

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN**

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**Pioneer Pet Products, LLC**

Plaintiff,

v.

**Innovative Design & Sourcing, LLC, and  
Bed Bath and Beyond Inc.**

Defendants.

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**COMPLAINT**

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Plaintiff, Pioneer Pet Products, LLC (“Pioneer Pet”), for its complaint against defendants Innovative Design & Sourcing, LLC (“Innovative Design”), and Bed Bath & Beyond Inc. (“Bed Bath & Beyond”) alleges as follows:

**Parties**

1. Plaintiff Pioneer Pet is a Wisconsin company with its principal place of business in this District at N144 W5660 Pioneer Road, Cedarburg, Wisconsin 53012.
2. Pioneer Pet operates within this District and is engaged in the manufacture and sale of pet-related products, including, but not limited to, catnip toys for cats.
3. Upon information and belief, Defendant Innovative Design is a Connecticut company with its principal place of business located at 2 Mansfield Place, Darien, Connecticut 06820.

4. Upon information and belief, Defendant Bed Bath & Beyond is a New York company with its principal place of business located at 650 Liberty Avenue, Union, New Jersey, 07083.

### **Nature of Action**

5. This is an action for patent infringement arising under the Patent Laws of the United States, 35 U.S.C. § 100 *et seq.*

6. Pioneer Pet is the owner of all right, title and interest in U.S. Patent 9,101,114 (“the ‘114 Patent”) entitled *Animal Attractant Dispensing Device*, issued on August 11, 2015, a copy of which is attached hereto as Exhibit A.

7. Pioneer Pet is the owner of all right, title and interest in U.S. Patent D670,455 (“the ‘455 Patent”) entitled *Catnip Toy*, issued on November 6, 2012, a copy of which is attached hereto as Exhibit B.

8. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

9. Upon information and belief, Defendants Innovative Design and Bed Bath & Beyond regularly conduct business in this District and have sold and/or offered for sale catnip toys that infringe the ‘114 patent and the ‘455 patent in this District.

10. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(c) and 1400(b).

11. Pioneer Pet manufactures and sells a cat nip toy under the trademark Nip Nibblers (“Nip Nibblers”), examples of which are shown below.



12. Upon information and belief Pioneer Pet began to sell the Nip Nibblers product on or about March 3, 2011.

13. The product packaging for Plaintiff's Nip Nibblers product includes a virtual patent marking notice, an example of which is visible in the photographs shown above.

14. Pioneer Pet maintains a virtual patent marking website available at [pioneerpet.com/patents](http://pioneerpet.com/patents), a copy of which is attached hereto as Exhibit C.

15. Pioneer Pet's virtual patent marking website provides notice of the '114 patent and the '455 patent.

16. Upon information and belief, Defendant Bed Bath & Beyond began to offer for sale and/or sell Pioneer Pet's Nip Nibblers product on or about March 29, 2012.

17. Upon information and belief, Defendant Bed Bath & Beyond stopped offering for sale and/or selling Pioneer Pet's Nip Nibblers product on or about April 9, 2019.

18. Upon information and belief, Pioneer Pet's Nip Nibblers product displayed a virtual patent marking notice on its packaging during the entire time in which it was sold and/or offered for sale by Bed Bath & Beyond.

19. Upon information and belief, Pioneer Pet maintained a virtual patent marking website available at pioneerpet.com/patents during the entire time in which Pioneer Pet's Nip Nibblers Product was sold and/or offered for sale by Bed Bath & Beyond.

20. Upon information and belief, Defendant Innovative Design imports, makes, uses, sells, and/or offers for sale a catnip toy under the name "Meow & Me Catnip Toy"), examples of which are shown below.



21. Upon information and belief, Defendant Bed Bath & Beyond sells and/or offers for sale the Meow & Me Catnip Toy at its retail stores.

22. Upon information and belief, Defendant Bed Bath & Beyond sells and/or offers for sale the Meow & Me Catnip Toy at its e-commerce website, available at [www.bedbathandbeyond.com](http://www.bedbathandbeyond.com), a photocopy of which is attached hereto as Exhibit D.

23. Upon information and belief, Defendant Bed Bath & Beyond stopped selling Pioneer Pet's Nip Nibblers product and replaced it with the Meow & Me Catnip Toy product.

