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RICHARD W. BRINKMANN
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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Worldwise, Inc.

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

CV 12 1431 LB

Case No. _____
COMPLAINT FOR PATENT
INFRINGEMENT UNDER 35 U.S.C. § 271

11 Worldwise, Inc.,
12 Plaintiff,
13 v.
14 The Brinkmann Corporation and Dallas
15 Manufacturing Company, Inc.,
16 Defendants.

DEMAND FOR JURY TRIAL

17 COMPLAINT FOR PATENT INFRINGEMENT

18
19 Plaintiff Worldwise, Inc. ("Worldwise") brings this Complaint against Defendants The
20 Brinkmann Corporation and Dallas Manufacturing Company, Inc. (collectively, "Brinkmann" or
21 "Defendants") for infringement of U.S. Patent No. 7,353,773 ("the '773 Patent") pursuant to 35
22 U.S.C. § 271.

23 THE PARTIES

- 24 1. Plaintiff Worldwise, Inc. ("Worldwise") is a California Corporation with its
25 principal place of business at 160 Mitchell Road, San Rafael, California 94903.
26 2. On information and belief, Defendant The Brinkmann Corporation is a Texas
27 Corporation with its principal place of business at 4215 McEwen Road, Dallas, Texas 75244.
28 3. On information and belief, Defendant Dallas Manufacturing Company, Inc. is a

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1 Texas Corporation with its principal place of business at 4215 McEwen Road, Dallas, Texas
2 75244. On information and belief, Defendant Dallas Manufacturing Company, Inc. is a wholly
3 owned subsidiary of The Brinkmann Corporation.

4 **JURISDICTION AND VENUE**

5 4. This is an action for patent infringement under the patent laws of the United
6 States, Title 35 of the United States Code. The Court has subject matter jurisdiction over this
7 action pursuant to 28 U.S.C. §§1331 and 1338(a). Venue lies in this judicial district pursuant to
8 28 U.S.C. §§ 1391(c) and 1400(b).

9 5. Defendants are subject to personal jurisdiction in this Court. Defendants have
10 conducted and do conduct business within the State of California, directly or through
11 intermediaries or agents.

12 6. In addition to Defendants' continuous and systematic conduct of business in
13 California, the causes of action against Defendants in this Complaint arose from or are connected
14 with their purposeful acts committed in California, including directly infringing, contributorily
15 infringing, or inducing infringement of the '773 Patent by, among other activities, making,
16 selling, offering to sell, and using and inducing others to use products that embody one or more
17 claims in the '773 Patent.

18 7. Venue is proper pursuant to 28 U.S.C. §§ 1391(b) and (c), and 1400(b) because,
19 among other reasons, Defendants are subject to personal jurisdiction in this judicial district, and
20 have committed acts of infringement in this judicial district.

21 **BACKGROUND**

22 8. Worldwise is the owner by assignment of all right, title and interest in and to the
23 '773 Patent.

24 9. The '773 Patent is entitled "Pet Bed with Chopped Memory Foam Filler." On
25 April 8, 2008, after a full and fair examination, the United States Patent and Trademark Office
26 ("PTO") duly and legally issued the '773 Patent. A true and correct copy of the '773 Patent is
27 attached hereto as Exhibit A. The '773 Patent is valid and enforceable.

28 10. The patented invention relates to a pet bed. Commercial embodiments of the

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1 patented invention are sold through retail distributors under the PoochPlanet® and other brands.

2 11. Defendants directly compete with Worldwise in the marketplace. After Worldwise
3 introduced its patented pet beds to the market, Defendants introduced products which, on
4 information and belief, were intended to compete with Worldwise's patented pet beds and which
5 infringe the '773 Patent.

6 12. On information and belief, Defendants also supply infringing pet beds to other
7 entities for resale.

8 **CLAIM FOR RELIEF**

9 **INFRINGEMENT OF U.S. PATENT NO. 7,353,773**

10 13. Worldwise incorporates by reference the preceding paragraphs 1-12 as set forth
11 fully herein.

