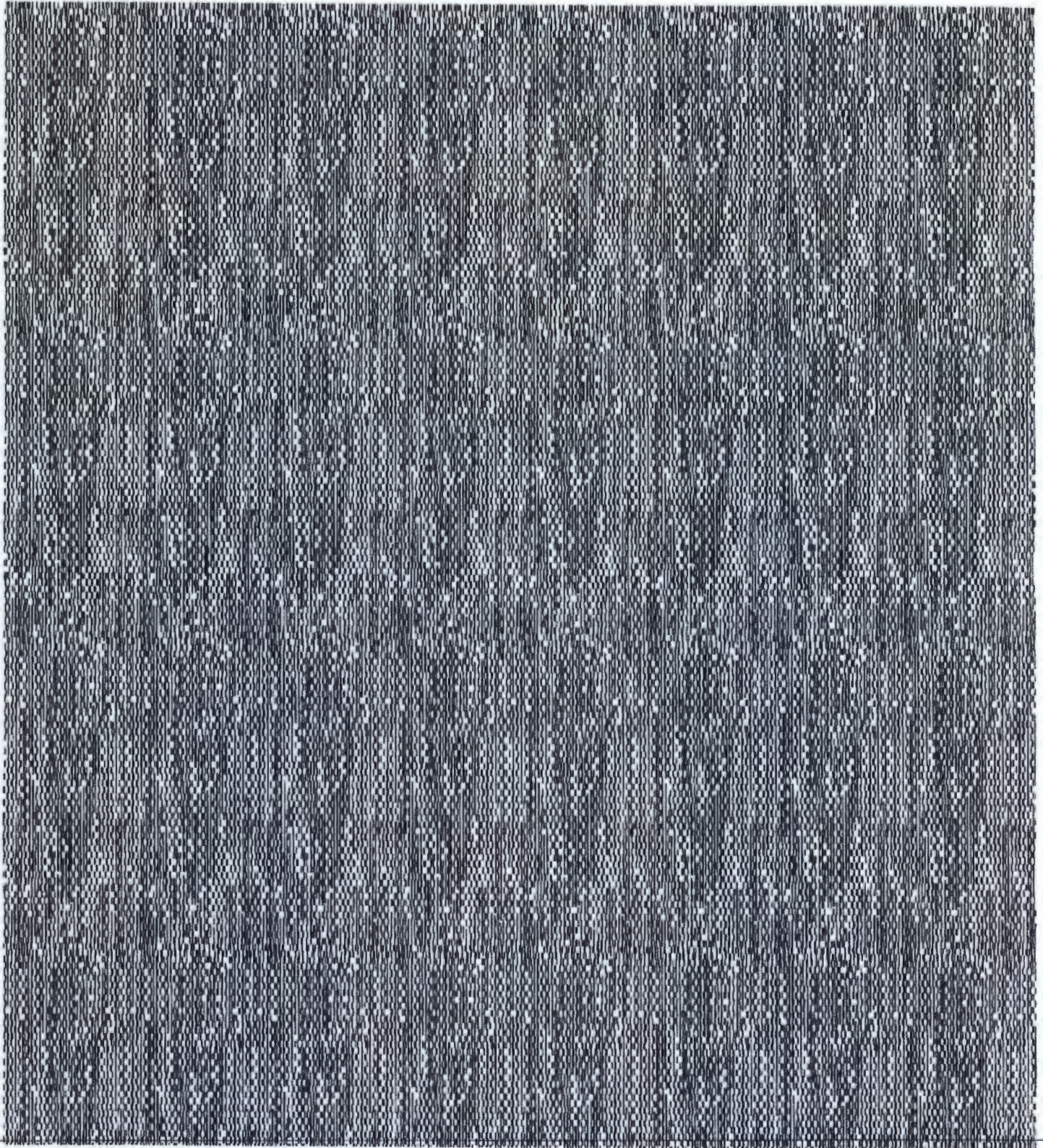
COSTILLIA II

MT3395-B SR# 1-2656939030



Date: 7/22/2015 Time: 13:36

Pattern Width: 120 Pattern Length: 288 Pattern Gauge: 1/4 Stitch Rate: 8.000  
Stitch Dimensions (Pixels) Stitch Width: 1 Stitch Length: 1