## COMPARISON OF EXEMPLARY CLAIMS TO THE ACCUSED PRODUCT

### Claim 1 of the '114 Patent

24. Claim 1 of the '114 patent is directed to an animal attractant dispensing device.
25. The Meow & Me Catnip Toy is an animal attractant dispensing device as indicated on its packaging, "Gently releases catnip with each squeeze or swat."
26. Claim 1 of the '114 patent includes a flexible pouch having a plurality of pairs of perforations through which an animal attractant inside the pouch is dispensed by deformation of the pouch caused by interaction with the pouch by an animal.
27. The Meow & Me Catnip Toy includes a flexible pouch having a plurality of pairs of perforations through which an animal attractant inside the pouch is dispensed by deformation of the pouch caused by interaction with the pouch by an animal as shown in the photograph above and as indicated on its packaging, "Lightweight woven nylon" and "Gently releases catnip with each squeeze or swat."
28. Claim 1 of the '114 patent states that the pouch is made of a flexible perforate sidewall formed of a section of braided or woven tubing or sleeving comprised of a plurality of elongate strands forming perforations therebetween.
29. The pouch of the Meow & Me Catnip Toy is made of a flexible perforate sidewall formed of a section of braided or woven tubing or sleeving comprised of a plurality of elongate strands forming perforations therebetween, as shown in the photograph above and as indicated on its packaging, "Lightweight woven nylon".
30. Claim 1 of the '114 patent states that the strands helically spiraling about a central longitudinal axis of the pouch and movable relative to one another in response to deformation or

deflection of the pouch by animal interaction changing the size of a plurality of the perforations formed in the pouch sidewall.

31. The Meow & Me Catnip Toy includes strands helically spiraling about a central longitudinal axis of the pouch and movable relative to one another in response to deformation or deflection of the pouch by animal interaction changing the size of a plurality of the perforations formed in the pouch sidewall, as shown in the photograph above and as indicated on its packaging, “Lightweight woven nylon.”

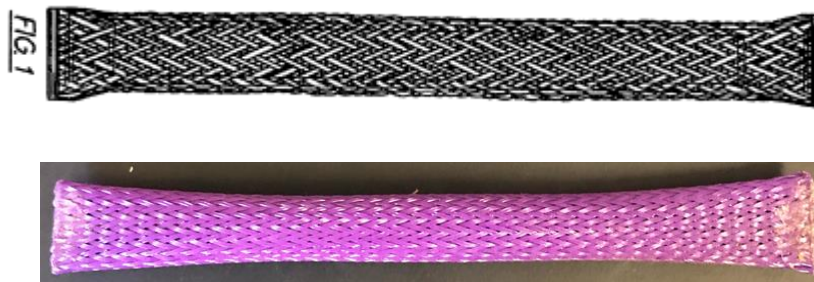
32. Claim 1 of the ‘971 patent recites an animal attractant disposed inside the pouch.

33. The Meow & Me Catnip Toy includes an animal attractant disposed inside the pouch as indicated on its packaging, “catnip toys” and “Gently releases catnip with each squeeze or swat.”

#### **Claim of the ‘455 Patent**

34. Claim 1 of the ‘455 patent is directed to the ornamental design for a catnip toy.

35. The ‘455 patent includes three figures, which are shown below in comparison to corresponding photographs of a Meow & Me Catnip Toy.





## COUNT I

### Claim for Infringement of the '114 Patent by Innovative Design

36. Pioneer Pet realleges and incorporates by reference the allegations in paragraphs 1-35 as if fully set forth herein.

37. Innovative Design has imported, manufactured, used, sold and/or offered to sell the infringing Meow & Me Catnip Toy.

38. Innovative Design has directly infringed and continues to infringe the '114 patent through the importation, use, manufacture, sale, and/or offer for sale of the infringing Meow & Me Catnip Toy.

39. Upon information and belief, Innovative Design was aware of the '114 patent prior to the importation, use, manufacture, sale, or offer for sale of the infringing Meow & Me Catnip Toy.

40. Upon information and belief, after becoming aware of the '114 patent Innovative Design has continued to import, use, manufacture, sell, or offer for sale the infringing Meow & Me Catnip Toy.