12 14. Defendants, and each of them, have infringed and continue to infringe the '773
13 Patent in violation of 35 U.S.C. § 271(a) by making, using, selling and/or offering for sale, within
14 the United States, California and this judicial district, products embodying the inventions claimed
15 in the '773 Patent, including without limitation the products identified above.

16 15. Defendants, and each of them, have infringed and continue to infringe, the '773
17 Patent by actively inducing others to make, use, sell and/or offer for sale, within the United
18 States, California and this judicial district, products embodying the inventions claimed in the '773
19 Patent.

20 16. Defendants, and each of them, have infringed and continue to infringe, the '773
21 Patent by contributing to the infringement by others by providing products embodying the
22 inventions claimed in the '773 Patent.

23 17. Worldwise is in compliance with the marking requirements of 35 U.S.C. § 287.

24 18. Defendants have had actual knowledge of the infringement of the '773 Patent
25 since at least as early as November 2011.

26 19. Defendants' infringement of the '773 Patent has been and continues to be willful
27 and deliberate.

28 20. Worldwise has no adequate remedy at law against Defendants' acts of

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1 infringement and Defendants' infringement will continue unless enjoined by this Court.

2 21. Worldwide has suffered, and will continue to suffer, irreparable injury as a result
3 of Defendants' infringement.

4 22. Worldwide has been damaged by Defendants' infringement, and will continue to
5 be damaged until enjoined by this Court.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Worldwide prays for the following relief:

- 8 1. That Defendants be adjudged to have infringed the '773 Patent, directly and
9 indirectly, literally and/or under the doctrine of equivalents;
- 10 2. That Defendants and their officers, directors, agents, servants, employees,
11 attorneys, affiliates, divisions, branches, parents, and those persons in active
12 concert or participation with any of them, be preliminarily and permanently
13 restrained and enjoined from directly and/or indirectly infringing the '773 Patent;
- 14 3. An award of damages pursuant to 35 U.S.C. § 284 sufficient to compensate
15 Worldwide for Defendants' past infringement and any continuing or future
16 infringement up until the date Defendants are finally and permanently enjoined
17 from further infringement;
- 18 4. Adjudging that the '773 Patent is valid and enforceable;
- 19 5. An assessment of pre-judgment and post-judgment interest and costs against
20 Defendants, together with an award of such interest and costs, in accordance with
21 35 U.S.C. § 284;
- 22 6. That Brinkmann be directed to pay enhanced damages, including Worldwide's
23 attorneys' fees incurred in connection with this lawsuit pursuant to 35 U.S.C. §
24 285;
- 25 7. That Worldwide be granted such other and further relief as this Court may deem
26 just and proper.

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DEMAND FOR JURY TRIAL

Worldwise demands a trial by jury of any and all issues triable of right before a jury.

DATED: March 21, 2012

SHARTSIS FRIESE LLP

By: 

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EXHIBIT A



US007353773B2

(12) **United States Patent**
Lamstein et al.

(10) **Patent No.:** US 7,353,773 B2
(45) **Date of Patent:** Apr. 8, 2008

(54) **PEI BED WITH CHOPPED MEMORY FOAM FILLER**

(76) **Inventors:** Aaron Lamstein, 160 Mitchell Rd., San Rafael, CA (US) 94903-2044; **Wonjung Song**, 160 Mitchell Rd., San Rafael, CA (US) 94903-2044; **Irish Ottens**, 160 Mitchell Rd. San Rafael, CA (US) 94903-2044

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(*) **Notice:** Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 0 days

* cited by examiner

Primary Examiner—Alexander Grosz

(21) **Appl. No:** 11/386,862

(22) **Filed:** Mar 22, 2006

(65) **Prior Publication Data**

US 2007/0220676 A1 Sep 27, 2007

(51) **Int. Cl.**
A47C 27/14 (2006 01)
A01K 29/00 (2006 01)

(52) **U.S. Cl.** 119/28.5; 5/420; 5/655.5; 5/502

(58) **Field of Classification Search** 5/502, 5/645, 482, 413 R, 420, 655 5; 119/28.5
See application file for complete search history