High Pile Height

Low Pile Height



**COSTA LIA II MT 3395**





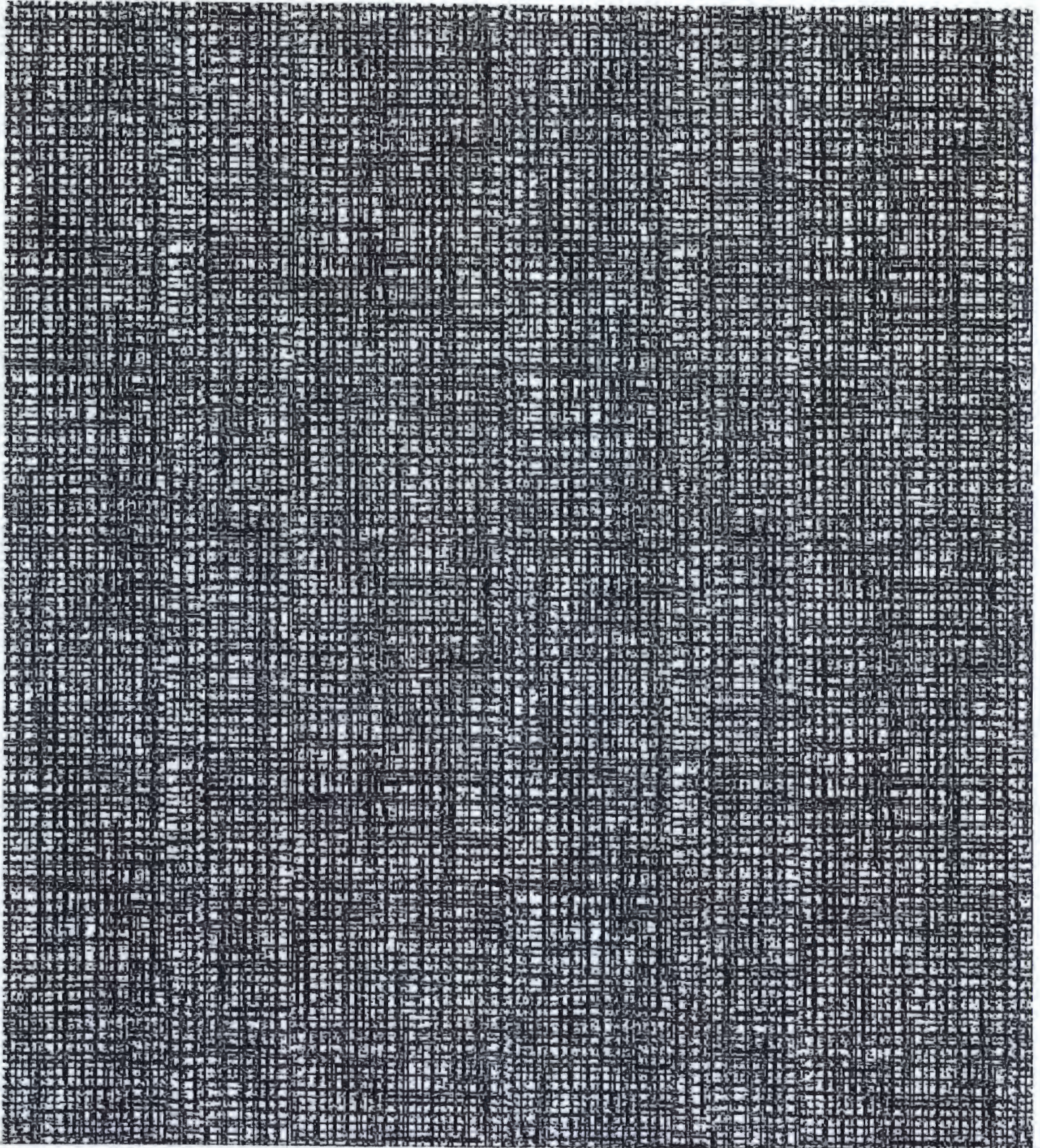
# MESH

2E203-BB SR#1-2656939221



Date: 7/2/2015 Time: 16:13

Pattern Width: 240 Pattern Length: 478 Pattern Gauge: 5/32 Stitch Rate: 10.000  
Stitch Dimensions (Pixels) Stitch Width: 2 Stitch Length: 1



