

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

INTERACTIVE PLAY DEVICES LLC, a  
Texas limited liability company,

Plaintiff,

v.

TARGET CORPORATION, a Minnesota  
corporation,

Defendant.

CIVIL ACTION FILE NO.

2:17-cv-00625-JRG

**JURY TRIAL DEMANDED**

**FOURTH AMENDED COMPLAINT FOR PATENT INFRINGEMENT**

1. This is an action for patent infringement under 35 U.S.C. § 271, *et seq.*, by Interactive Play Devices LLC (“IPD”) against Target Corporation (“Target” or the “Defendant”) for infringement of U.S. Patent No. 7,491,108 (the “108 Patent”), U.S. Patent No. 7,491,111 (the “111 Patent”), U.S. Patent No. 7,018,265 (the “265 Patent”), and U.S. Patent No. 9,868,072 (the “072 Patent”). A true and correct copy of the 108 Patent is attached hereto as **Exhibit A**. A true and correct copy of the 111 Patent is attached hereto as **Exhibit B**. A true and correct copy of the 265 Patent is attached hereto as **Exhibit C**. Collectively, these patents are referred to herein as the “Ghaly Patents.”

**THE PARTIES**

2. IPD is a limited liability company formed under the laws of Texas. IPD is the owner by assignment of the Ghaly Patents.

3. Upon information and belief, Target is a Minnesota Corporation with a principal office located at 1000 Nicollet Mall, Minneapolis, Minnesota 55403.

4. Target is in the business of selling and offering for sale in the United States, including at Target stores physically located in this judicial district and on its web site which is

accessible in this judicial district, the infringing products, which is explained in greater detail below.

5. Target has offered for sale, sold and/or is presently offering for sale and selling interactive robotic products for sale including COZMO interactive robots. These are referred to herein as the Infringing Products.

6. Target's web site has advertised Cozmo for sale:



[https://www.target.com/p/anki-cozmo-robot/-/A-52631303?ref=tgt\\_adv\\_XS000000&AFID=google\\_pla\\_df&CPNG=PLA\\_Video+Games+Shopping\\_Brand&adgroup=SC\\_Video+Games&LID=700000001170770pgs&network=g&device=c&location=9011028&gclid=EAiaIQobChMI34nhhO-t2gIVxQOGCh1vPw7LEAQYASABEGlc7fD\\_BwE&gclsrc=aw.ds](https://www.target.com/p/anki-cozmo-robot/-/A-52631303?ref=tgt_adv_XS000000&AFID=google_pla_df&CPNG=PLA_Video+Games+Shopping_Brand&adgroup=SC_Video+Games&LID=700000001170770pgs&network=g&device=c&location=9011028&gclid=EAiaIQobChMI34nhhO-t2gIVxQOGCh1vPw7LEAQYASABEGlc7fD_BwE&gclsrc=aw.ds)

7. Target's web site further states in regards to Cozmo:

Big brain. Bigger personality. Adorably personable. Cozmo's a supercomputer and loyal sidekick all at once. Thanks to artificial intelligence, Cozmo can express hundreds of emotions. From curious to clever, persistent to playful, he has personality x 10. He knows your name, face, and quirks. And best of all, he continues to evolve the more you hang out. Super-powered smarts. Cozmo is made of 300+ parts that create one super smart, super entertaining robot. He doesn't just move; he gets curious and explores. He doesn't just learn; he plots and plans. He doesn't just see you; he gets to know you. Also, Cozmo is equipped with Code Lab, the perfect platform for new coders. Simply drag and drop a few blocks and you'll see Cozmo act out your creation. Always game. Cozmo is a game-playing machine. Literally. Whether lifting his Power Cubes or challenging you to games like Quick Tap and Keepaway, he's always up for action. And in Explorer Mode, Cozmo lets you guide him through his environment to see what he sees - day or night. Cozmo's skills and games are constantly updating, so the fun never runs out. Ready to roll. Cozmo is way easier than you'd think and tougher than he looks. There are no parts to put together, and all you need is a compatible iOS or Android device and the free Cozmo app. Things like security and durability have all been rigorously tested.

*Id.*

## **JURISDICTION AND VENUE**

8. This is an action for infringement of a United States patent arising under 35 U.S.C. §§ 271, 281, and 284–85, among others. This Court has subject matter jurisdiction of the action under 28 U.S.C. §§ 1331 and 1338(a).