(56) **References Cited**

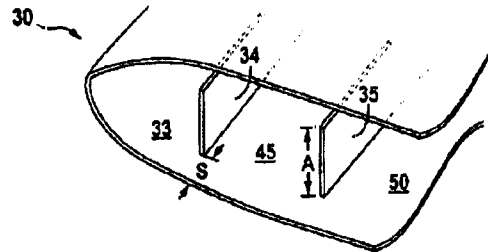
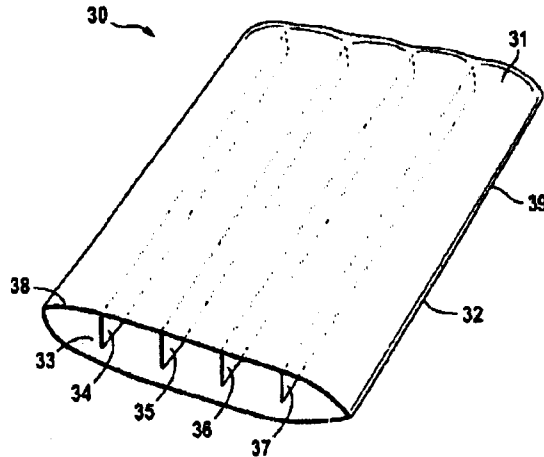
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(57) **ABSTRACT**

A pet bed which is configured from an upper fabric layer and lower fabric layer which are joined at a peripheral edge. The upper and lower fabric layers define the shape of the bedding product wherein a portion of the peripheral edge is selectively closeable to provide an opening for filling the bedding product with a chopped memory foam fill material. A plurality of barriers extend proximate the opening to the length of the upper and lower fabric layers and join the upper and lower fabric layers by, for example, sewing the barriers to them. The barrier layers are of a width approximately equal to the thickness of the bedding product once filled with said chopped memory foam fill material substantially preventing fill material migration between sub volumes created by said barriers.

6 Claims, 2 Drawing Sheets



U.S. Patent

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Sheet 1 of 2

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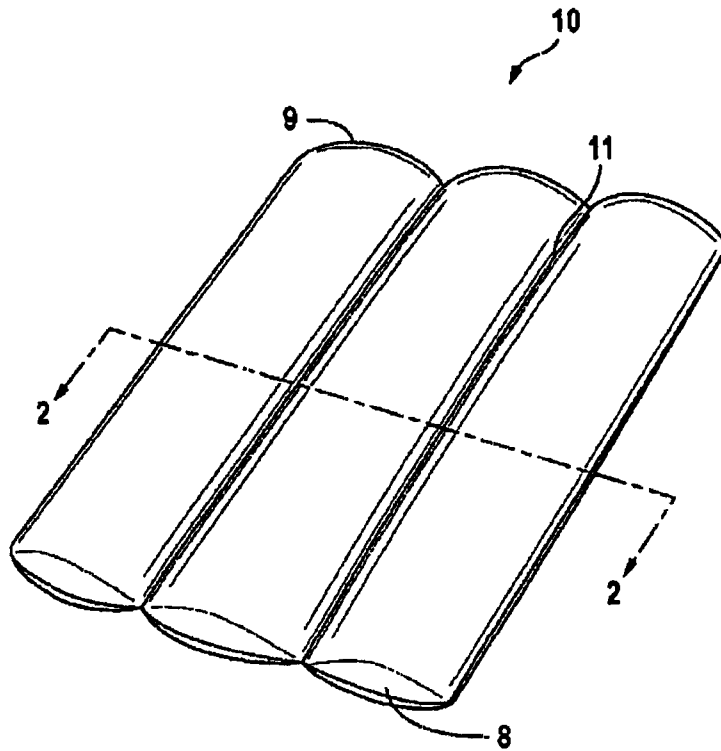


FIG. 1
(PRIOR ART)