PH #1 - 0.3250 in

PH #2 - 0.6250 in

PH #3 - 0.8000 in



**MESH 2E203**





SR # 1-2657613114

SS507

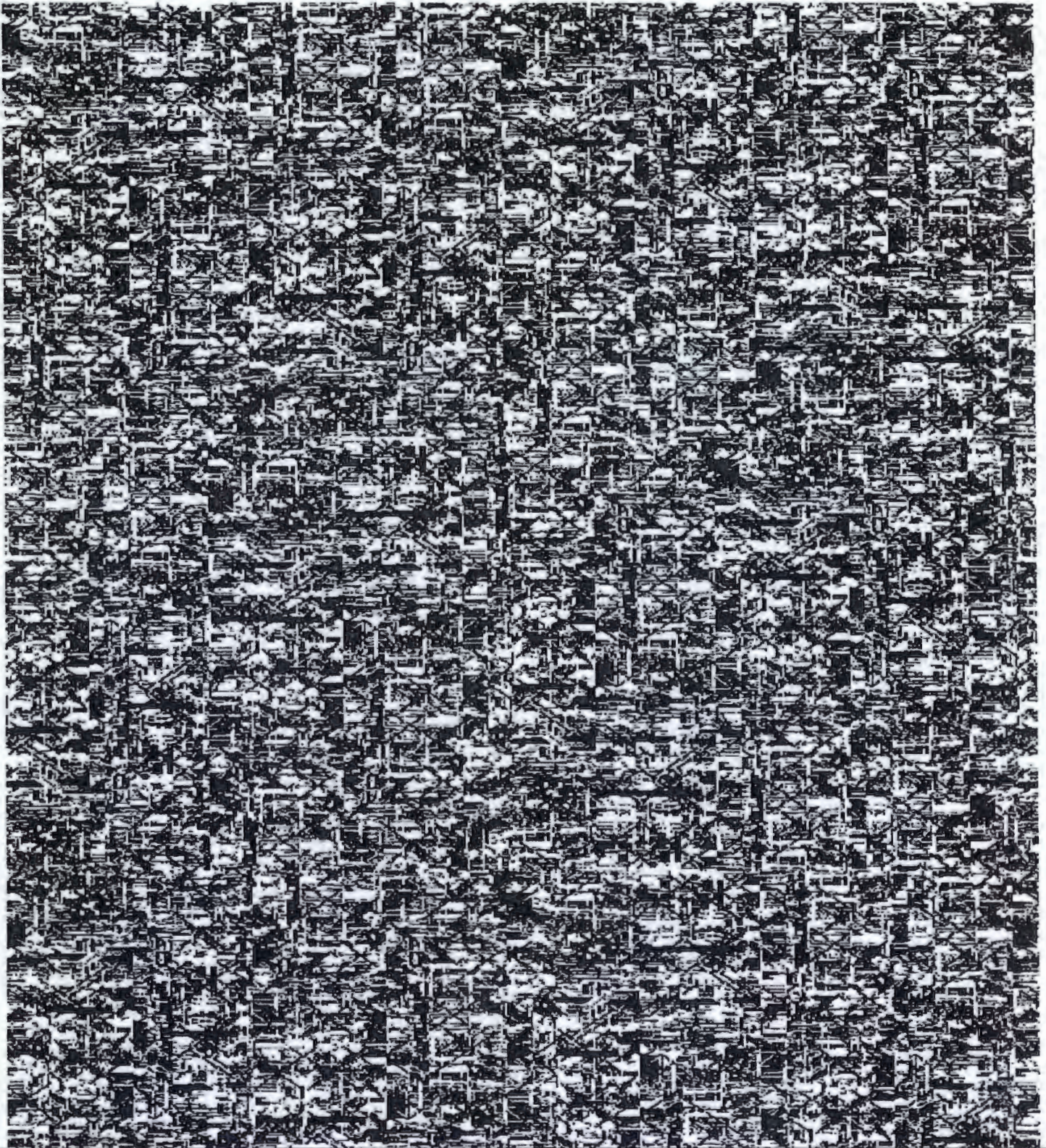
SS507-B

SCAFFOLD



Date: 7/2/2015 Time: 16:13

Pattern Width: 480 Pattern Length: 1600 Pattern Gauge: 1/4 Stitch Rate: 8.000  
Stitch Dimensions (Pixels) Stitch Width: 2 Stitch Length: 1



