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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK**

The Green Pet Shop Enterprises, LLC,)	
)	
Plaintiff,)	
)	
v.)	
)	Civil Action No. 18-cv-4526-NGG-JO
Fine Promotions, LLC,)	
)	JURY TRIAL DEMANDED
Defendant and)	
Counterclaim-Plaintiff,)	
)	
v.)	
)	
The Green Pet Shop Enterprises, LLC and)	
Southeast Clearance Consolidators, Inc.)	
d/b/a Firefly Buys,)	
)	
Counterclaim-Defendants.)	

**FINE PROMOTIONS’ FIRST AMENDED
ANSWER, AFFIRMATIVE DEFENSES,
COUNTERCLAIMS, AND DEMAND FOR JURY TRIAL**

Fine Promotions, LLC (“Fine Promotions”) through counsel, hereby responds as follows to the Complaint filed in this action by The Green Pet Shop Enterprises, LLC (“Green Pet Shop”):

NATURE OF THE ACTION

1. This is a civil action for infringement of United States Patent Nos. 8,720,218 (the “218 Patent”) and 9,226,474 (the “474 Patent”) (collectively, the “Green Pet Shop Patents”).

RESPONSE: Fine Promotions admits that Plaintiff’s Complaint purports to initiate a civil action for infringement of the ’218 Patent and the ’474 Patent, but denies that Plaintiff has any such claim or that any such claim is justified.

THE PARTIES

2. Plaintiff, Green Pet Shop, is an Illinois limited liability company having a place of business at 770 Lake-Cook Rd., Suite 120, Deerfield, Illinois 60015. Green Pet Shop manufactures and brings to market high quality, unique, and eco-friendly pet products.

RESPONSE: Fine Promotions is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 2, and therefore denies them.

3. On information and belief, Defendant, Fine Promotions (“Fine Promotions” or “Defendant”), is a New York business corporation having a principal place of business located at 1303 53rd Street, Suite 70, Brooklyn, New York 11219.

RESPONSE: Fine Promotions admits that it is a limited liability company organized under the laws of the State of New York having an address of 1303 53rd Street, Brooklyn, New York 11219. Fine Promotions denies the remaining allegations in paragraph 3.

JURISDICTION AND VENUE

4. This action arises under the patent laws of the United States, e.g., 35 U.S.C. §§ 1 *et seq.*, 271, 281, 283-285. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

RESPONSE: Fine Promotions admits that Green Pet Shop purports to bring an action for patent infringement under 35 U.S.C. §§ 1 *et seq.* Fine Promotions denies that there is any basis for this action and denies that Green Pet Shop is entitled to any relief as it requests or otherwise, and therefore denies the remaining allegations in paragraph 4.

5. Venue is proper in this Court under 28 U.S.C. §1400(b) because Fine Promotions is incorporated in the State of New York.

RESPONSE: Fine Promotions admits for purposes of this action only that venue is proper in this judicial district. Fine Promotions admits that it is a limited liability company organized under the laws of the State of New York. Fine Promotions denies any remaining allegations in paragraph 5.

6. Defendant is subject to personal jurisdiction in this Court. In particular, this Court has personal jurisdiction over Defendant because it has engaged in continuous, systematic and substantial activities within this judicial district, including the marketing and sales of products, in this judicial district. Furthermore, upon information and belief, this Court has personal jurisdiction over Defendant in this case because it has committed acts giving rise to Green Pet Shop's claims within and directed to this judicial district.

RESPONSE: Fine Promotions admits for purposes of this action only that this Court has personal jurisdiction over it. Fine Promotions denies the remaining allegations in paragraph 6, and specifically denies that it has committed any acts of infringement.

FACTUAL BACKGROUND

A. Patents In Suit

7. The '218 Patent is called "Pressure Activated Recharging Cooling Platform" and relates to cooling platforms for a variety of uses, including for pets. The inventor of the '218 Patent is Gerard E. Prendergast. The '218 Patent was filed on April 14, 2010. On May 13, 2014, the United States Patent and Trademark Office issued the '218 Patent.

RESPONSE: Fine Promotions admits that the '218 Patent is titled "Pressure Activated Recharging Cooling Platform" and the '218 Patent purports to relate to "temperature controlled platforms, particularly, cooling platforms for animals." Fine Promotions admits that, on its face,

the '218 Patent lists the inventor as Gerard E. Prendergast; the filing date as April 14, 2010; and the issuance date as May 13, 2014. Fine Promotions is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 7, and therefore denies them.

8. The application leading to the '218 Patent was assigned to Green Pet Shop on February 9, 2012. Green Pet Shop is the lawful owner by assignment of all rights, title and interest in and to the '218 Patent and possesses all rights of recovery under the '218 Patent, and has standing to sue for infringement of the Green Pet Shop Patent. A true and correct copy of the '218 Patent is attached hereto as Exhibit 1.

RESPONSE: Fine Promotions admits that “The Green Pet Shop Enterprises, LLC” is listed as assignee on the face of the '218 Patent. Fine Promotions admits that Plaintiff purports to attach the '218 Patent as Exhibit 1 to its Complaint. Fine Promotions is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 8, and therefore denies them.

9. The '218 Patent is valid and enforceable.

RESPONSE: Fine Promotions denies the allegations in paragraph 9.

10. The '474 Patent is called “Pressure Activated Recharging Cooling Platform” and relates to cooling platforms for a variety of uses, including for pets. The inventor of the '474 Patent is Gerard E. Prendergast. The '474 Patent is a continuation of the '218 Patent and was filed on March 26, 2014. On January 5, 2016, the United States Patent and Trademark Office issued the '474 Patent.

RESPONSE: Fine Promotions admits that the '474 Patent is titled “Pressure Activated Recharging Cooling Platform,” purports to relate to “[a] pressure activated recharging cooling

platform” and, on its face, purports to be a continuation of U.S. Patent No. 8,720,218. Fine Promotions admits that, on its face, the ’474 Patent lists the inventor as Gerard Prendergast; the filing date as March 26, 2014; and the issuance date as January 5, 2016. Fine Promotions is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 10, and therefore denies them.

11. The application leading to the ’474 Patent was assigned to Green Pet Shop on February 9, 2012. Green Pet Shop is the lawful owner by assignment of all rights, title and interest in and to the ’474 Patent and possesses all rights of recovery under the ’474 Patent, and has standing to sue for infringement of the Green Pet Shop Patent. A true and correct copy of the ’474 Patent is attached hereto as Exhibit 2.

RESPONSE: Fine Promotions admits that “Green Pet Shop Enterprises, LLC” is listed as assignee on the face of the the ’474 Patent. Fine Promotions admits that Plaintiff purports to attach the ’474 Patent as Exhibit 2 to its Complaint. Fine Promotions is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 11, and therefore denies them.

12. The ’474 Patent is valid and enforceable.

RESPONSE: Fine Promotions denies the allegations in paragraph 12.

B. Accused Product

13. Fine Promotions makes, imports into the United States, offers for sale, sells, and/or uses in the United States pet products, including, without limitation, a pet bed such as the Fine Promotions Unleashed Comfort Cooling Gel Pet Mat (“Accused Product”). See Exhibit 3 attached hereto. Fine Promotions’ infringement may include additional products, services and technologies (to be determined in discovery).

RESPONSE: Fine Promotions admits that it has offered for sale and sold in the United States the Unleashed Comfort Cooling Gel Pet Mat. Fine Promotions denies the remaining allegations in paragraph 13, and specifically denies that it has committed any acts of infringement.

14. The Accused Product is covered by at least claims 15, 16, 18 and 19 of the '218 Patent and by at least claims 1, 4, 5, 11, and 16-21 of the '474 Patent.

RESPONSE: Fine Promotions denies the allegations in paragraph 14.

C. Notice of Infringement

15. On April 30, 2018, counsel for Green Pet Shop notified Fine Promotions that it's Accused Product infringed one or more claims of the '218 and '474 Patents. Attached hereto as Exhibit 4.

RESPONSE: Fine Promotions admits it received a letter from counsel for Green Pet Shop dated April 30, 2018, alleging that the Unleashed Comfort Cooling Gel Pet Mat infringes one or more claims of the '218 and '474 Patents. Fine Promotions denies that it received that letter on April 30, 2018. Fine Promotions denies any remaining allegations in paragraph 15, and specifically denies that it has committed any acts of infringement.

16. Fine Promotions has continued to manufacture, import and offer for sale the Accused Product.

RESPONSE: Fine Promotions denies the allegations in paragraph 16.

D. Green Pet Shop Commercial Embodiment

17. Green Pet Shop sells a product called "Cool Pet Pad." The Cool Pet Pad is covered by the '218 and '474 Patents. Green Pet Shop began marking its Cool Pet Pad product with one or both of its patent numbers no later than 2014.

RESPONSE: Fine Promotions is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 17, and therefore denies them.

E. Prior Litigation

18. Green Pet Shop has already litigated to judgment a patent infringement lawsuit against a seller of cooling pads for pets called Maze Innovations, Inc. (Case No. 15-cv-1138) in the Northern District of Illinois.

RESPONSE: Fine Promotions admits that Green Pet Shop Enterprises LLC filed Case No. 1:15-cv-01138 against Maze Innovations, Inc. in the Northern District of Illinois and the parties settled, resulting in a consent decree and final judgment. However, none of the claims or issues litigated in the Maze litigation are precluded from being litigated in this case, and the prior lawsuit between Green Pet Shop and Maze provides no basis for an assertion that claims and issues in this case are barred by collateral estoppel or res judicata. No decision of the court in the Northern District of Illinois is controlling of claims or issues to be litigated in this case. Fine Promotions is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 18, and therefore denies them.

19. During that lawsuit, Maze petitioned for an inter partes review based on the allegation that the Green Pet Shop Patents were invalid. The United States Patent and Trademark Office rejected that petition and did not institute a review of the Green Pet Shop Patents.

RESPONSE: Fine Promotions admits that Maze Innovations, Inc. filed a petition for *inter partes* review of U.S. Patent No. 8,720,218 and that the United States Patent and Trademark Office (“USPTO”) issued a decision denying institution of *inter partes* review based on the prior art and arguments presented by Maze Innovations, Inc. However, the USPTO’s decision to deny Maze Innovations’ petition for *inter partes* review provides no basis for an assertion that claims and issues in this case are precluded from being litigated. Fine Promotions denies that the ’218 Patent is patentable and denies that the ’218 Patent is valid.