9. Target has availed itself of the privilege of doing business in Texas, including in this judicial district. Target has regular and established places of business throughout Texas, including within this judicial district. Moreover, Target is registered to do business in the State of Texas, has offices and facilities in the State of Texas, and actively directs its activities to customers located in the State of Texas.

10. This Court has personal jurisdiction over Target in this action because Target has committed acts within the Eastern District of Texas giving rise to this action and has established minimum contacts with this forum such that the exercise of jurisdiction over Target would not offend traditional notions of fair play and substantial justice. Defendant Target, directly and/or through subsidiaries or intermediaries (including distributors, retailers, and others), has committed and continues to commit acts of infringement in this district by offering for sale and sales of Infringing Products.

11. The regular and established Target places of business in this district include, but are not limited to the Target stores located at: 3092 N Eastman Road #100, Longview, TX 75605; 102 Richmond Road, Texarkana, TX 75503; 4200 S Medford Drive, Lufkin, TX 75901; 4160 Town Center Street, Sherman, TX 75092; 5850 Eastex Freeway, Beaumont, TX 77708; and multiple locations in Plano, TX.

12. As a result of its retail activities in this district, Target also employs people and maintains inventory, including some or all of the types of Infringing Products, and equipment in

this district.

13. Venue is proper pursuant to 28 U.S.C. §§ 1391 and 1400(b) because Target has committed acts of infringement of the Ghaly Patents by offering for sale and selling Infringing Products at these regular and established places of business, and on the interactive Target web site which offers or has offered the Infringing Products for sale, and which is accessible in this judicial district. Target derives significant benefits from its presence in the district, both physical and online through its interactive web site, including but not limited to sales revenue which Target receives due to sales activity in this district.

14. Target is subject to this Court's specific and general personal jurisdiction under due process and/or the Texas Long Arm Statute due at least to Defendants' substantial business in this forum, including: (i) at least a portion of the infringements alleged herein; and (ii) regularly doing or soliciting business, engaging in other persistent courses of conduct, and/or deriving substantial revenue from goods and services provided to individuals in Texas and in this district.

### **BACKGROUND**

15. Plaintiff filed this suit against Target on August 31, 2017, and served the complaint on Target. The original complaint in this action identified CHiP as the sole infringing product, and identified the infringed patent as the '108 Patent. Upon service of the original complaint, Target was on notice of the '108 Patent, as well as Plaintiff's explanation for how CHiP, as an interactive robotic toy, infringed the '108 Patent.

16. Plaintiff subsequently filed and served Target with a First Amended Complaint.

The First Amended Complaint was filed on September 19, 2017. The First Amended Complaint also identified CHiP as the infringing product, and identified the infringed patents as the ‘108 Patent, the ‘111 Patent and the ‘265 Patent. Upon service of the First Amended Complaint, Target was on notice of the ‘108 Patent, the ‘111 Patent and the ‘265 Patent, as well as Plaintiff’s explanation for how CHiP, as an interactive robotic toy vehicle, infringed the ‘108 Patent, the ‘111 Patent and the ‘265 Patent.

17. Plaintiff subsequently filed and served Target with a Second Amended Complaint. The motion for leave to file the Second Amended Complaint was filed on February 8, 2018. The Second Amended Complaint identified CHiP as the infringing product, and identified the infringed patents as the ‘108 Patent, the ‘111 Patent, the ‘265 Patent, and the ‘072 Patent. Upon service of the Second Amended Complaint, Target was on notice of the ‘108 Patent, the ‘111 Patent, the ‘265 Patent, and the ‘072 Patent, as well as Plaintiff’s explanation for how CHiP, as an interactive robotic toy vehicle, infringed the ‘108 Patent, the ‘111 Patent, the ‘265 Patent, and the ‘072 Patents.

18. Pursuant to the Local Rules of this Court, Plaintiff commenced the preparation of its Preliminary Infringement Contentions, to be served upon Target in this case. During the course of preparing these contentions, Plaintiff visited Target’s web site, and learned that, in addition to CHiP, Target has sold, and continues to sell other interactive robotic toys which are functionally similar to CHiP – including COZMO.

