

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS**

SHERMAN DIVISION

LAKESOUTH HOLDINGS, LLC,

Plaintiff,

v.

BED BATH & BEYOND, INC.,

Defendant.

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Civil Action No. 4:15-CV-398

JURY TRIAL DEMANDED

ORIGINAL COMPLAINT FOR PATENT INFRINGEMENT

COMES NOW Plaintiff LakeSouth Holdings, LLC and files this Original Complaint for patent infringement against Bed Bath & Beyond, Inc., and alleges as follows:

NATURE OF THE SUIT

1. This is a claim for patent infringement arising under the patent laws of the United States, Title 35 of the United States Code.

THE PARTIES

2. Plaintiff **LakeSouth Holdings, LLC** (“**Plaintiff**” or “**LakeSouth**”) is a Delaware limited liability company with its principal place of business located at 1460 Main Street, Suite 244, Southlake, Texas 76092.

3. Upon information and belief, Defendant **Bed Bath & Beyond, Inc.** (“**Defendant**” or “**BB&B**”) is a corporation organized and existing under the laws of the State of New York with its principal place of business at 650 Liberty Avenue, Union, New Jersey 07083. BB&B may be served via its registered agent, Prentice Hall Corp System, at 211 East 7th Street, Suite 620, Austin, Texas 78701-3218.

JURISDICTION AND VENUE

4. This action arises under the patent laws of the United States, 35 U.S.C. § 101, *et seq.* This Court's jurisdiction over this action is proper under the above statutes, including 35 U.S.C. § 271, *et seq.*, 28 U.S.C. § 1331 (federal question jurisdiction), and § 1338 (jurisdiction over patent actions).

5. Upon information and belief, BB&B, directly and/or through subsidiaries or intermediaries (including distributors, retailers, and others), has transacted business in this district and has committed acts of patent infringement in this District. Thus, venue is proper in this district under 28 U.S.C. §§ 1391(c) and 1400(b).

6. Upon information and belief, BB&B has conducted and does conduct substantial business in this forum, directly and/or through subsidiaries or intermediaries, such substantial business including but not limited to: (i) at least a portion of the infringements alleged herein; (ii) purposefully and voluntarily placing one or more infringing products into the stream of commerce with the expectation that they will be purchased by consumers in this forum; or (iii) regularly doing or soliciting business, engaging in other persistent courses of conduct, or deriving substantial revenue from goods and services provided to individuals in Texas and in this judicial district. Thus, BB&B is subject to this Court's specific and general personal jurisdiction pursuant to due process and the Texas Long Arm Statute. Venue is proper in the Eastern District of Texas pursuant to 28 U.S.C. §1391 and 28 U.S.C. § 1400(b).

THE PATENTS AT ISSUE

7. Mr. Gregory G. Kuelbs is a Texas resident and a prolific inventor. Mr. Kuelbs is a named inventor on more than 40 patents.

8. This cause of action asserts infringement of United States Patent No. 8,727,555 (“the ’555 Patent”) and United States Patent No. 8,794,781 (“the ’781 Patent”) (collectively, “the Asserted Patents”).

9. The ’555 Patent, entitled “Umbrella Apparatus,” duly and legally issued on May 20, 2014, from U.S. Patent Application No. 11/199,956, filed on August 9, 2005, naming as inventor Mr. Kuelbs. A true and correct copy of the ’555 Patent is attached hereto as **Exhibit A**.

10. The ’781 Patent, entitled “Umbrella Apparatus,” duly and legally issued on August 5, 2014, from U.S. Patent Application No. 10/650,537, filed on August 28, 2003, naming as inventor Mr. Kuelbs. A true and correct copy of the ’781 Patent is attached hereto as **Exhibit B**.

11. Plaintiff LakeSouth is the owner and assignee of all rights, title, and interest in and under the ’555 Patent and the ’781 Patent.