PH #1 - 0.3120 in

PH #2 - 0.4500 in



**SCAFFOLD SSSO7**





SC7946

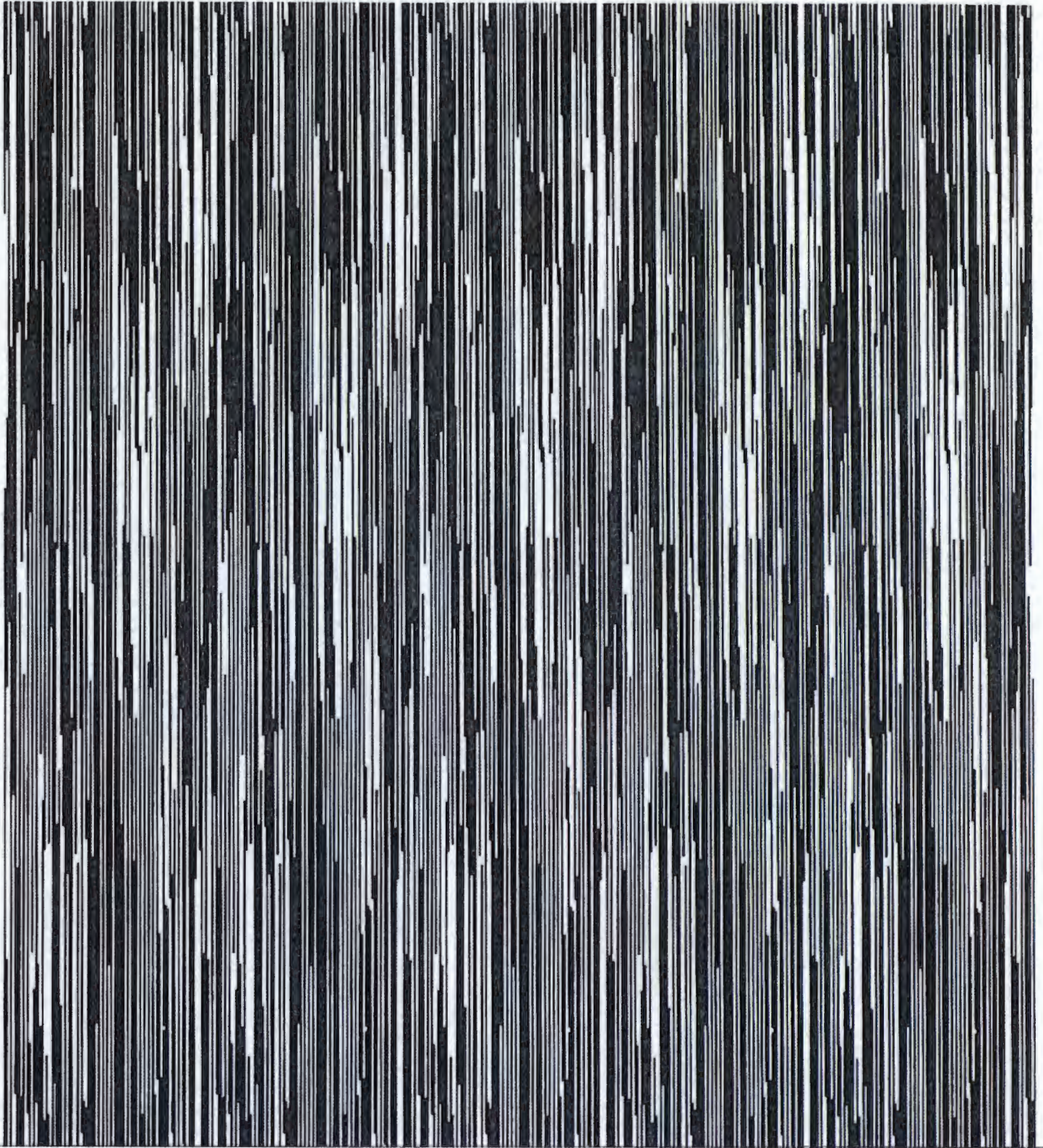
SC7946-R

RADIUS



Date: 7/2/2015 Time: 16:10

Pattern Width: 96 Pattern Length: 625 Pattern Gauge: 1/4 Stitch Rate: 9.500  
Stitch Dimensions (Pixels) Stitch Width: 2 Stitch Length: 2