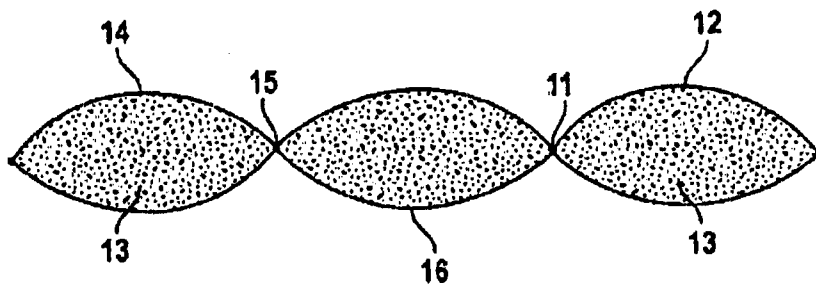


FIG. 2
(PRIOR ART)

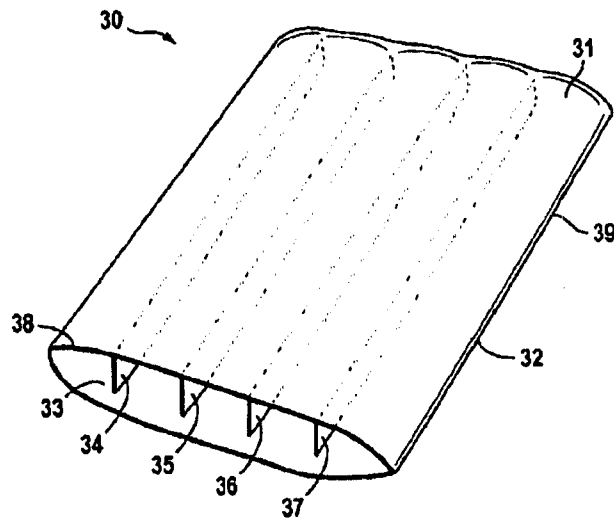


FIG. 3

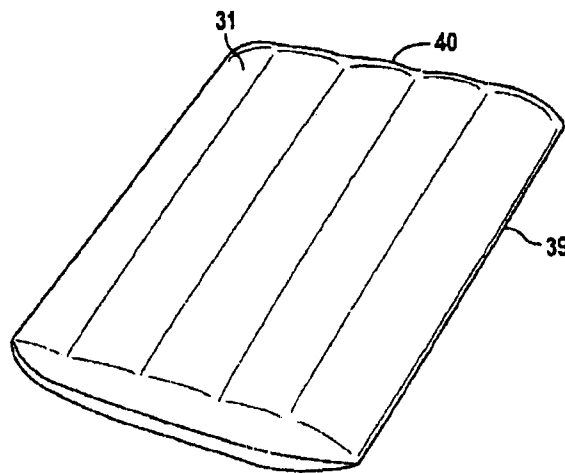


FIG. 4

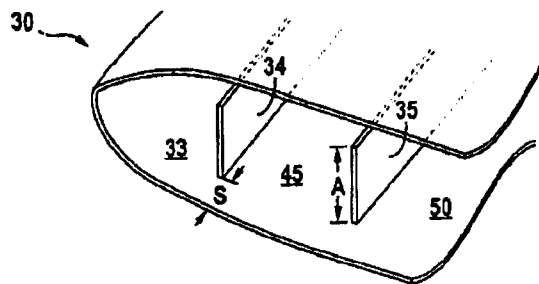


FIG. 5

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PET BED WITH CHOPPED MEMORY FOAM FILLER**TECHNICAL FIELD**

The present invention deals with a bedding product which is ideally suited for use as a pet bed. Such bedding products oftentimes employ dense fillers such as chopped memory foam made available from recycled chopped or aggregated pieces. The present invention is intended to employ such fill material and yet provide a bedding product vastly improved over those currently available.

BACKGROUND OF THE INVENTION

Bedding products such as those used for pet beds often employ dense recycled memory foam as such products are inexpensive and act as an excellent cushioning layer. If such material is simply placed within a fabric covering, limitations associated with such a bedding product become quickly apparent. For example, if one was to pick the bedding product up by one of its corners in order to move it from one location to another, the filling material would concentrate in the opposite corner producing a pear-shaped cross section.