41. Upon information and belief, Innovative Design knew that the import, manufacture, use, sale, or offer for sale of the infringing Meow & Me Catnip Toy would infringe the '114 patent.

42. The infringing Meow & Me Catnip Toy are not commonly available items with substantial non-infringing uses.

43. Upon information and belief, Innovative Design has been and is willfully infringing the '114 patent.

44. Innovative Design will continue to import, manufacture, use, sell, or offer for sale the infringing Meow & Me Catnip Toy unless enjoined from doing so, causing Pioneer Pet irreparable harm.

45. Pursuant to 35 U.S.C. § 284, Pioneer Pet is entitled to enhanced damages for infringement of the '114 patent by Innovative Design, up to treble damages.

46. Pursuant to 35 U.S.C. § 283, Pioneer Pet is entitled to a preliminary and permanent injunction against further infringement of the '114 patent by Innovative Design.

## COUNT II

### **Claim for Infringement of the '114 Patent by Bed Bath & Beyond**

47. Pioneer Pet realleges and incorporates by reference the allegations in paragraphs 1-46 as if fully set forth herein.

48. Bed Bath & Beyond has imported, manufactured, used, sold and/or offered to sell the infringing Meow & Me Catnip Toy.

49. Bed Bath & Beyond has directly infringed and continues to infringe the '114 patent through the importation, use, manufacture, sale, and/or offer for sale of the infringing Meow & Me Catnip Toy.

50. Upon information and belief, Bed Bath & Beyond was aware of the '114 patent prior to the importation, use, manufacture, sale, or offer for sale of the infringing Meow & Me Catnip Toy.

51. Upon information and belief, after becoming aware of the '114 patent Bed Bath & Beyond has continued to import, use, manufacture, sell, or offer for sale the infringing Meow & Me Catnip Toy.

52. Upon information and belief, Bed Bath & Beyond knew that the import, manufacture, use, sale, or offer for sale of the infringing Meow & Me Catnip Toy would infringe the '114 patent.

53. The infringing Meow & Me Catnip Toy are not commonly available items with substantial non-infringing uses.

54. Upon information and belief, Bed Bath & Beyond has been and is willfully infringing the '114 patent.

55. Bed Bath & Beyond will continue to import, manufacture, use, sell, or offer for sale the infringing Meow & Me Catnip Toy unless enjoined from doing so, causing Pioneer Pet irreparable harm.

56. Pursuant to 35 U.S.C. § 284, Pioneer Pet is entitled to enhanced damages for infringement of the '114 patent by Bed Bath & Beyond, up to treble damages.

57. Pursuant to 35 U.S.C. § 283, Pioneer Pet is entitled to a preliminary and permanent injunction against further infringement of the '114 patent by Innovative Design.

### **COUNT III**

#### **Claim for Infringement of the '445 Patent by Innovative Design**

58. Pioneer Pet realleges and incorporates by reference the allegations in paragraphs 1-57 as if fully set forth herein.

59. Innovative Design has imported, manufactured, used, sold and/or offered to sell the infringing Meow & Me Catnip Toy.

60. Innovative Design has directly infringed and continues to infringe the '445 patent through the importation, use, manufacture, sale, and/or offer for sale of the infringing Meow & Me Catnip Toy.

61. Upon information and belief, Innovative Design was aware of the '445 patent prior to the importation, use, manufacture, sale, or offer for sale of the infringing Meow & Me Catnip Toy.

62. Upon information and belief, after becoming aware of the '445 patent Innovative Design has continued to import, use, manufacture, sell, or offer for sale the infringing Meow & Me Catnip Toy.

63. Upon information and belief, Innovative Design knew that the import, manufacture, use, sale, or offer for sale of the infringing Meow & Me Catnip Toy would infringe the '445 patent.

64. The infringing Meow & Me Catnip Toy are not commonly available items with substantial non-infringing uses.

65. Upon information and belief, Innovative Design has been and is willfully infringing the '445 patent.

66. Innovative Design will continue to import, manufacture, use, sell, or offer for sale the infringing Meow & Me Catnip Toy unless enjoined from doing so, causing Pioneer Pet irreparable harm.

67. Pursuant to 35 U.S.C. § 284, Pioneer Pet is entitled to enhanced damages for infringement of the '445 patent by Innovative Design, up to treble damages.