20. Also during that lawsuit, Maze argued a claim construction that it believed would allow it to avoid a finding of infringement. The judge presiding over that case issued a claim construction decision that rejected Maze's attempted construction and adopted Green Pet Shop's proposed construction.

RESPONSE: Fine Promotions admits that the judge in Case No. 1:15-cv-01138, the Maze lawsuit, issued a claim construction decision. Fine Promotions is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 20, and therefore denies them.

21. After the rejection of its inter partes review petition and its proposed claim constructions, Maze settled that lawsuit and admitted that the Green Shop Patents were valid and infringed.

RESPONSE: Fine Promotions is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 21, and therefore denies them.

22. Before it filed this Complaint, Green Pet Shop informed Fine Promotions about the Maze lawsuit, including the information set forth in Paragraphs 18-21 above.

RESPONSE: Fine Promotions admits it received a letter from counsel for Green Pet Shop dated April 30, 2018, that referenced Case No. 1:15-cv-01138, the Maze lawsuit. Fine Promotions further repeats and incorporates its answers to paragraphs 18 through 21 above, as though fully set forth herein. Fine Promotions further denies any remaining allegations in paragraph 22.

COUNT I: INFRINGEMENT OF U.S. PATENT NO. 8,720,218

23. Green Pet Shop incorporates each of the preceding paragraphs as if fully set forth herein.

RESPONSE: Fine Promotions repeats and incorporates its answers to each of the preceding paragraphs 1 through 22, as though fully set forth herein.

24. Fine Promotions has been and is now infringing, directly and indirectly by way of inducement, literally and/or under the doctrine of equivalents, the '218 Patent in this District and elsewhere by making, using, offering for sale, importing, and/or selling products that fall within the scope of at least one claim of the '218 Patent without license or authorization. Such acts constitute infringement under at least 35 U.S.C. § 271 (a) and (b).

RESPONSE: Fine Promotions denies the allegations in paragraph 24.

25. Upon information and belief, Fine Promotions has been aware of the '218 Patent since at least approximately July 17, 2012, when the '218 Patent was first published by the United States Patent and Trademark Office, and again on April 30, 2018, when a notice of infringement was sent to Fine Promotions on behalf of Green Pet Shop. Fine Promotions has yet to respond to the notice of infringement sent by Green Pet Shop. Fine Promotions' infringement has therefore been reckless, without objective basis, and willful.

RESPONSE: Fine Promotions denies that it has been aware of the '218 Patent since approximately July 17, 2012. Fine Promotions admits that it received what counsel for Green Pet Shop purported to be a copy of the '218 Patent that accompanied a letter from counsel for Green Pet Shop dated April 30, 2018, but denies that it received that letter on April 30, 2018. Fine Promotions denies that it has committed any acts of infringement, and Fine Promotions further denies the remaining allegations in paragraph 25.

26. Upon information and belief, Fine Promotions has also knowingly and intentionally actively aided, abetted and induced others to infringe (such as its customers and/or business partners in this judicial district and throughout the United States).

RESPONSE: Fine Promotions denies the allegations in paragraph 26.

27. As a direct and proximate consequence of the infringement, Green Pet Shop has been, is being and, unless such acts and practices are enjoined by the Court, will continue to be injured in its business and property rights, and has suffered, is suffering, and will continue to suffer injury and damages for which it is entitled to relief under 35 U.S.C. § 284 adequate to compensate for such infringement, but in no event less than a reasonable royalty.

RESPONSE: Fine Promotions denies the allegations in paragraph 27.

28. Green Pet Shop is entitled to recover from Fine Promotions the damages sustained by Green Pet Shop as a result of Fine Promotions' wrongful acts in an amount subject to proof at trial.

RESPONSE: Fine Promotions denies the allegations in paragraph 28.

COUNT II: INFRINGEMENT OF U.S. PATENT NO. 9,226,474

29. Green Pet Shop incorporates each of the preceding paragraphs as if fully set forth herein.

RESPONSE: Fine Promotions repeats and incorporates its answers to each of the preceding paragraphs 1 through 28, as though fully set forth herein.

30. Fine Promotions has been and is now infringing, directly and indirectly by way of inducement, literally and/or under the doctrine of equivalents, the '474 Patent in this District and elsewhere by making, using, offering for sale, importing, and/or selling products that fall within the scope of at least one claim of the '474 Patent without license or authorization. Such acts constitute infringement under at least 35 U.S.C. § 271 (a) and (b).

RESPONSE: Fine Promotions denies the allegations in paragraph 30.

31. Upon information and belief, Fine Promotions has been aware of the '474 Patent since at least approximately January 5, 2016, when the '474 Patent was first published by the United States Patent and Trademark Office, and again on April 30, 2018, when a notice of

infringement was sent to Fine Promotions on behalf of Green Pet Shop. Fine Promotions' infringement has therefore been reckless, without objective basis, and willful.

RESPONSE: Fine Promotions denies that it has been aware of the '474 Patent since approximately January 5, 2016. Fine Promotions admits that it received what counsel for Green Pet Shop purported to be a copy of the '474 Patent that accompanied a letter from counsel for Green Pet Shop dated April 30, 2018, but denies that it received that letter on April 30, 2018. Fine Promotions denies that it has committed any acts of infringement, and Fine Promotions further denies the remaining allegations in paragraph 31.

32. Upon information and belief, Fine Promotions has also knowingly and intentionally actively aided, abetted and induced others (such as its customers and/or business partners in this judicial district and throughout the United States) to infringe the '474 Patent.

RESPONSE: Fine Promotions denies the allegations in paragraph 32.

33. As a direct and proximate consequence of the infringement, Green Pet Shop has been, is being and, unless such acts and practices are enjoined by the Court, will continue to be injured in its business and property rights, and has suffered, is suffering, and will continue to suffer injury and damages for which it is entitled to relief under 35 U.S.C. § 284 adequate to compensate for such infringement, but in no event less than a reasonable royalty.

RESPONSE: Fine Promotions denies the allegations in paragraph 33.

34. Green Pet Shop is entitled to recover from Fine Promotions the damages sustained by Green Pet Shop as a result of Fine Promotions' wrongful acts in an amount subject to proof at trial.

RESPONSE: Fine Promotions denies the allegations in paragraph 34.

RESPONSE TO PRAYER FOR RELIEF

Fine Promotions denies that Green Pet Shop is entitled to any relief in this case, and prays that the Court deny all relief sought by Green Pet Shop.

AFFIRMATIVE AND OTHER DEFENSES

For the asserted affirmative and other defenses, Fine Promotions does not assume the burden of proof where such burden is not legally upon Fine Promotions. Fine Promotions alleges and asserts the following defenses in response to Green Pet Shop's allegations and reserves all rights to allege additional defenses that may now exist or become known through the course of discovery or further investigation in this case:

**FIRST AFFIRMATIVE DEFENSE
(Noninfringement of U.S. Patent No. 8,720,218)**

35. Fine Promotions does not infringe and has not infringed, either directly or indirectly, literally or under the doctrine of equivalents, any valid, enforceable, and properly construed claim of the '218 patent.

**SECOND AFFIRMATIVE DEFENSE
(Noninfringement of U.S. Patent No. 9,226,474)**

36. Fine Promotions does not infringe and has not infringed, either directly or indirectly, literally or under the doctrine of equivalents, any valid, enforceable, and properly construed claim of the '474 patent.

**THIRD AFFIRMATIVE DEFENSE
(No Willful Infringement of U.S. Patent No. 8,720,218)**

37. To the extent that Fine Promotions is found to infringe any claim of the '218 patent (and Fine Promotions contends that it has and does not), any such infringement is not, and has not been, willful.

FOURTH AFFIRMATIVE DEFENSE
(No Willful Infringement of U.S. Patent No. 9,226,474)

38. To the extent that Fine Promotions is found to infringe any claim of the '474 patent (and Fine Promotions contends that it has and does not), any such infringement is not, and has not been, willful.

FIFTH AFFIRMATIVE DEFENSE
(Invalidity of U.S. Patent No. 8,720,218)

39. The claims of the '218 patent are invalid for failure to satisfy one or more provisions of the patentability requirements specified in 35 U.S.C. § 101 *et seq.*, including without limitation, §§ 102, 103, and 112.

SIXTH AFFIRMATIVE DEFENSE
(Invalidity of U.S. Patent No. 9,226,474)

40. The claims of the '474 patent are invalid for failure to satisfy one or more provisions of the patentability requirements specified in 35 U.S.C. § 101 *et seq.*, including without limitation, §§ 102, 103, and 112.

SEVENTH AFFIRMATIVE DEFENSE
(No Entitlement to Injunctive Relief)

41. Green Pet Shop is not entitled to injunctive relief against Fine Promotions because any alleged injury to Green Pet Shop as a result of Fine Promotions' alleged activities is not immediate or irreparable, and Green Pet Shop has an adequate remedy at law. Furthermore, the balance of any hardships favors Fine Promotions, and any injunction against Fine Promotions would harm the public interest.

EIGHTH AFFIRMATIVE DEFENSE
(Prosecution History Estoppel)

42. Green Pet Shop is estopped, by virtue of cancellations, amendments, representations, and/or concessions made to the U.S. Patent and Trademark Office during the

prosecution of the '218 and '474 patent, and during *inter partes* review proceedings, from construing any claims of the '218 and '474 patents as being, or having been, infringed by Fine Promotions.

**NINTH AFFIRMATIVE DEFENSE
(Statutory Limitations on Damages and Costs)**

43. Green Pet Shop's claims for damages and costs are limited by 35 U.S.C. §§ 286, 287, and 288.

**TENTH AFFIRMATIVE DEFENSE
(Laches)**

44. Green Pet Shop's claims for equitable relief are barred under the doctrine of laches. Green Pet Shop has unreasonably delayed in bringing suit, and Fine Promotions has been prejudiced by this delay.

**ELEVENTH AFFIRMATIVE DEFENSE
(Patent Exhaustion)**

45. Green Pet Shop's claims are precluded in whole or part under the doctrine of patent exhaustion to the extent any accused product was supplied to Fine Promotions by a licensee of any asserted patent.