Recognizing the need to maintain fill material uniformly dispersed across the entire internal volume of the bedding product, the prior art has suggested a structure depicted in FIGS. 1 and 2 hereof. Specifically, pet bed 10 is shown composed of upper fabric layer 12 and lower fabric layer 16 containing fill material 13. In order to maintain fill material 13 in place, longitudinally extending parallel stitching 11 is provided. In this way, regardless of how bedding product 10 is handled, fill material 13 will generally remain in place.

Although, superficially, the bedding product 10 provides somewhat of a "solution" to the problem of fill material migration, bedding product 10 is hardly ideal. Specifically, by providing stitching 11, bedding product 10 inherently presents extended peaks 14 and deep valleys 15 which is not by any means a preferred sleeping surface. Even a pet engaging bedding product 10 would find the undulating surface thereof somewhat uncomfortable causing the pet to oftentimes reject the bedding product in favor of nothing more than a carpeted surface.

It is thus an object of the present invention to provide a bedding product devoid of the limitations of the prior art.

It is yet a further object of the present invention to provide a bedding product which can be used, for example, as a pet bed which substantially prevents fill migration while providing a relatively flat or planar surface to a user.

These and further objects will be more readily apparent when considering the following disclosure and appended claims.

SUMMARY OF THE INVENTION

A bedding product comprising an upper fabric layer, lower fabric layer and a peripheral edge joining said upper and lower fabric layers defining the shape of said bedding product wherein a portion of said peripheral edge is selectively closeable to provide an opening for filling said bedding product with a chopped memory foam fill material. A plurality of barriers are provided extending proximate said opening to the extent of said upper and lower fabric layers and which are joined to said upper and lower fabric layers, the barriers being of a width equal to the thickness of the bedding product once filled with said chopped memory foam

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fill material substantially preventing fill material migration between sub volumes created by said barriers.

BRIEF DESCRIPTION OF THE FIGURES

FIG. 1 is a perspective view of a typical bedding product of the prior art.

FIG. 2 is a side cross sectional view taken along line 2-2 of FIG. 1.

FIG. 3 is a perspective view of the bedding product of the present invention showing an opening for receipt of appropriate fill material.

FIG. 4 is a perspective view of the bedding product of FIG. 3 once appropriately filled and closed.

FIG. 5 is a partial perspective end view of the bedding product of the present invention.

DETAILED DESCRIPTION OF THE INVENTION

As noted previously, prior art bedding products such as those shown in FIG. 1 are able to maintain fill material throughout the bedding product's interior by providing stitching 11. Thus, if one was to grab bedding product 10 by corner 9 and pick this product up from a floor or other supporting surface, fill material 13 would concentrate at corner 8 leaving the bedding product at corner 9 depleted of such fill material. This is a particular problem when using chopped memory foam that is quite heavy and dense. However, in providing stitching 11, peak 14 and valley 15 are created making bedding product 10 less than ideal. Certainly such a product, even when used as a pet bed, would be found to be less than an optimum sleeping surface.

In overcoming the problems provided above, reference is made to FIG. 3 showing present bedding product 30. Bedding product 30 comprises upper fabric layer 31 and lower fabric layer 32 and a peripheral edge 39 joining upper and lower fabric layers 31 and 32 thus defining the shape of bedding product 30. Selectively closeable opening 33 is configured on one of the peripheral edges noting that, ideally, bedding product 30 defined by peripheral edge 39 is substantially rectangular. Once appropriate chopped memory foam has been introduced within opening 33, closure 38 is provided such as a zipper or hook and loop fastener for completing peripheral edge 39 as shown in FIG. 4.

The improvement defining the present invention comprises providing a plurality of barriers 34, 35, 36 and 37 extending proximate opening 33 to approximately the extent of said upper and lower fabric layers 31 and 32 at opposing peripheral edge 40.