12. LakeSouth has standing to sue for infringement of the ’555 Patent and the ’781 Patent.

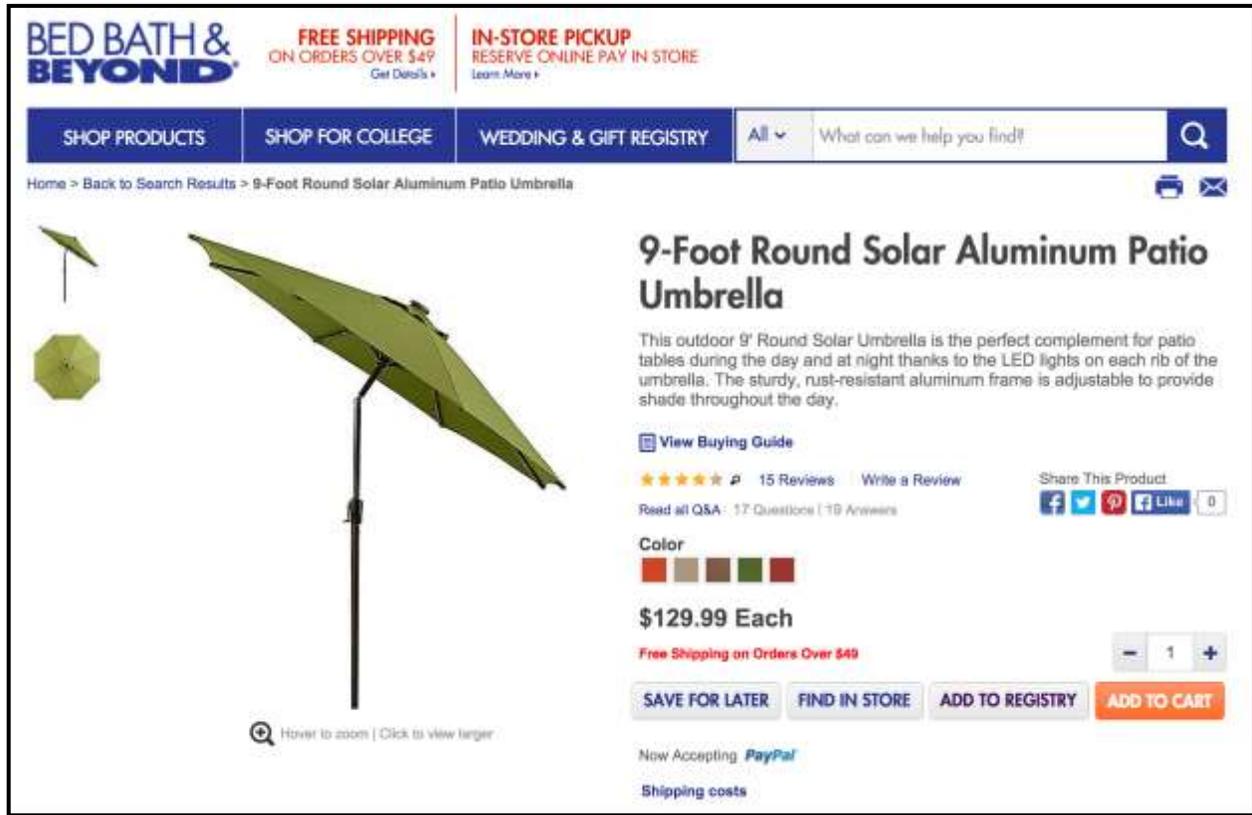
GENERAL ALLEGATIONS

13. Upon information and belief, BB&B purchases various patio and outdoor umbrellas that it uses, offers to sell, sells, and/or imports.

14. BB&B’s umbrellas are sold online through its website, www.bedbathandbeyond.com and at BB&B stores, including stores in the Eastern District of Texas.

15. BB&B uses, offers to sell, sells, and/or imports solar powered umbrellas that include lights and a solar panel and infringe one or more claims of the ’555 Patent and the ’781

Patent (“the Accused Umbrellas”). For example and without limitation, BB&B offers for sale and/or sells Accused Umbrellas described as “9-Foot Round Solar Aluminum Patio Umbrella”:



<http://www.bedbathandbeyond.com/store/product/9-foot-round-solar-aluminum-patio-umbrella/208180?Keyword=solar+umbrella>

16. Further discovery may reveal additional infringing products and/or models.
17. Upon information and belief, BB&B’s Accused Umbrellas are offered for sale and sold within the Eastern District of Texas.
18. BB&B has infringed and continues to infringe (literally and/or under the doctrine of equivalents) directly and/or through subsidiaries or intermediaries, one or more claims of the Asserted Patents by using, importing, testing, supplying, causing to be supplied, selling, and/or offering for sale in the United States the Accused Umbrellas.
19. LakeSouth has been and continues to be damaged as a result of BB&B’s infringing conduct. BB&B is therefore liable to LakeSouth in an amount that adequately

compensates LakeSouth for BB&B's infringement, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

20. BB&B failed to obtain permission from LakeSouth to use, offer to sell, sell, or import products incorporating the inventions claimed in the Asserted Patents.

21. For each count of infringement listed below, LakeSouth incorporates and realleges the allegations contained in the preceding paragraphs above including these General Allegations as if fully set forth in each count of infringement.

COUNT I – DIRECT INFRINGEMENT OF THE '555 PATENT

22. BB&B has been and is now directly infringing the '555 Patent in violation of 35 U.S.C. § 271(a) by using, selling, offering for sale, and/or importing into the United States products that are covered by at least Claim 1 of the '555 Patent, including but not limited to the Accused Umbrellas.

23. As a result of BB&B's infringement of the '555 Patent, LakeSouth has suffered and is owed monetary damages that are adequate to compensate it for the infringement under 35 U.S.C. § 284, but in no event less than a reasonable royalty.

Count II – DIRECT INFRINGEMENT OF THE '781 PATENT

24. BB&B has been and is now directly infringing the '781 Patent in violation of 35 U.S.C. § 271(a) by using, selling, offering for sale, and/or importing into the United States products that are covered by at least Claim 1 of the '781 Patent, including but not limited to the Accused Umbrellas.

25. As a result of BB&B's infringement of the '781 Patent, LakeSouth has suffered and is owed monetary damages that are adequate to compensate it for the infringement under 35 U.S.C. § 284, but in no event less than a reasonable royalty.

DEMAND FOR A JURY TRIAL

26. Pursuant to Rule 38 of the Federal Rules of Civil Procedure, LakeSouth demands a trial by jury on all issues triable of right by a jury.

PRAYER FOR RELIEF

27. WHEREFORE, LakeSouth respectfully requests that this Court enter judgment in its favor and grant the following relief:

28. A judgment that BB&B has directly infringed one or more claims of each of the Asserted Patents;

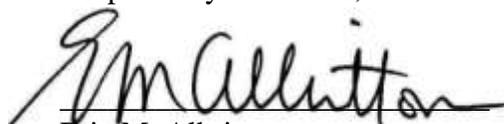
29. A judgment and order requiring BB&B to pay LakeSouth past and future damages under 35 U.S.C. § 284, including supplemental damages for any continuing post-verdict infringement up until entry of the final judgment, with an accounting, as needed, as provided by 35 U.S.C. § 284;

30. A judgment and order requiring BB&B to pay LakeSouth pre-judgment and post-judgment interest on the damages award; and

31. Such other and further relief as the Court may deem just and proper.

Dated: June 12, 2015

Respectfully submitted,



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