**TWELFTH AFFIRMATIVE DEFENSE
(Unclean Hands)**

46. Green Pet Shop's claims for relief, including its claims for equitable and injunctive relief, are barred because Green Pet Shop does not come forth in this action with clean hands.

**THIRTEENTH AFFIRMATIVE DEFENSE
(Service of Process)**

47. Fine Promotions was not served with the summons and complaint in this action on September 7, 2018, as averred by Green Pet Shop. For purposes of this action only, Fine Promotions does not challenge service effective January 4, 2019.

COUNTERCLAIMS

Fine Promotions, LLC (“Fine Promotions”) hereby asserts the following counterclaims against The Green Pet Shop Enterprises, LLC (“Green Pet Shop”) and Southeast Clearance Consolidators, Inc. d/b/a Firefly Buys (“Firefly Buys”):

PRELIMINARY STATEMENT

1. Green Pet Shop and Firefly Buys have violated the federal antitrust laws by conspiring to attempt to monopolize the self-cooling pet mat market in the United States.

2. Green Pet Shop and Firefly Buys executed on their scheme by submitting product take-down requests on Amazon.com which collectively resulted in, on information and belief, the removal of more than 1,000 self-cooling pet mat product listings from Amazon.com. Green Pet Shop and Firefly Buys were aided by the inside help of Alex Crawford, an Amazon Program Manager, who divulged how they could circumvent Amazon’s proprietary automated algorithms which rank legitimacy of takedown complaints.

3. Green Pet Shop’s and Firefly Buys’ efforts were intended to cause maximum harm to their competition.

4. Green Pet Shop and Firefly Buys must finally be held accountable for their illegal conspiracy and attempt to eliminate competition in violation of the antitrust laws of the United States, for engaging in unfair competition, and for tortiously interfering with Fine Promotions’ business dealings.

THE PARTIES

5. Fine Promotions, LLC is a limited liability company organized under the laws of the State of New York having an address of 1303 53rd Street, Brooklyn, New York 11219.

6. The Green Pet Shop Enterprises, LLC alleges that it is an Illinois limited liability company having an address of 770 Lake-Cook Rd., Suite 120, Deerfield, Illinois 60015.

7. Southeast Clearance Consolidators, Inc., d/b/a Firefly Buys, is a Georgia corporation having an address of 1901 Satellite Boulevard, Suite 200, Buford, Georgia 30518.

JURISDICTION AND VENUE

8. Counts I and III of these counterclaims arise under the antitrust laws of the United States, 15 U.S.C. § 1, *et seq.* This court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331.

9. Counts II and VIII of these counterclaims arise under state law. This court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1332(a), 1367(a).

10. Counts IV through VII of these counterclaims arise under the patent laws of the United States, 35 U.S.C. § 1, *et seq.* This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1338(a).

11. By virtue of the allegations in Green Pet Shop's Complaint and Fine Promotions' Answer thereto, an actual controversy exists between Fine Promotions and Green Pet Shop as to whether U.S. Patent Nos. 8,720,218 and 9,226,474 are invalid and not infringed.

12. This Court has personal jurisdiction over Green Pet Shop by virtue, *inter alia*, of its filing of its Complaint for patent infringement against Fine Promotions in this Court.

13. Green Pet Shop has consented to venue in this District by filing this action, which is currently pending in this District. Additionally, a substantial part of the events and omissions giving rise to these counterclaims occurred in this District. Accordingly, these counterclaims may, at this time, be brought in this District pursuant to 28 U.S.C. §§ 1391 and 1400.

14. Venue is proper in this district for Fine Promotions' counterclaims against Firefly Buys under 28 U.S.C. § 1391 and/or 15 U.S.C. § 22.

15. Venue is proper under 15 U.S.C. § 22, which provides that "Any suit, action, or proceeding under the antitrust laws against a corporation may be brought not only in the judicial

district whereof it is an inhabitant, but also in any district wherein it may be found or transacts business.”

16. Firefly Buys transacts business in this district. For example, Firefly Buys transacts business with companies located in this district such as Eva NYC, 300 Meserole Street, Brooklyn, NY; Mikasa (Lifetime Brands), 1000 Stewart Avenue, Garden City, NY; and Over and Back, 90 Adams Avenue, Hauppauge, NY. (See <https://shop.fireflybuys.com/brands/>).

17. Venue is proper alternatively under 28 U.S.C. § 1391 because, as set forth in the underlying allegations below, a substantial part of the events or omissions giving rise to such counterclaims occurred in this district, and/or a substantial part of property that is the subject of the action is situated in this district.

18. This court also has personal jurisdiction over Firefly Buys for purposes of Fine Promotions’ counterclaims.

19. Personal jurisdiction over Firefly Buys is proper under 15 U.S.C. § 22, which provides for nationwide personal jurisdiction and service of process for civil antitrust claims brought against a corporation under federal law. 15 U.S.C. § 22 (“[A]ll process in such cases may be served in the district of which it is an inhabitant, or wherever it may be found”) & Fed. R. Civ. P. 4(k)(1)(C) (“Serving a summons or filing a waiver of service establishes personal jurisdiction over a defendant when authorized by federal statute.”).

20. This court also has personal jurisdiction over Firefly Buys because Firefly Buys has, and continues to have, continuous and systematic business contacts with the State of New York, as it directly, and through agents, representatives, subsidiaries or intermediaries, has conducted and continues to conduct business extensively in and through New York. Further, upon information and belief, Firefly Buys has purposely availed itself of the benefits and protections of

the State of New York by marketing, selling, and providing goods and services to residents in New York.

21. Firefly Buys regularly transacts business in New York. For example, Firefly Buys transacts business with numerous companies located in New York, such as Best Brands Consumer Products, 20 West 33rd Street, New York, NY; Brushtech Inc., P.O. Box 1130, Plattsburgh, NY; Clear Eyes (Prestige Brands), Tarrytown, NY; Dream Home NY, 255 5th Avenue, New York, NY; Eva NYC, 300 Meserole Street, Brooklyn, NY; Irish Spring (Colgate-Palmolive), 300 Park Avenue, New York, NY; Kikkerland Design Inc., 666 Broadway, New York, NY; Lancer & Loader, 276 5th Avenue, New York, NY; Magic Sliders LP, 50 Main Street, White Plains, NY; Mikasa (Lifetime Brands), 1000 Stewart Avenue, Garden City, NY; Over and Back, 90 Adams Avenue, Hauppauge, NY; OXO, New York, NY; Etna Products Co. Inc., 99 Madison Avenue, New York, NY; Prepara, 247 Centre Street, New York, NY; Revlon Inc., 1 New York Plaza, New York, NY; Spin Master Inc., 200 5th Avenue, New York, NY; and Whiff Wizard, Chittenango, NY. (*See* <https://shop.fireflybuys.com/brands/>).

22. Firefly Buys also attends trade shows in the State of New York. For example, Firefly Buys attends the New York Toy Fair trade show held at the Jacob K. Javits Convention Center in New York, NY. Firefly Buys most recently attended the New York Toy Fair trade show in February 2019. (<https://www.fireflybuys.com/tradeshows>). Firefly Buys attends the New York Toy Fair trade show for the purpose of transacting and developing business with suppliers and partners. (<https://www.fireflybuys.com/post/manage-your-blog-from-your-live-site>) (Firefly Buys: “At Firefly, we LOVE toys! That’s why the New York Toy Fair in February is one of our favorite shows on the calendar.... It’s always great to catch up with our contacts and suppliers in

the toy industry, and make plans for how we can help our partners grow their brand and online business in the coming year.”).

FACTUAL BACKGROUND

A. Green Pet Shop’s and Firefly Buys’ Conspiracy to Attempt to Monopolize the Market

23. Firefly Buys sells Green Pet Shop’s “Cool Pet Pad” on eCommerce platforms, including on Amazon.com and on its own website, Fireflybuys.com.

24. Firefly Buys is, and represents itself as, Green Pet Shop’s “Brand Manager.”

25. In March 2017, Green Pet Shop and Firefly Buys began conspiring to attempt to monopolize the market for self-cooling pet mat products.

26. Larry Wright, President of Green Pet Shop, and Ryan Flanagan, Chief Executive Officer and co-owner of Firefly Buys, sought to retain Cynthia Stine and her company, eGrowth Partners, to assist with submitting IP infringement complaints to Amazon in an attempt to have competitors’ pet mat products taken down from Amazon.com. Larry Wright and Ryan Flanagan believed that this would add to their market share.

27. Cynthia Stine’s initial efforts, however, did not work to Green Pet Shop’s satisfaction. Specifically, as Larry Wright complained to Ms. Stine (and copying Firefly Buys and Green Pet Shop’s attorney, Steven Susser), Larry Wright was frustrated that after Ms. Stine had helped them submit an initial set of 70 product takedown requests, Amazon had not shut any of them down. Instead, Larry Wright found himself needing to “negotiate a resolution” directly with competitors, about which he complained to Ms. Stine.

28. The relationship with Cynthia Stine quickly soured. On information and belief, Green Pet Shop did not continue with its engagement with Cynthia Stine, and instead began to conspire with Firefly Buys to eliminate competition and obtain increased market share.

29. Green Pet Shop and Firefly Buys began implementing their product takedown plan by first searching the Amazon.com website for competitors' listings to target, using the search query "cooling pads for dogs."

30. Firefly Buys then compiled lists of competitors' listings to target for takedown, and sent the listings to Larry Wright for confirmation and approval. Larry Wright then reviewed the listings, and instructed Firefly Buys about which ones to submit IP complaints to Amazon.

31. Whether an advertised pet mat product infringes the patents asserted by Green Pet Shop in this action, however, could not necessarily be determined from browsing a product listing on Amazon.com.

32. Therefore, Green Pet Shop's and Firefly Buy's actual criteria for submitting an IP infringement complaint to Amazon was, on information and belief, whether a third-party product posed *any* competitive risk.

33. Not surprisingly, because Green Pet Shop and Firefly Buys undertook an inadequate investigation before filing IP infringement complaints with Amazon, they ended up submitting takedown complaints against products that even they later conceded were beyond the scope of Green Pet Shop's patent rights.

34. Once Larry Wright approved competitors' product listings for takedown attempt, Firefly Buys would then facilitate submission of an IP infringement complaint to Amazon.