It is noted from reference to FIG. 3 that barriers 34, 35, 36 and 37 are substantially rectangular in shape and are connected to both upper fabric layer 31 and lower fabric layer 32 by, for example, stitching these barriers to these fabric layers. The barriers are of a height A (FIG. 5) approximately equal to the thickness of the bedding product once filled with compressible fill material 13 substantially preventing fill material migration between sub volumes 45, 50, etc., created by said barriers. The fabric layers themselves, as well as the barriers can be composed of the same or different materials and can be non-woven synthetics or woven natural fibers such as cotton.

In practice, suitable fill material, specifically chopped or aggregated recycled memory foam would be introduced through opening 33 and into each channel 45, 50, etc., created by barriers 34, 35, 36 and 37. Opening 33 would then

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be closed creating the bedding product shown in FIG. 4. Because barriers 34, 35, 36 and 37 maintain the appropriate spacing between upper and lower fabric layers 31 and 32, once the fill material has been introduced within pillow 30, peaks and valleys such as 14 and 15 of FIG. 3 are greatly reduced and yet the fill material remains in place throughout the entire internal volume of bedding product 30.

As a preferred embodiment, reference is further made to FIG. 5. In this regard, it is noted that barriers 34, 35, 36 and 37 generally extend within pillow 30 as parallel rectangular elements. As further noted, in order to improve closure and fill characteristics of bedding product 30, barriers 34, 35, 36 and 37 begin not at opening 33 but spaced from that opening a short distance S. As noted, each barrier 34, 35, 36 and 37 can be sewn to upper and lower fabric layers 31 and 32 in order to maintain their positioning within the internal volume of bedding product 30.

Finally, as noted, that the present invention is directed to the use of chopped or otherwise particulate pieces of recycled memory foam. Such fill material is ideal for a number of reasons. Firstly, recycled materials are more environmentally friendly and much cheaper than solid blocks of such material. When used as a pet bed, a solid block of memory foam would make such a product prohibitively expensive. Waste memory foam is generally quite available as it created from making foam pillows, mattresses and other similar products and the use of recycled materials provides for a cushioned highly desirable bedding product, particularly one suited for use as a pet bed.

The invention claimed is:

1. A pet bed comprising an upper fabric layer, a lower fabric layer and a peripheral edge joining said upper and lower fabric layers defining the shape of said pet bed wherein a portion of said peripheral edge is selectively closeable to provide an opening for filling said pet bed, a plurality of barriers extending proximate but spaced from said opening to approximately the extent of said upper and

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lower fabric layers and which are joined to said upper and lower fabric layers, a chopped memory foam incorporated between said upper and lower layers between said plurality of barriers, said barrier layers being of a width approximately equal to the thickness of the pet bed once filled with said chopped memory foam fill material substantially preventing its migration between sub volumes created by said barriers, said barriers extending substantially parallel to one another, creating substantially rectangularly shaped volumes for receiving and maintaining said chopped memory foam.

2. The pet bed of claim 1 wherein said opening is closeable by use of a zipper or hook and loop fasteners.

3. The pet bed of claim 1 wherein said barriers are comprised of fabric sewn into upper and lower fabric layers.

4. A pet bed comprising rectangularly shaped upper and lower fabric layers joined by a peripheral edge on three sides thereof, a fourth side of said rectangularly shaped upper and lower fabric layers being selectively closeable to provide an opening for filling said pet bed with a chopped memory foam fill material, a plurality of parallel substantially rectangularly shaped barriers extending within said upper and lower fabric layers from a point spaced from said closeable opening to an opposite peripheral edge and joined to said upper and lower fabric layers to create sub chambers within said pet bed, the barrier layers being of a width approximately equal to the thickness of the pet bed once filled with said chopped memory foam fill material substantially preventing fill material migration between sub volumes created by said barriers, said sub chambers filled with chopped memory foam.

5. The pet bed of claim 4 wherein said opening is closeable by use of a zipper or hook and loop fasteners.

6. The pet bed of claim 4 wherein said barriers are comprised of fabric sewn into upper and lower fabric layers.

* * * * *