19. Plaintiff placed Target on written notice of these additional infringing products on April 4, 2018. By written notice to counsel for Target, Plaintiff identified the additional products, and stated “Given the extraordinary scope of the infringement, the fact that Target continues to offer these infringing products for sale...combined with the fact that Target

continues its unabated sales of numerous other infringing products with knowledge of the accusations set forth in the Second Amended Complaint (and prior iterations thereof) that it is infringing the patents-in-suit, we intend to amend the complaint to conform the allegations of infringement to the claim charts which we will provide you on April 10, and to allege willful infringement by Target in a manner that is most egregious for the reasons stated herein.”

20. On April 10, 2018, Plaintiff provided its Preliminary Infringement Contentions to Target, including claim charts demonstrating infringement by each of the Infringing Products by direct infringement, joint infringement, contributory infringement and inducement-to-infringe. These contentions were directed to a number of products, including the Cozmo.

21. Upon information and belief, with actual knowledge of the Ghaly Patents and knowledge as to why interactive robotic toys such as the Infringing Products infringe them, Target continues to offer for sale and sell the Infringing Products. Thus, Target has acted to cause ongoing infringement of the Ghaly Patents with knowledge of them, and has acted to cause this infringement despite an objectively high likelihood that its actions constituted infringement of one or more of the Ghaly Patents. This likelihood of infringement was either known to Target or so obvious based upon information provided to it by Plaintiff that it should have been known to Target. In light of all of these factors, including the Infringing Products which Target has continued to sell despite the knowledge of its infringement, Target’s infringement in this case is egregious in nature.

22. Plaintiff filed its Third Amended Complaint in May 2018, after serving Target with its infringement contentions. Subsequent to the filing of the Third Amended Complaint, Plaintiff negotiated an agreement with WowWee, the makers of the CHiP interactive robot and several other interactive robotic toy products offered for sale and sold by Target. As the result of

this agreement with WowWee, the only remaining Infringing Products in the case are the Cozmo robotic toys sold by Target. The purpose of this amendment to the complaint is to clarify the scope of Infringing Products by removing any and all WowWee products previously identified in infringement contentions and the Third Amended Complaint from the case.

**COUNT I**  
**(Infringement of the 108 Patent)**

23. Count I incorporates the contents of the preceding paragraphs 1-22 as if restated

24. Cozmo is an interactive play device for interacting between the device and the user comprising:

a housing,

a microprocessor with a computer-readable medium encoded with a computer program to control the operation of the device,

a computer program segment that generates a plurality of interactions for providing interactive effects with the user,

at least one of a switch, a pressure switch, a sound activated sensor, a voice activated module, a speech recognition module, a magnetic sensor, a light activated sensor, a magnetic sensor, a proximity sensor, a switch on a remote control apparatus, and an accessory that can be plugged into the device to enable a user to interact with the device,

computer memory to store information related to user's responses to interactions, a computer program segment that processes user's responses to derive knowledge information pertaining to how the user has interacted with the device, and

a computer program segment that employs said knowledge information to control the device to operate in a distinct manner that is different from the operation of a similar device with a different knowledge information.

25. Therefore, Cozmo infringes at least one claim of the 108 Patent.

26. Because all elements of at least one claim of the 108 Patent are present in the Cozmo, either literally or under the doctrine of equivalents, the past and present sales and offers

for sale of Cozmo by Target in its retail stores and on its interactive web site infringes at least one claim of the 108 Patent.

27. By reason of these egregious and willful infringing activities of Target, IPD has suffered, and will continue to suffer, substantial damages in an amount to be determined at trial, including but not limited to a reasonable royalty, treble damages and attorney's fees.

**COUNT II**  
**(Infringement of the 111 Patent)**

28. Count II incorporates the contents of the preceding paragraphs 1-27 as if restated fully herein.

29. Cozmo is an interactive toy vehicle that provides interactive effects with the user comprising:

input control mechanisms to enable a player to control the vehicle, and interact with the vehicle,

a microprocessor with a computer-readable medium encoded with a computer program to control the operation of the vehicle,

a computer program segment to control the operation of the vehicle,

computer memory to store information related to user's interactions,

a computer program segment that analyzes user's interactions with the vehicle in order to derive knowledge information that includes at least one of pattern of user's interactions with the vehicle, user's preferences in interacting with the vehicle, user's habits in interacting with the device, and personal information pertaining to the user, and

a computer program segment that employs said knowledge information to operate the vehicle in a plurality of states that imitates human or android behavior.