35. In support of the IP infringement complaints, Firefly Buys submitted correspondence prepared by Green Pet Shop's counsel, Steven Susser, which enclosed a consent decree and final judgment that was stipulated between The Green Pet Shop Enterprises, LLC and Maze Innovations, Inc. in the matter *The Green Pet Shop Enterprises, LLC v. Maze Innovations, Inc.*, No. 15-cv-1138 (N.D. Ill.). Mr. Susser's letter claimed, without support, that the competitor

product listings being complained of “have the same characteristics as the Maze accused products that have been found to infringe.”

36. Steven Susser’s letter to Amazon that accompanied the IP infringement complaints was misleading, insofar as no court had “found” that Maze’s accused products infringed Green Pet Shop’s patents. Rather, in exchange for dismissal of Green Pet Shop’s lawsuit, Maze agreed to stipulate that its product infringed two of Green Pet Shop’s patents.

37. Green Pet Shop and Firefly Buys knew when they filed their IP infringement complaints with Amazon that the consent decree entered by Maze Innovations and Green Pet Shop in the matter *The Green Pet Shop Enterprises, LLC v. Maze Innovations, Inc.*, No. 15-cv-1138 (N.D. Ill.) did not apply to the competitor product listings for which they were submitting IP infringement complaints.

38. In all, Green Pet Shop and Firefly Buys have submitted IP infringement complaints to Amazon collectively resulting, on information and belief, in the removal of more than 1,000 self-cooling pet mat product listings from Amazon.com.

39. Green Pet Shop and Firefly Buys also submitted trademark infringement complaints in an effort to have competitors’ products removed. In furtherance of those efforts, Larry Wright provided Firefly Buys with a signed, “blank letter” and template on Steven Susser’s law firm’s letterhead for Firefly Buys to use when submitting complaints to the “Amazon.com Legal Department.”

40. Not only did Green Pet Shop and Firefly Buys seek to remove particular competing products from Amazon.com, their internal emails report that they wanted to see entire companies disappear outright.

41. Green Pet Shop and Firefly Buys also undertook their product take-down efforts with the aim of inflicting significant financial and reputational harm on their competitors.

42. As Green Pet Shop and Firefly Buys were aware, sellers who are the subject of numerous IP complaints submitted by third-parties to Amazon are at risk of having their Amazon accounts suspended.

43. Indeed, Green Pet Shop and Firefly Buys understood that by filing IP infringement complaints against competing sellers on Amazon, they gained the leverage to inflict pressure on their competition by jeopardizing their Amazon account standing.

44. Green Pet Shop and Firefly Buys also knew that product removal from Amazon.com causes their competitors to suffer immediate economic loss.

45. Indeed, Larry Wright acknowledged the harm that would be caused by product removal from Amazon when he received an IP infringement complaint lodged by a third-party intellectual property rights holder against Green Pet Shop. This was evidenced when another patent owner had complained that Green Pet Shop's "Cool Pet Pad" infringed a U.S. Patent (which predated Green Pet Shop's patent asserted in this action).

46. In the beginning, Green Pet Shop's and Firefly Buys' IP infringement complaints yielded mixed results. Sometimes Amazon would grant the request to remove the complained-of product listing, but other times Amazon would simply forward the complaint to the seller, and advise the seller and Green Pet Shop to confer.

47. Having to correspond with competitors about Green Pet Shop's IP infringement allegations was, in Green Pet Shop's and Firefly Buys' view, overly burdensome.

48. Therefore, in April 2018, Firefly Buys and Green Pet Shop worked on developing an inside relationship with Alex Crawford, a Program Manager at Amazon, to gain insight into

Amazon's product listing takedown process and to gain inside help with facilitating the submission of Green Pet Shop's complaints and obtaining successful product removals.

49. At Green Pet Shop's and Firefly Buys' behest, Alex Crawford began coordinating with Amazon's "patents team" and "legal team" to fast-track Green Pet Shop's and Firefly Buys' efforts to remove competitors' product listings.

50. For example, when Amazon initially rejected Green Pet Shop's IP infringement complaints because "after reviewing your notice of infringement, we determined that the products you reported are not substantially similar to your patented design," Larry Wright would forward Amazon's response to Firefly Buys, who in turn would ask Amazon to reverse its decision, relying on the inapplicable consent decree from the *Maze* matter and their relationship with, and assistance from, Alex Crawford.

51. Alex Crawford also divulged to Green Pet Shop and Firefly Buys how they could circumvent Amazon's proprietary automated algorithms that rank legitimacy of takedown complaints.

52. By having inside help from a Program Manager at Amazon — including benefiting from inside tips on how to circumvent Amazon's proprietary algorithms — Green Pet Shop and Firefly Buys were able to have the vast majority of competitive product listings removed from Amazon.

53. Indeed, as Firefly Buys observed, having inside help from Alex Crawford was a game changer for Green Pet Shop and Firefly Buys during the 2018 season.

54. As of May 1, 2018, Green Pet Shop and Firefly Buys had achieved in having no more third party sellers left on Amazon. Larry Wright continued to work hard on his end to ensure they continued to eliminate as many competitors as possible.

55. It was at this point that Ryan Flanagan proposed that Green Pet Shop and Firefly Buys target Fine Promotions. Fine Promotions sells a variety of pet products to end consumers, and has sold pet products primarily on the eCommerce platform Amazon.com. Fine Promotions had begun marketing, selling, and distributing the Unleashed Comfort Cooling Gel Pet Mat in July 2017.

56. Green Pet Shop and Firefly Buys targeted Fine Promotions because they were concerned with competing with products that consumers consider substitute items at half the cost.

57. To that end, on or around May 1, 2018, Green Pet Shop and Firefly Buys submitted a report to Amazon representing that Fine Promotions' Unleashed Comfort Cooling Gel Pet Mat infringes the '218 and '474 Patents.

58. At the time Green Pet Shop and Firefly Buys submitted the report to Amazon, no court had found that Fine Promotions' Unleashed Comfort Cooling Gel Pet Mat infringed the '218 and '474 Patents.

59. In fact, at the time Green Pet Shop and Firefly Buys submitted the report to Amazon, Green Pet Shop had not even asserted any claim of infringement of the '218 and '474 Patents against Fine Promotions.

60. Green Pet Shop's and Firefly Buys' representation that the Unleashed Comfort Cooling Gel Pet Mat infringes any rights in the '218 and '474 Patents was false and was made with malicious intent to interfere with Fine Promotions' marketing, sales, and distribution activities on Amazon.com.

61. Green Pet Shop and Firefly Buys intended to induce Amazon to remove Fine Promotions' listings for its Unleashed Comfort Cooling Gel Pet Mat from Amazon.com.

62. On May 1, 2018, Amazon removed Fine Promotions' listings for its Unleashed Comfort Cooling Gel Pet Mat from Amazon.com.

63. Amazon removed Fine Promotions' listings in reliance on Green Pet Shop's and Firefly Buys' representation that the Unleashed Comfort Cooling Gel Pet Mat infringes rights in the '218 and '474 Patents.

64. As Green Pet Shop and Firefly Buys were aware, the removal of the Unleashed Comfort Cooling Gel Pet Mat from Amazon.com resulted in little or no competition remaining on Amazon.com.

65. Neither Green Pet Shop nor Firefly Buys has submitted to Amazon any retraction of its representation that the Unleashed Comfort Cooling Gel Pet Mat infringes rights in the '218 and '474 Patents.

66. As a result of Green Pet Shop's and Firefly Buys' representations to Amazon, Fine Promotions has been and continues to be prevented from marketing, selling, and distributing the Unleashed Comfort Cooling Gel Pet Mat on Amazon.com since May 1, 2018.

67. The next month, in June 2018, Larry Wright and Ryan Flanagan further conspired to eliminate competition, seeking to shut down product listings and kill the market for human cooling pads.

68. Green Pet Shop and Firefly Buys continued in 2018 and 2019 to conspire to eliminate competition, including by targeting competitors' product listings and attempting to have them removed from Amazon.com.

69. But in March 2019, Firefly Buys and Green Pet Shop found their Amazon.com product listing take-down efforts realizing slower results. Firefly Buys and Green Pet Shop therefore contacted Alex Crawford, Program Manager at Amazon, for assistance, and made sure

he was aware that the removal of competition was central to sustaining and growing their sales growth.

B. Green Pet Shop's Bad Faith Patent Litigation

70. In 2017 and 2018, Green Pet Shop filed patent infringement lawsuits against competitors in the market of self-cooling pet mat products in the United States.

71. Green Pet Shop's litigation campaign directed at the self-cooling pet mat industry in the United States has included at least the following lawsuits:

- The Green Pet Shop Enterprises, LLC v. C&A Marketing, Inc. d/b/a C&A Global, 2:17-cv-6181 (D.N.J.) (filed Aug. 16, 2017);
- The Green Pet Shop Enterprises, LLC v. Telebrands Corporation, 2:17-cv-6179 (D.N.J.) (filed Aug. 16, 2017);
- The Green Pet Shop Enterprises, LLC v. European Home Design, LLC, 1:17-cv-6238 (S.D.N.Y.) (filed Aug. 17, 2017);
- The Green Pet Shop Enterprises, LLC v. Unique Petz, Inc., 1:17-cv-6236 (S.D.N.Y.) (filed Aug. 17, 2017);
- The Green Pet Shop Enterprises, LLC v. Petco Animal Supplies, Inc., 3:17-cv-2413 (S.D. Cal.) (filed Nov. 30, 2017);
- The Green Pet Shop Enterprises, LLC v. PetEdge, Inc., 1:17-cv-12583 (D. Mass.) (filed Dec. 29, 2017);
- The Green Pet Shop Enterprises, LLC v. Argento SC By Sicura Inc., 1:18-cv-4230 (S.D.N.Y.) (filed May 11, 2018);
- The Green Pet Shop Enterprises, LLC v. Dogo Pet Fashions, 1:18-cv-3118 (E.D.N.Y.) (filed May 27, 2018); and

- The Green Pet Shop Enterprises, LLC v. Fine Promotions, 1:18-cv-4526 (E.D.N.Y.) (filed Aug. 9, 2018).

72. On information and belief, the litigations identified above in paragraph 77 were brought by Green Pet Shop to eliminate competition, and thus in bad faith.