■ High Pile Height

□ Low Pile Height



RADIUS SC7946





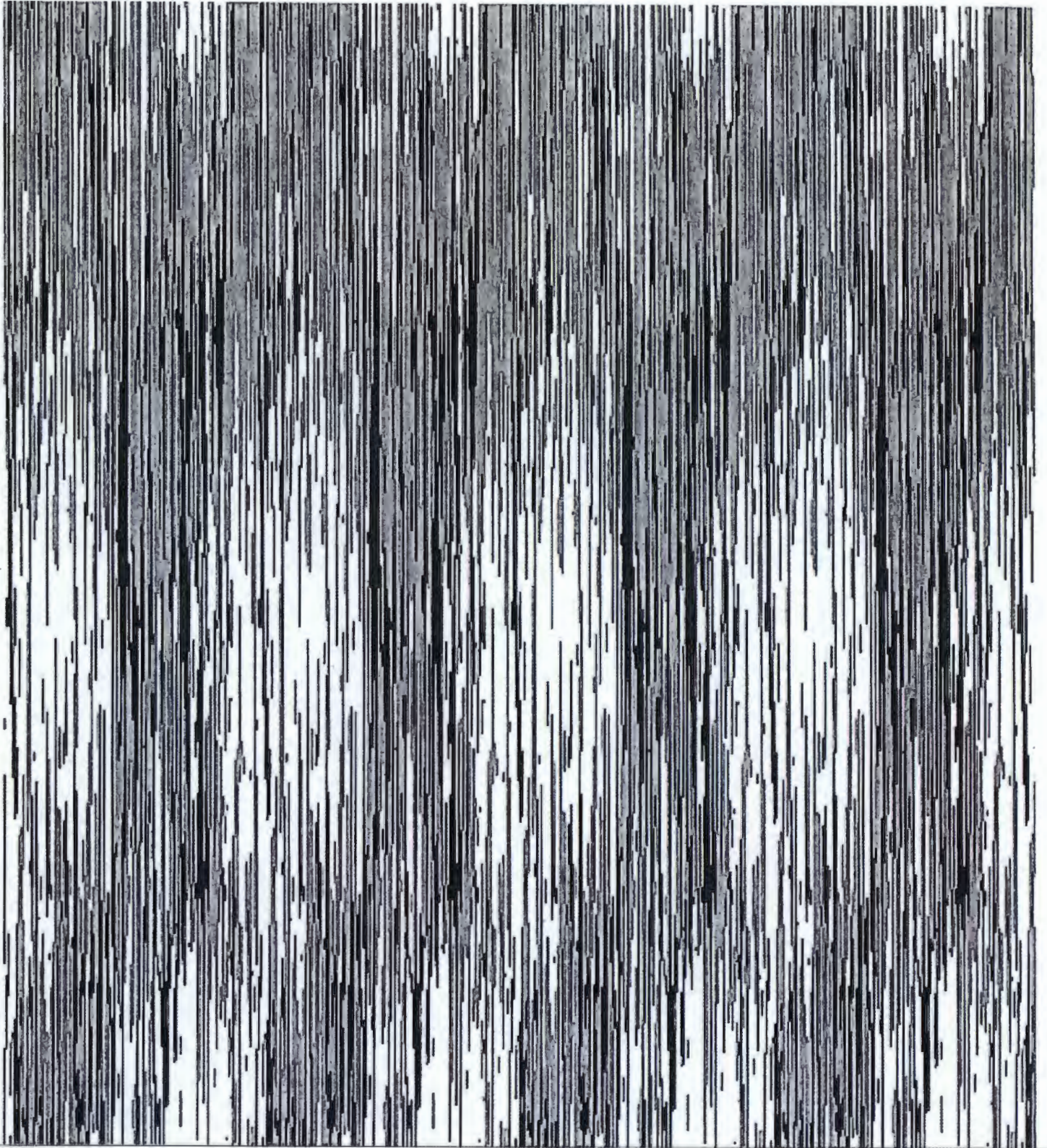
With the GRAIN

SS329-B SR# 1-2656938889



Date: 7/2/2015 Time: 16:00

Pattern Width: 120 Pattern Length: 1200 Pattern Gauge: 5/32 Stitch Rate: 12.000  
Stitch Dimensions (Pixels) Stitch Width: 2 Stitch Length: 1



PH #1 - 0.1000 in

PH #2 - 0.2000 in

PH #3 - 0.3000 in



With the GRAIN  
SS329





# Philadelphia

2E290B SR# 1-2657613302

Date: 7/2/2015 Time: 16:06



Pattern Width: 480 Pattern Length: 1062 Pattern Gauge: 5/32 Stitch Rate: 10.000  
Stitch Dimensions (Pixels) Stitch Width: 4 Stitch Length: 4