68. Pursuant to 35 U.S.C. § 283, Pioneer Pet is entitled to a preliminary and permanent injunction against further infringement of the '445 patent by Innovative Design.

#### **COUNT IV**

##### **Claim for Infringement of the '114 Patent by Bed Bath & Beyond**

69. Pioneer Pet realleges and incorporates by reference the allegations in paragraphs 1-68 as if fully set forth herein.

70. Bed Bath & Beyond has imported, manufactured, used, sold and/or offered to sell the infringing Meow & Me Catnip Toy.

71. Bed Bath & Beyond has directly infringed and continues to infringe the '445 patent through the importation, use, manufacture, sale, and/or offer for sale of the infringing Meow & Me Catnip Toy.

72. Upon information and belief, Bed Bath & Beyond was aware of the '445 patent prior to the importation, use, manufacture, sale, or offer for sale of the infringing Meow & Me Catnip Toy.

73. Upon information and belief, after becoming aware of the '445 patent Bed Bath & Beyond has continued to import, use, manufacture, sell, or offer for sale the infringing Meow & Me Catnip Toy.

74. Upon information and belief, Bed Bath & Beyond knew that the import, manufacture, use, sale, or offer for sale of the infringing Meow & Me Catnip Toy would infringe the '445 patent.

75. The infringing Meow & Me Catnip Toy are not commonly available items with substantial non-infringing uses.

76. Upon information and belief, Bed Bath & Beyond has been and is willfully infringing the '445 patent.

77. Bed Bath & Beyond will continue to import, manufacture, use, sell, or offer for sale the infringing Meow & Me Catnip Toy unless enjoined from doing so, causing Pioneer Pet irreparable harm.

78. Pursuant to 35 U.S.C. § 284, Pioneer Pet is entitled to enhanced damages for infringement of the '445 patent by Bed Bath & Beyond, up to treble damages.

79. Pursuant to 35 U.S.C. § 283, Pioneer Pet is entitled to a preliminary and permanent injunction against further infringement of the '445 patent by Innovative Design.

### **Request for Relief**

WHEREFORE, Pioneer Pet Products, LLC demands that judgment be entered in its favor and against Defendants Innovative Design & Sourcing, LLC and Bed Bath & Beyond Inc., as follows:

- A. Adjudging that Defendant Innovative Design & Sourcing, LLC has infringed U.S. Patent 9,101,114;
- B. Adjudging that Defendant Innovative Design & Sourcing, LLC has infringed U.S. Patent D670,455;
- C. Adjudging that Defendant Innovative Design & Sourcing, LLC has willfully infringed U.S. Patent 9,101,114;
- D. Adjudging that Defendant Innovative Design & Sourcing, LLC has willfully infringed U.S. Patent D670,455;
- E. Adjudging that Defendant Bed Bath & Beyond Inc. has infringed U.S. Patent 9,101,114;
- F. Adjudging that Defendant Bed Bath & Beyond Inc. has infringed U.S. Patent D670,455;
- G. Adjudging that Defendant Bed Bath & Beyond Inc. has willfully infringed U.S. Patent 9,101,114;
- H. Adjudging that Defendant Bed Bath & Beyond Inc. has willfully infringed U.S. Patent D670,455;
- I. Preliminarily and permanently enjoining the Defendant Innovative Design & Sourcing, LLC from infringing U.S. Patent 9,101,114;
- J. Preliminarily and permanently enjoining the Defendant Innovative Design & Sourcing, LLC from infringing U.S. Patent D670,455;
- K. Preliminarily and permanently enjoining the Defendant Bed Bath & Beyond Inc. from infringing U.S. Patent 9,101,114;
- L. Preliminarily and permanently enjoining the Defendant Bed Bath & Beyond Inc. from infringing U.S. Patent D670,455;

- M. Awarding Plaintiff its damages, together with prejudgment interest, caused by Defendant's infringement;
- N. Granting such other and further relief as the court may deem appropriate.

**Jury Demand**

Plaintiff Pioneer Pet Products, LLC hereby demands a jury trial of all issues of fact not admitted by the defendants.

Dated: February 5, 2020

s/Adam L. Brookman  
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