30. Because all elements of at least one claim of the 111 Patent are present in the Cozmo, either literally or under the doctrine of equivalents, the sale and offer for sale of the



Cozmo by Target in its retail stores and on its interactive web site infringes at least one claim of the 111 Patent.

31. By reason of these egregious and willful infringing activities of Target, IPD has suffered, and will continue to suffer, substantial damages in an amount to be determined at trial, including but not limited to a reasonable royalty, treble damages and attorney's fees.

**COUNT III**  
**(Infringement of the 265 Patent)**

32. Count III incorporates the contents of the preceding paragraphs 1-31 as if restated fully herein.

33. Cozmo is a toy vehicle comprising:

vehicle body having a plurality of wheels,

motor driving at least one wheel of the vehicle,

input control mechanisms to enable a player to control the vehicle, and interact with the vehicle,

a microprocessor or a micro-controller to control the operation of the vehicle, and

a control logic executed on the processor that controls the operation of the vehicle independent of control signals received from said input control mechanisms, and which includes an algorithm that employs at least one of a random function, and a function that determines if the manner in which a user interacts with the vehicle is consistent with past interactions.

34. Because all elements of at least one claim of the 265 Patent are present in each Cozmo, either literally or under the doctrine of equivalents, the sale and offer for sale of each Cozmo by Target in its retail stores and on its interactive web site infringes at least one claim of the 265 Patent.

35. There is also an App which is used with the Cozmo. It is provided for free in order to provide upgraded capabilities, including remote control. Target promotes the use of the

App, including promotion on its web site and in packaging instructions provided with the box kit. Target describes benefits to users that they only receive if they download the App, provides product packaging including instructions to download the App, and instructs user to use the App in tandem with the Accused Instrumentality, making it fair to attribute the App to Target in this case.

36. The App enables a player to control Cozmo, and interact with Cozmo. Using a smart device, a user may guide Cozmo through his environment, and interact with Cozmo, such as prompting him to greet people and pets, and use his lift to move Power Cubes. This is done through use of a touch switch enabled by the App on the smart device. This is an example of “input control mechanisms to enable a player to control the vehicle, and interact with the vehicle” within the meaning of the claims of the 265 Patent.

37. Therefore, Cozmo used with the Cozmo App. infringes the 265 Patent by, *inter alia*, joint infringement with its customers, by inducement of its customers to use the invention of at least one claim of the 265 Patent, and also by contributory infringement (insofar as the Infringing Products are not staple goods).

38. By reason of these egregious and willful infringing activities of Target, IPD has suffered, and will continue to suffer, substantial damages in an amount to be determined at trial, including but not limited to a reasonable royalty, treble damages and attorney’s fees.

#### **PRAYER FOR RELIEF**

WHEREFORE, IPD respectfully requests the Court to enter judgment as follows:

- A. That Defendant has directly infringed the Ghaly Patents;
- B. That Defendant be ordered to pay damages adequate to compensate IPD for its infringement of the Ghaly Patents, but in no event less than a reasonable royalty, together with

prejudgment and post-judgment interest thereon;

C. That Defendant be ordered to account for any post-verdict infringement and pay no less than a reasonable royalty, together with interest, thereon;

D. That this case be declared: (a) a case of willful infringement, and that the damages be trebled; and (b) an exceptional case under 35 U.S.C. § 285 and that IPD be awarded its reasonable attorneys' fees, costs, and expenses; and

E. That IPD be granted such other and additional relief as the Court deems just and proper.

### **Jury Demand**

IPD hereby demands a jury trial as to all issues so triable.

DATED this 5th day of June, 2018.

RESPECTFULLY SUBMITTED,

/s/ Steven G. Hill

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**CERTIFICATE OF SERVICE**

I hereby certify that on this the 5th day of June, 2018, I electronically filed the above and foregoing document with the Clerk of this Court using the CM/ECF filing system, and that service upon all counsel of record will be automatically accomplished through the Notice of Electronic Filing of this document.

/s/ Steven G. Hill

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