PH #1 - 0.3250 in

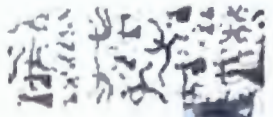
PH #2 - 0.5000 in

PH #3 - 0.7000 in

PH #4 - 0.8000 in



PHILADELPHIA 2E290





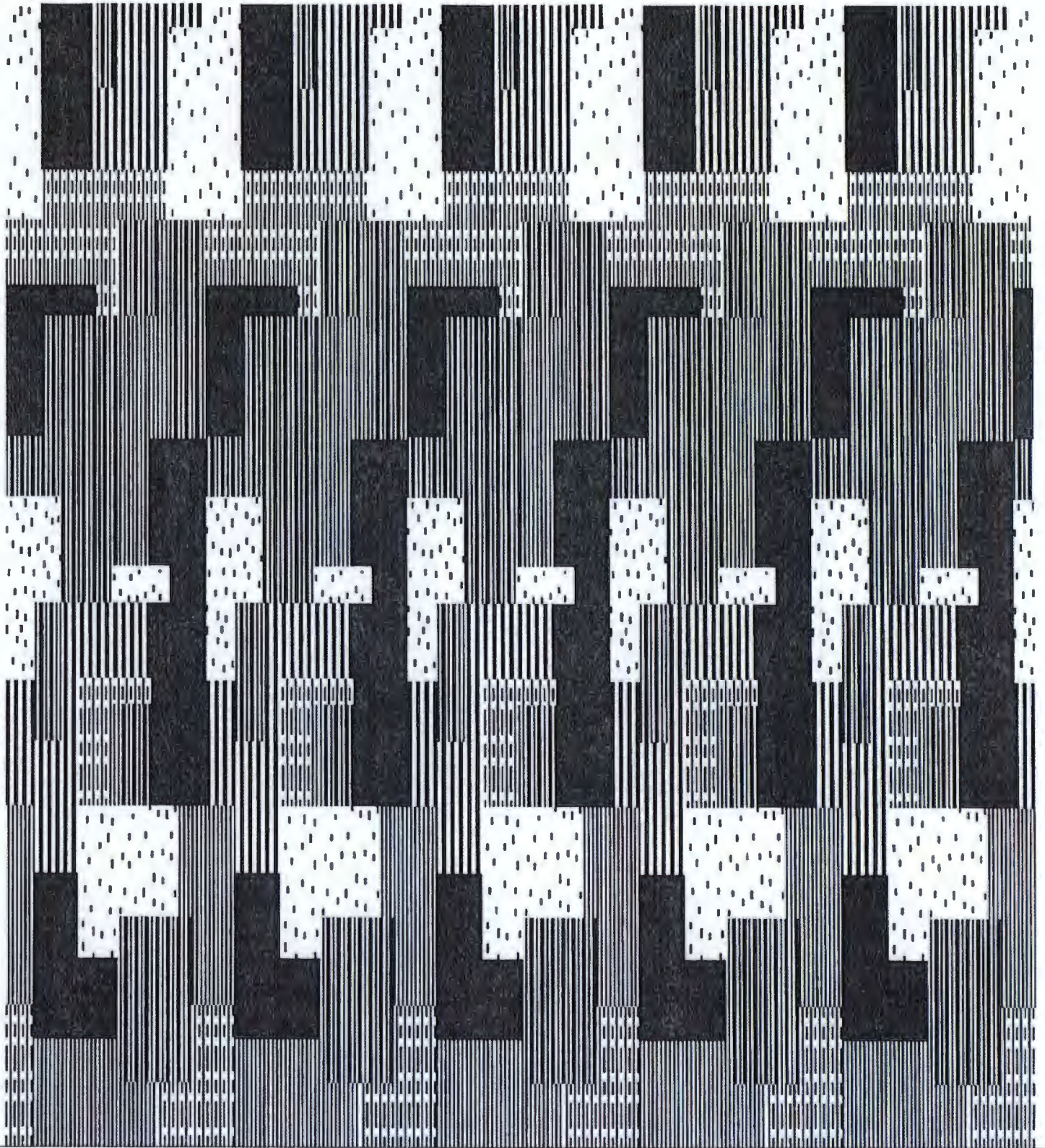
TSN

SC7944 SR# 1-2656939402



Date: 7/2/2015 Time: 16:09

Pattern Width: 96 Pattern Length: 990 Pattern Gauge: 1/4 Stitch Rate: 8.000  
Stitch Dimensions (Pixels) Stitch Width: 2 Stitch Length: 2



■ High Pile Height

□ Low Pile Height



TSN SC7944