73. In at least the litigation The Green Pet Shop Enterprises, LLC v. European Home Design, LLC, 1:17-cv-6238 (S.D.N.Y.) (filed Aug. 17, 2017), Green Pet Shop submitted IP complaints against European Home Design on Amazon.com while the litigation was ongoing in an effort to impose litigation pressure and to expedite European Home Design's exit from the market entirely.

74. On information and belief, Green Pet Shop's litigation tactics are motivated by an intent to leverage competitors' costs to defend against Green Pet Shop's patent infringement lawsuits in order to monopolize the self-cooling pet mat market in the United States.

75. The litigations identified above in paragraph 77 evidence a pattern of initiating litigation against competitors in the self-cooling pet mat market in the United States, quickly followed by a withdrawal of the actions by Green Pet Shop before its claims and its competitors' defenses can be adjudicated on the merits. For example:

Action	Resolution
Green Pet Shop v. C&A Marketing (filed Aug. 16, 2017)	Stipulation of Dismissal (filed Apr. 3, 2018)
Green Pet Shop v. Telebrands (filed Aug. 16, 2017)	Stipulation of Dismissal (filed Feb. 7, 2018)
Green Pet Shop v. Unique Petz (filed Aug. 17, 2017)	Stipulation of Voluntary Dismissal (filed Apr. 10, 2018)
Green Pet Shop v. Petco (filed Nov. 30, 2017)	Joint Motion to Dismiss (filed Mar. 2, 2018)
Green Pet Shop v. PetEdge (filed Dec. 29, 2017)	Stipulation of Dismissal (filed July 31, 2018)
Green Pet Shop v. Argento SC (filed May 11, 2018)	Stipulation of Voluntary Dismissal (filed Nov. 9, 2018)

Green Pet Shop v. Dogo Pet Fashions (filed May 27, 2018)	Notice of Voluntary Dismissal (filed July 26, 2018)
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76. On information and belief, Green Pet Shop has perpetrated such litigation tactics to impose unjustified costs on its competitors and monopolize the self-cooling pet mat market in the United States.

77. On information and belief, Green Pet Shop's complaint in this action was brought to eliminate competition, and thus in bad faith.

78. In May 2018, Firefly Buys suggested that Green Pet Shop file this action as a purported means for Green Pet Shop to confiscate Fine Promotions' inventory to resell to Firefly Buys at a profit.

79. On information and belief, Green Pet Shop was aware before filing this action that the claims of the '218 and '474 Patents are invalid.

80. On information and belief, Green Pet Shop gained such knowledge when competitors it sued had identified invalidating prior art to the '218 and '474 Patents. Identification and explanation of such invalidating prior art has been set forth in at least the following pleadings served on Green Pet Shop:

- Answer and counterclaims filed by C&A Marketing in The Green Pet Shop Enterprises, LLC v. C&A Marketing, Inc., 2:17-cv-6181 (D.N.J.)
- Answer and counterclaims filed by European Home Design in The Green Pet Shop Enterprises, LLC v. European Home Design, LLC, 1:17-cv-6238 (S.D.N.Y.)
- Answer and counterclaims filed by Unique Petz in The Green Pet Shop Enterprises, LLC v. Unique Petz, Inc. 1:17-cv-6236 (S.D.N.Y.)
- Answer and counterclaims filed by PetEdge in The Green Pet Shop Enterprises, LLC v. PetEdge, Inc., 1:17-cv-12583 (D. Mass.)
- Answer and counterclaims filed by Argento SC in The Green Pet Shop Enterprises, LLC v. Argento SC By Sicura Inc., 1:18-cv-4230 (S.D.N.Y.)

81. For at least the reasons set forth in paragraphs 87 through 167, on information and belief, Green Pet Shop also was aware before filing this action that the Unleashed Comfort Cooling Gel Pet Mat does not infringe the '218 and '474 Patents.

82. As further set forth herein, before filing this lawsuit Green Pet Shop also tortiously interfered with Fine Promotions' business relations by filing a false rights owner complaint with Amazon, which resulted in suspension of Fine Promotions' marketing, sales, and distribution of the Unleashed Comfort Cooling Gel Pet Mat on Amazon.com.

83. Both before and after filing this lawsuit, Green Pet Shop has engaged in unlawful and anticompetitive attempts to license the '218 and '474 Patents to Fine Promotions on unfair and anticompetitive terms.

84. For example, Green Pet Shop has insisted that any license to the '218 and '474 Patents include a prohibition on Fine Promotions' freedom to sell or distribute the Unleashed Comfort Cooling Gel Pet Mat in any market in which Green Pet Shop and Fine Promotions compete, including for example within the e-Commerce market for self-cooling pet mats in the United States (e.g., on Amazon.com).

85. Green Pet Shop has also engaged in unlawful and anticompetitive activity by attempting to license the '218 and '474 Patent on unfair terms by leveraging the litigation costs required to obtain an adjudication that the Unleashed Comfort Cooling Gel Pet Mat does not infringe the '218 and '474 Patents and that the '218 and '474 Patents are invalid.

86. In particular, in its attempt to obtain a license to the '218 and '474 Patent on unfair and anticompetitive terms, Green Pet Shop has cited the fact that its litigation costs are far lower than Fine Promotions' costs because Green Pet Shop purportedly bears no responsibility to pay ongoing legal fees to its litigation counsel in this action.

C. The Unleashed Comfort Cooling Gel Pet Mat Does Not Practice the Asserted Patents

87. The Unleashed Comfort Cooling Gel Pet Mat is a temperature activated mat that absorbs a pet's body heat.

88. Fine Promotions' Unleashed Comfort Cooling Gel Pet Mat does not include "a pressure activated recharging cooling composition."

89. Rather, Fine Promotions' Unleashed Comfort Cooling Gel Pet Mat is temperature activated.

90. The fact that Fine Promotions' Unleashed Comfort Cooling Gel Pet Mat lacks "a pressure activated recharging cooling composition" was readily ascertainable to Green Pet Shop prior to filing the Complaint in this action, for instance by examining and/or testing a sample of the publicly available Unleashed Comfort Cooling Gel Pet Mat product.

91. Green Pet Shop was able to determine the exact chemical makeup of Fine Promotions' Unleashed Comfort Cooling Gel Pet Mat prior to filing its Complaint in this action.

92. Upon information and belief, Green Pet Shop performed no chemical analysis of Fine Promotions' Unleashed Comfort Cooling Gel Pet Mat prior to filing its Complaint in this action.

93. Fine Promotions' Unleashed Comfort Cooling Gel Pet Mat is malleable and gives way when an animal lies on it.

94. The distance between the top side and bottom side of Fine Promotions' Unleashed Comfort Cooling Gel Pet Mat varies because the mat is malleable and gives way when an animal lies on it.

95. The top side and bottom side of Fine Promotions' Unleashed Comfort Cooling Gel Pet Mat are not set at a predefined distance.

96. The fact that Fine Promotions' Unleashed Comfort Cooling Gel Pet Mat lacks a predefined distance between its top side and bottom side was readily ascertainable to Green Pet Shop prior to filing the Complaint in this action, for instance by inspecting a sample of the publicly available Unleashed Comfort Cooling Gel Pet Mat product.

97. U.S. Patent Application No. 12/760,045 was filed on April 14, 2010, and later matured into U.S. Patent No. 8,720,218 ("the '218 patent").

98. U.S. Patent Application No. 14/226,393 was filed on March 26, 2014, and later matured into U.S. Patent No. 9,226,474 ("the '474 patent").

99. U.S. Patent Application No. 14/226,393, which matured into the '474 patent, was filed as a continuation of U.S. Patent Application No. 12/760,045.

100. The specifications of the '218 and '474 patents state that, "In another embodiment, the composition 110A can be activated by pressure, wherein the pressure of a object sitting on the cooling platform 100 activates the composition 110A, triggering an endothermic process and subsequent cooling. Upon the release of that pressure, the composition 110A undergoes a subsequent recharge, essentially the reverse of the initial reaction." '218 Patent at 3:17-3:22; '474 Patent at 3:29-35.

101. Claim 1 in both the '218 and '474 patents contains the limitation: "a pressure activated recharging cooling composition within the temperature regulation layer, the pressure activated recharging cooling composition endothermically activated and endothermically deactivated upon the application and release of pressure, respectively."

102. All of the claims of the '218 and '474 patents require "a pressure activated recharging cooling composition."

103. Green Pet Shop filed suit against Maze Innovations, Inc. in the Northern District of Illinois, in Case No. 1:15-cv-01138. The District Court for the Northern District of Illinois issued a *Markman* order on December 28, 2016, which stated, “The pressure of the pet on the pad triggers a reaction within the pad’s ‘composition.’”

104. The claimed “pressure activated recharging cooling composition” is activated by the pressure of an object sitting on the cooling platform.

105. The only composition disclosed in the ’218 and ’474 patents is comprised of thirty percent carboxmethylcellulose; twenty percent water; thirty-five percent polyacrylamide; and at least fifteen percent alginic acid.

D. Invalidating Prior Art Pre-Dates the ’218 and ’474 Patents

106. On August 12, 2019, Fine Promotions served invalidity contentions in this action setting forth grounds demonstrating that the ’218 and ’474 patents are invalid and unenforceable. Exemplary bases are set forth below.

107. The subject matter claimed in the ’218 and ’474 patents was the subject matter of patents and printed publications filed or published prior to the time when the application that matured into the ’218 patent was filed.

108. The earliest priority date to which the ’218 patent can alleged to be entitled is April 14, 2010.

109. The earliest priority date to which the ’474 patent can alleged to be entitled is April 14, 2010.

110. U.S. Patent Publication No. 2009/0088825, entitled “Cooling or Heating Sheet” (“Ota”) was published on April 2, 2009. Ex. 1 (“Ota”).

111. Ota was published more than a year before April 14, 2010.

112. Because Ota was published more than one year before April 14, 2010, Ota is prior art to the '218 patent, under 35 U.S.C. § 102(b).

113. Because Ota was published more than one year before April 14, 2010, Ota is prior art to the '474 patent, under 35 U.S.C. § 102(b).

114. 35 U.S.C. § 102(b) provides an absolute bar to patentability. It is not possible to predate, or swear behind, a reference offered as § 102(b) prior art through evidence of prior invention by the patentee.

115. Ota discloses a cooling “mat for a pet.” Ota at para. 48.

116. Ota discloses an “aqueous gel layer that is made by crosslinking a polymer that gelatinizes by absorbing smoothly a lot of water and other components.” Ota at Figs. 1–4, para. 70.

117. Ota further discloses that the “[m]ost preferable polymers that are used for the formation of the aqueous gel layer are polyacrylic acids.” Ota at para. 70

118. Ota further discloses that “[e]xamples of the polyacrylic acids include polyacrylic acid, a salt of polyacrylic acid, [and] partially-neutralized polyacrylic acid” Ota at para. 70.

119. Sodium polyacrylic acid is a salt of polyacrylic acid.

120. Ota further discloses that “[t]he amount of the water that the aqueous gel layer bears is preferably 60 to 95% on the basis of the weight of the aqueous gel layer.” Ota at para. 20.

121. Claim 10 of the '474 patent depends from claim 1 and recites that the “pressure activated recharging cooling composition is comprised of water and sodium polyacrylic acid.”

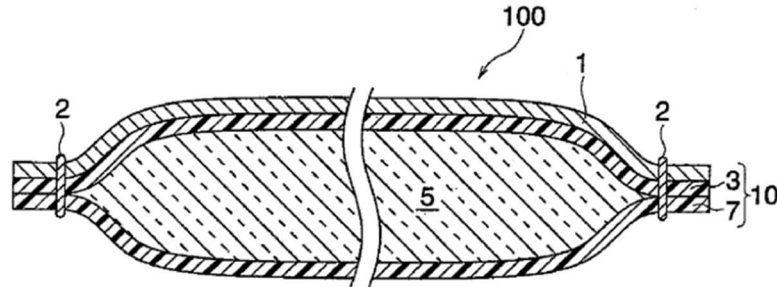
122. Ota discloses a composition is comprised of water and sodium polyacrylic acid.

123. Ota discloses a “pressure activated recharging cooling composition.”

124. Ota discloses that “[t]he cooling or warming sheet of th[e] invention comprises a fibrous layer a, an air-impermeable sheet layer a, an aqueous gel layer, and an air-impermeable sheet layer b in this order.” Ota at para. 64.

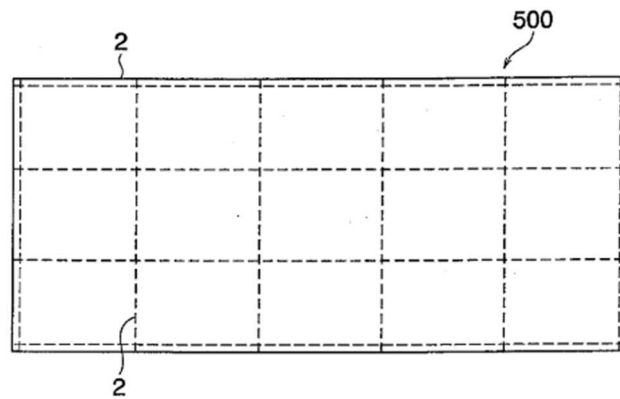
125. Figure 1 of Ota is shown below:

[Figure 1]



126. Figure 7 of Ota is shown below:

[Figure 7]



127. Below is a description of the numerical references for the numerical references in Figures 1 and 7 of Ota:

- [0037] 1, 9, 13, and 15 nonwoven fabric
- [0038] 2 thread
- [0039] 3, 7 air-impermeable polymer film
- [0040] 5 aqueous gel
- [0041] 10, 30 bag
- [0042] 17 pressure-sensitive adhesive layer
- [0043] 19 release sheet
- [0044] 100, 200, 300 sheet
- [0045] 400 sheet (a sheet for warming up a sole)
- [0046] 500 a pad to be laid

128. Ota discloses that “pad 500 to be laid of which plane view is shown in FIG. 7, the pad 500 is sewed to give 15 divisions.” Ota at Fig. 7, para. 109.

129. Items 3 and 7 in Figure 1 of Ota constitute “a temperature regulation layer” as claimed in the ’218 and ’474 patents.

130. Item 2 in Figures 1 and 7 constitutes channels as claimed in the ’218 and ’474 patents.

131. The top side and the bottom side of the mat of Figures 1 and 7 of Ota are at a predefined distance as claimed in the ’218 and ’474 patents.

132. At least Figures 1 and 7 of Ota disclose a “temperature regulation layer having an angled segment formed by a top side and a bottom side at a predefined distance, and channels” as claimed in the ’218 and ’474 patents.

133. At least Figures 1 and 7 of Ota disclose “wherein channels form sides by contacting the top side with the bottom side” as claimed in the ’218 and ’474 patents.

134. Ota discloses a “temperature regulation layer having a plurality of angled segments, wherein the angled segments within a sealed perimeter of the temperature regulation layer are formed by a top side and a bottom side at a predefined distance” as claimed in the ’474 patent.

135. Ota discloses “channel, wherein the channels substantially form sides by contacting the top side with the bottom side at a distance lesser than the predefined distance” as claimed in the ’474 patent.

136. Ota discloses every element recited in one or more claims of the ’218 patent.

137. Ota discloses every element recited in one or more claims of the ’474 patent.

138. Chinese Patent Application No. 200810063081.4 was filed in China on July 9, 2008, and was published on December 28, 2008 as Chinese Publication No. CN 101305877 B,

titled “Gel Pad and Production Method Thereof,” (“Fan”). Ex. 2 (“Fan”); Ex. 3 (*Maze Innovations, Inc. v. The Green Pet Shop Enterprises, LLC*, IPR2016-00117, Paper 1 at Ex. 1003 (PTAB Oct. 30, 2015)) (“Fan (English Translation)”).

139. Fan was published more than a year before April 14, 2010.

140. Because Fan was published more than one year before April 14, 2010, Fan is prior art to the ’218 patent, under 35 U.S.C. § 102(b).

141. Because Fan was published more than one year before April 14, 2010, Fan is prior art to the ’474 patent, under 35 U.S.C. § 102(b).

142. 35 U.S.C. § 102(b) provides an absolute bar to patentability. It is not possible to predate, or swear behind, a reference offered as § 102(b) prior art through evidence of prior invention by the patentee.

143. Fan discloses a gel pad where “the gel has a water content of about 70% and hence a high heat absorption capacity similar to that of water.” Fan (English Translation) at para. 11.

144. Fan discloses that “[a]s a result of the polymerization of a monomeric solution in the pouch 2, a polymer (i.e. a gel 5) is generated therein.” Fan (English Translation) at para. 16.

145. Fan discloses that “mixing water, monomer(s), a cross-linking agent, a polymerization initiator as well as a pigment and/or condiment to produce a monomeric solution to be filled into the pouch 2 through the filling orifice.” Fan (English Translation) at para. 20.

146. Fan discloses that “[t]he monomer(s) referred to are water-soluble monomer(s) used for making highly absorbent polyacrylic resins, e.g. acrylic acid and alkali metal salts thereof, methacrylic acid and metal salts thereof, one or more esters generated by methacrylic acid or acrylic acid; or monomer(s) used for making highly absorbent polyacrylamide materials, e.g.

polyacrylamide and/or methyl polyacrylamide; or combinations of the aforementioned two monomers.” Fan (English Translation) at para. 21.

147. Fan discloses that “[t]he weight ratio of the water, the monomer(s), the cross-linking agent and the polymerization initiator is: water 60%~80%, monomer(s) 10%~30%, cross-linking agent 0.1 %~6%, polymerization initiator 0.1 %~6%.” Fan (English Translation) at para. 24.

148. Claim 10 of the '474 patent depends from claim 1 and recites that the “pressure activated recharging cooling composition is comprised of water and sodium polyacrylic acid.”

149. Sodium polyacrylic acid is an example of an acrylic acid and alkali metal salts.

150. Fan discloses a “pressure activated recharging cooling composition.”

151. Fan discloses that “Figure 1 and Figure 2 are structural schematic diagrams of a gel pad comprising a pouch 2 made of two flakes 1, wherein the two flakes 1 are made of two laminated materials made by coating plastic material on a woven fabric or flocked fabric 3, and a plastic layer 4 is made as an inner layer of the pouch 2.” Fan (English Translation) at para. 16.

152. Figure 1 of Fan is shown below:

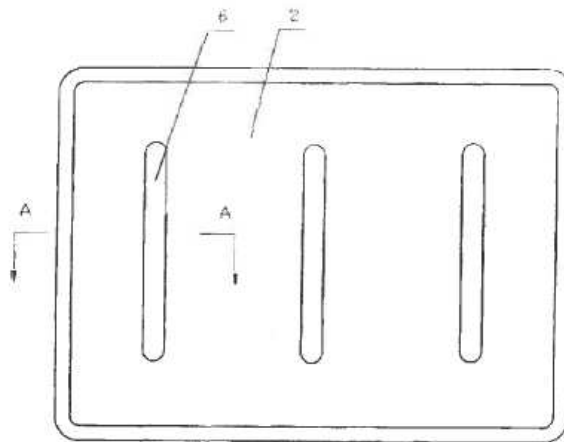


Figure 1

153. Figure 2 of Fan is shown below:

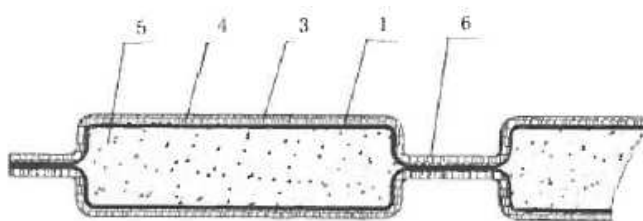


Figure 2

154. Below is a description of the numerical references in Figures 1 and 2 of Fan:

[0012] Figure 1 is a front view of a gel pad of the present invention.

[0013] Figure 2 is a sectional view A-A of the gel pad shown in Figure 1.

[0014] In the figures, 1 denotes flakes; 2 denotes pouch; 3 denotes woven fabric or flocked fabric; 4 denotes plastic layer; 5 denotes gel; and 6 denotes reinforcing ribs.

155. Item 1 in Figure 2 of Fan constitutes “a temperature regulation layer” as claimed in the ’218 and ’474 patents.

156. Fan discloses the flakes are joined together to form pouches. Fan (English Translation) at Figs. 1 and 2, para. 16.

157. Fan discloses that “[a]s a result of the polymerization of a monomeric solution in the pouch 2, a polymer (i.e. a gel 5) is generated therein” Fan (English Translation) at para. 16.

158. Fan discloses that the pouches form angled segments as claimed in the ’218 and ’474 patents. Fan at Fig. 2.

159. Fan discloses that “[f]or a pouch 2 with a larger area, to prevent large area of separation between the two flakes 1 which would result in movement of the gel 5, one or more reinforcing ribs 6 may be provided at the central portion of the pouch 2 during the manufacture thereof to directly bond the two flakes together, and this facilitates folding of the gel pad at the reinforcing ribs 6 as well as ventilation during its use.” Fan (English Translation) at para. 16.

160. Fan discloses a “temperature regulation layer having an angled segment formed by a top side and a bottom side at a predefined distance, and channels” as claimed in the ’218 and ’474 patents.

161. Item 6 in Figures 1 and 2 of Fan constitute “channels” as claimed in the ’218 and ’474 patents.

162. The top side and the bottom side of the gel pad of Figure 2 of Fan are at a predefined distance as claimed in the ’218 and ’474 patents.

163. Item 6 in Figures 1 and 2 of Fan, i.e., the channels, form sides by contacting the top side with the bottom side of the gel pad as claimed in the ’218 and ’474 patents.

164. Fan discloses a “temperature regulation layer having a plurality of angled segments, wherein the angled segments within a sealed perimeter of the temperature regulation layer are formed by a top side and a bottom side at a predefined distance” as claimed in the ’474 patent.

165. Fan discloses “wherein the channels substantially form sides by contacting the top side with the bottom side at a distance lesser than the predefined distance” as claimed in the ’474 patent.

166. Fan discloses every element recited in one or more claims of the ’218 patent.

167. Fan discloses every element recited in one or more claims of the ’474 patent.

COUNT I:
ANTITRUST LIABILITY FOR CONSPIRACY TO ATTEMPT TO MONOPOLIZE
(AGAINST GREEN PET SHOP AND FIREFLY BUYS)

168. Fine Promotions restates and incorporates by reference its allegations in paragraphs 1 through 167 of its Counterclaims so that each of those allegations is made in this Count I.

169. Green Pet Shop and Firefly Buys made an agreement to attempt to gain monopoly power in the market for self-cooling pet mats in the United States.

170. Green Pet Shop and Firefly Buys undertook anticompetitive acts in furtherance of their agreement, including without limitation by conspiring to exclude competitors from marketing, selling, and distributing self-cooling pet mats in the United States on the eCommerce platform Amazon.com.

171. Green Pet Shop and Firefly Buys did so, for instance, by submitting misleading intellectual property complaints to Amazon.com, Inc. with the specific intent to attempt to gain monopoly power in the market for self-cooling pet mats in the United States.

172. Green Pet Shop and Firefly Buys further did so, for instance, by submitting intellectual property complaints to Amazon.com, Inc. alleging infringement of invalid patents.

173. Green Pet Shop's and Firefly Buys' conspiracy to attempt to gain monopoly power in the market for self-cooling pet mats in the United States poses a dangerous probability of successful monopolization because, by their own admission, Green Pet Shop controls the market for self-cooling pet mats, and its efforts together with Firefly Buys to eliminate competition have already succeeded in removing more than 1,000 competitive products from Amazon.com.

174. As a result, Fine Promotions has sustained, and continues to sustain, substantial damages, including without limitation loss of sales, loss of market share, reputational harm, loss of consumers, and legal fees incurred to defend this action and to prosecute this counterclaim.

COUNT II:
TORTIOUS INTERFERENCE WITH BUSINESS RELATIONS
(AGAINST GREEN PET SHOP AND FIREFLY BUYS)

175. Fine Promotions restates and incorporates by reference its allegations in paragraphs 1 through 167 of its Counterclaims so that each of those allegations is made in this Count II.

176. In July 2017, Fine Promotions began marketing, selling, and distributing the Unleashed Comfort Cooling Gel Pet Mat on Amazon.com.

177. At least on or around May 1, 2018, Green Pet Shop and Firefly Buys were aware that Fine Promotions marketed, sold, and distributed the Unleashed Comfort Cooling Pet Mat through Amazon.com.

178. On or around May 1, 2018, Green Pet Shop and Firefly Buys submitted a report to Amazon representing that Fine Promotions' Unleashed Comfort Cooling Gel Pet Mat infringes the '218 and '474 Patents.

179. At the time Green Pet Shop and Firefly Buys submitted the report to Amazon, no court had found that Fine Promotions' Unleashed Comfort Cooling Gel Pet Mat infringed the '218 and '474 Patents.

180. In fact, at the time Green Pet Shop and Firefly Buys submitted the report to Amazon, Green Pet Shop had not even asserted any claim of infringement of the '218 and '474 Patents against Fine Promotions.

181. For the reasons set forth herein, including in paragraphs 87 through 167, Green Pet Shop had no reasonable basis or justification to represent to Amazon that Fine Promotions' Unleashed Comfort Cooling Gel Pet Mat infringes any rights in the '218 and '474 Patents.

182. Green Pet Shop's and Firefly Buys' representation that the Unleashed Comfort Cooling Gel Pet Mat infringes any rights in the '218 and '474 Patents was false and was made with malicious intent to interfere with Fine Promotions' marketing, sales, and distribution activities on Amazon.com.

183. Green Pet Shop and Firefly Buys intended to induce Amazon to remove Fine Promotions' listings for its Unleashed Comfort Cooling Gel Pet Mat from Amazon.com.

184. On May 1, 2018, Amazon removed Fine Promotions' listings for its Unleashed Comfort Cooling Gel Pet Mat from Amazon.com.

185. Amazon removed Fine Promotions' listings in reliance on Green Pet Shop's and Firefly Buys' representation that the Unleashed Comfort Cooling Gel Pet Mat infringes rights in the '218 and '474 Patents.

186. By reason of the foregoing, Green Pet Shop and Firefly Buys committed the tort of interference with business relations.

187. As a result, Fine Promotions has sustained, and continues to sustain, substantial damages, including without limitation loss of sales of the Unleashed Comfort Cooling Gel Pet Mat and other products, loss of market share, loss of consumers, and reputational harm, including harm to Fine Promotions' business relationship with Amazon.

**COUNT III:
ANTITRUST LIABILITY FOR BAD FAITH PATENT ENFORCEMENT CONDUCT
(AGAINST GREEN PET SHOP)**

188. Fine Promotions restates and incorporates by reference its allegations in paragraphs 1 through 167 of its Counterclaims so that each of those allegations is made in this Count III.

189. Green Pet Shop and Fine Promotions are competitors in the market of self-cooling pet mat products in the United States.

190. Green Pet Shop has market power in the market of self-cooling pet mat products in the United States, the relevant market for purposes of this claim.

191. In 2017 and 2018, Green Pet Shop filed patent infringement lawsuits against competitors in the market of self-cooling pet mat products in the United States.

192. On information and belief, the litigations identified above in paragraph 77 were brought by Green Pet Shop to eliminate competition, and thus in bad faith.

193. On information and belief, Green Pet Shop's litigation tactics are motivated by an intent to leverage competitors' costs to defend against Green Pet Shop's patent infringement lawsuits in order to monopolize the self-cooling pet mat market in the United States.

194. The litigations identified above in paragraph 77 evidence a pattern of initiating litigation against competitors in the self-cooling pet mat market in the United States, quickly followed by a withdrawal of the actions by Green Pet Shop before its claims and its competitors' defenses can be adjudicated on the merits. On information and belief, Green Pet Shop has perpetrated such litigation tactics to impose unjustified costs on its competitors and monopolize the self-cooling pet mat market in the United States.

195. On information and belief, Green Pet Shop's complaint in this action was brought to eliminate competition, and thus in bad faith.

196. On information and belief, Green Pet Shop was aware before filing this action that the claims of the '218 and '474 Patents are invalid. On information and belief, Green Pet Shop gained such knowledge when competitors it sued had identified invalidating prior art to the '218 and '474 Patents.

197. For at least the reasons set forth above in paragraphs 87 through 167, on information and belief, Green Pet Shop also was aware before filing this action that the Unleashed Comfort Cooling Gel Pet Mat does not infringe the '218 and '474 patents.

198. As further set forth herein, before filing this lawsuit Green Pet Shop also tortiously interfered with Fine Promotions' business relations by filing a false rights owner complaint with Amazon, which resulted in suspension of Fine Promotions' marketing, sales, and distribution of the Unleashed Comfort Cooling Gel Pet Mat on Amazon.com.

199. Both before and after filing this lawsuit, Green Pet Shop has engaged in unlawful and anticompetitive attempts to license the '218 and '474 Patents to Fine Promotions on unfair and anticompetitive terms.

200. By reason of the foregoing, Green Pet Shop has engaged in bad faith patent enforcement conduct intended to eliminate competition and monopolize the U.S. market for self-cooling pet mats in violation of U.S. antitrust laws.

201. As a result, Fine Promotions has sustained, and continues to sustain, substantial damages, including without limitation loss of sales, loss of market share, loss of consumers, and legal fees incurred to defend this action and to defend against Green Pet Shop's claims of patent infringement.

COUNT IV:
DECLARATORY JUDGMENT OF NON-INFRINGEMENT OF THE '218 PATENT
(AGAINST GREEN PET SHOP)

202. Fine Promotions restates and incorporates by reference its allegations in paragraphs 1 through 167 of its Counterclaims so that each of those allegations is made in this Count IV.

203. Green Pet Shop claims to have an ownership interest by assignment in the '218 patent and claims to have the right to enforce the '218 patent.

204. Green Pet Shop, in this action, alleges that Fine Promotions infringes the '218 patent.

205. Fine Promotions is not infringing, has not infringed, and is not liable for any infringement, either directly or indirectly, literally or under the doctrine of equivalents, of any valid and enforceable claim of the '218 patent, and Green Pet Shop is entitled to no relief of any claim in its Complaint for, *inter alia*, at least the reasons stated herein.

206. Thus, an immediate, real, and justiciable controversy exists between Green Pet Shop, on the one hand, and Fine Promotions, on the other hand, with respect to the alleged infringement of the '218 patent.

207. Fine Promotions is entitled to a declaratory judgment that it has not and does not infringe, directly or indirectly, literally or under the doctrine of equivalents, any valid, enforceable claim of the '218 patent.

COUNT V:
DECLARATORY JUDGMENT OF INVALIDITY OF THE '218 PATENT
(AGAINST GREEN PET SHOP)

208. Fine Promotions restates and incorporates by reference its allegations in paragraphs 1 through 167 of its Counterclaims so that each of those allegations is made in this Count V.

209. The claims of the '218 patent are invalid for failure to meet one or more of the conditions for patentability specified in Title 35, U.S.C., or the rules, regulations, and law related thereto, including, without limitation, one or more of 35 U.S.C. §§ 102, 103, and/or 112.

210. The claims of the '218 patent, for example, are invalid under 35 U.S.C. §§ 102 and/or 103 for anticipation and/or obviousness based at least on the following exemplary references:

- a) U.S. Patent Publication No. 2009/0132013 (Amalfi);
- b) U.S. Patent No. 4,856,294 (Scaringe);
- c) U.S. Patent No. 4,064,835 (Rabenbauer);
- d) U.S. Patent No. 6,128,795 (Stanley);
- e) U.S. Patent No. 6,132,455 (Shang);
- f) U.S. Patent No. 6,210,427 (Augustine);

- g) U.S. Patent No. 7,036,162 (Gatten);
- h) U.S. Patent No. 7,324,340 (Xiong);
- i) U.S. Patent Publication No. 2010/0009128 A1 (Fan);
- j) U.S. Patent No. 8,381,495 (Fan);
- k) WIPO Application Publication WO 99/27313 (Furrer);
- l) Chinese Pat. Publ. No. CN 101305877 A (Fan);
- m) U.S. Patent Publication No. 2009/0088825 (Ota);
- n) U.S. Patent Publication No. 2010/0108287 (Ota);
- o) U.S. Patent Publication No. 2007/0179465 (Sakakibara);
- p) U.S. Patent Publication No. 2007/0098769 (Champion);
- q) Chinese Pat. Publ. No. CN 101305877 B (Fan); and
- r) Cooling mat products sold by Hirakawa Corporation of Japan.

211. The claims of the '218 patent, for example, are invalid under 35 U.S.C. § 112 for failing the written description and enablement requirements because the specification does not support the breadth of the claims—at least as asserted in Green Pet Shop's Complaint—nor does the specification enable a person of ordinary skill in the art to make and use the alleged claimed invention without undue experimentation. For example, the “pressure activated recharging cooling composition” is not adequately described in the specification or enabled.

212. Thus, an immediate, real, and justiciable controversy exists between Green Pet Shop, on the one hand, and Fine Promotions, on the other hand, with respect to the alleged validity of the '218 patent.

213. Fine Promotions is entitled to a declaratory judgment that the claims of the '218 patent are invalid.

COUNT VI:
DECLARATORY JUDGMENT OF NON-INFRINGEMENT OF THE '474 PATENT
(AGAINST GREEN PET SHOP)

214. Fine Promotions restates and incorporates by reference its allegations in paragraphs 1 through 167 of its Counterclaims so that each of those allegations is made in this Count VI.

215. Green Pet Shop claims to have an ownership interest by assignment in the '474 patent and claims to have the right to enforce the '474 patent.

216. Green Pet Shop, in this action, alleges that Fine Promotions infringes the '474 patent.

217. Fine Promotions is not infringing, has not infringed, and is not liable for any infringement, either directly or indirectly, literally or under the doctrine of equivalents, of any valid and enforceable claim of the '474 patent, and Green Pet Shop is entitled to no relief of any claim in its Complaint for, *inter alia*, at least the reasons stated herein.

218. Thus, an immediate, real, and justiciable controversy exists between Green Pet Shop, on the one hand, and Fine Promotions, on the other hand, with respect to the alleged infringement of the '474 patent.

219. Fine Promotions is entitled to a declaratory judgment that it has not and does not infringe, directly or indirectly, any valid, enforceable claim of the '474 patent.

COUNT VII:
DECLARATORY JUDGMENT OF INVALIDITY OF THE '474 PATENT
(AGAINST GREEN PET SHOP)

220. Fine Promotions restates and incorporates by reference its allegations in paragraphs 1 through 167 of its Counterclaims so that each of those allegations is made in this Count VII.

221. The claims of the '474 patent are invalid for failure to meet one or more of the conditions for patentability specified in Title 35, U.S.C., or the rules, regulations, and law related thereto, including, without limitation, one or more of 35 U.S.C. §§ 102, 103, and/or 112.

222. The claims of the '474 patent, for example, are invalid under 35 U.S.C. §§ 102 and/or 103 for anticipation and/or obviousness based at least on the following exemplary references:

- a) U.S. Patent Publication No. 2009/0132013 (Amalfi);
- b) U.S. Patent No. 4,856,294 (Scaringe);
- c) U.S. Patent No. 4,064,835 (Rabenbauer);
- d) U.S. Patent No. 6,128,795 (Stanley);
- e) U.S. Patent No. 6,132,455 (Shang);
- f) U.S. Patent No. 6,210,427 (Augustine);
- g) U.S. Patent No. 7,036,162 (Gatten);
- h) U.S. Patent No. 7,324,340 (Xiong);
- i) U.S. Patent Publication No. 2010/0009128 A1 (Fan);
- j) U.S. Patent No. 8,381,495 (Fan);
- k) WIPO Application Publication WO 99/27313 (Furrer);
- l) Chinese Pat. Publ. No. CN 101305877 A (Fan);
- m) U.S. Patent Publication No. 2009/0088825 (Ota);
- n) U.S. Patent Publication No. 2010/0108287 (Ota);
- o) U.S. Patent Publication No. 2007/0179465 (Sakakibara);
- p) U.S. Patent Publication No. 2007/0098769 (Champion);
- q) Chinese Pat. Publ. No. CN 101305877 B (Fan); and

r) Cooling mat products sold by Hirakawa Corporation of Japan.

223. The claims of the '474 patent, for example, are invalid under 35 U.S.C. § 112 for failing the written description and enablement requirements because the specification does not support the breadth of the claims—at least as asserted in Green Pet Shop's Complaint—nor does the specification enable a person of ordinary skill in the art to make and use the alleged claimed invention without undue experimentation. For example, the “pressure activated recharging cooling composition” is not adequately described in the specification or enabled.

224. Thus, an immediate, real and justiciable controversy exists between Green Pet Shop, on the one hand, and Fine Promotions, on the other hand, with respect to the alleged validity of the '474 patent.

225. Fine Promotions is entitled to a declaratory judgment that the claims of the '474 patent are invalid.

**COUNT VIII:
UNFAIR COMPETITION
(AGAINST GREEN PET SHOP AND FIREFLY BUYS)**

226. Fine Promotions restates and incorporates by reference its allegations in paragraphs 1 through 167 of its Counterclaims so that each of those allegations is made in this Count VIII.

227. Green Pet Shop and Firefly Buys engaged in unfair competition against Fine Promotions by submitting product takedown requests to Amazon.com to prevent Fine Promotions from competing with Green Pet Shop and Firefly Buys.

228. As alleged above, Green Pet Shop and Firefly Buys specifically targeted Fine Promotions because they were concerned with competing with products that consumers consider substitute items at half the cost.

229. As alleged above, as Green Pet Shop and Firefly Buys were aware, the removal of the Unleashed Comfort Cooling Gel Pet Mat from Amazon.com resulted in little or no competition remaining on Amazon.com.

230. By reason of the foregoing, Green Pet Shop and Firefly Buys committed the tort of unfair competition.

231. As a result, Fine Promotions has sustained, and continues to sustain, substantial damages, including without limitation loss of sales of the Unleashed Comfort Cooling Gel Pet Mat and other products, loss of market share, loss of consumers, and reputational harm.

EXCEPTIONAL CASE

For at least the reasons set forth in Fine Promotions' First Amended Answer, Affirmative Defenses, and Counterclaims, this is an exceptional case in Fine Promotions' favor, entitling Fine Promotions to an award of its attorneys' fees incurred in connection with defending and prosecuting this action pursuant to 35 U.S.C. § 285.

PRAYER FOR RELIEF

WHEREFORE, Fine Promotions respectfully requests that the Court grant the following relief:

- A. A judgment in favor of Fine Promotions denying Green Pet Shop all relief requested in its Complaint in this action and dismissing Green Pet Shop's Complaint against Fine Promotions with prejudice;
- B. An award of monetary damages that Fine Promotions has suffered as a result of Green Pet Shop's and Firefly Buys' tortious interference;
- C. An award of monetary damages that Fine Promotions has suffered as a result of Green Pet Shop's and Firefly Buys' unfair competition;
- D. An award of monetary damages flowing from Green Pet Shop's and Firefly Buys' conspiracy to attempt to monopolize in violation of the antitrust laws;
- E. An award of monetary damages flowing from Green Pet Shop's bad faith patent enforcement in violation of the antitrust laws;
- F. Treble damages;

- G. A declaration that Fine Promotions has not infringed and is not infringing, either literally or under the doctrine of equivalents, any valid or enforceable claims of the '218 patent and '474 patent, that Fine Promotions has not contributed to or induced, and is not contributing to or inducing, infringement of any valid or enforceable claims of the '218 patent and '474 patent, and that Fine Promotions is not liable for any infringement;
- H. A declaration that the claims of the '218 patent and '474 patent are invalid;
- I. A judgment awarding Fine Promotions prejudgment and post-judgment interest and its costs and other expenses incurred in this action;
- J. A declaration that this is an exceptional case in Fine Promotions' favor within the meaning of 35 U.S.C. § 285;
- K. An award of Fine Promotions' attorneys' fees;
- L. An injunction prohibiting Green Pet Shop and Firefly Buys from tortiously interfering with Fine Promotions' business relations;
- M. An injunction prohibiting Green Pet Shop and Firefly Buys from conspiring to attempt to monopolize in violation of the antitrust laws;
- N. An injunction prohibiting Green Pet Shop from engaging in bad faith patent enforcement in violation of the antitrust laws; and
- O. Any and all other relief as this Court may deem just and proper.

JURY DEMAND

Fine Promotions demands trial by jury on all issues so triable, including specifically on Green Pet Shop's claims, Fine Promotions' defenses thereto, and Fine Promotions' counterclaims.

Dated: November 15, 2019

Respectfully submitted,

/s/ David N. Draper

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Civil Rule 5.2 on November 15, 2019.

/s/ David N. Draper

David N. Draper