

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

Patrick M. Yananton,

Plaintiff,

v.

OurPet's Company,

Defendant.

Civil Action No. 3:12-cv-943

JURY TRIAL DEMANDED

**ORIGINAL COMPLAINT FOR PATENT INFRINGEMENT**

This is an action for patent infringement in which Plaintiff Patrick M. Yananton makes the following allegations against Defendant OurPet's Company ("OurPet's").

**BACKGROUND**

1. Mr. Yananton is the inventor and the sole owner of United States Patent No. 7,726,260 (the "'260 patent") entitled "Absorbent Pad for Entrapping Small and Coarse Particles, Retaining Liquids and Eliminating Odors."

2. This is a patent infringement action in which Mr. Yananton alleges that OurPet's has infringed and continues to infringe the '260 patent without a license.

3. Mr. Yananton seeks monetary damages of no less than a reasonable royalty pursuant to 35 U.S.C. § 284. Mr. Yananton also seeks injunctive relief to prevent further infringement of the '260 patent.

4. Mr. Yananton is a prolific inventor. He currently holds 14 issued U.S. patents and 5 pending U.S. patent applications pertaining to pet products. In 1975, while working as an assistant microbiologist in the research and development (R&D) department at Hoffman-La Roche, Mr. Yananton co-authored his first U.S. patent, which relates to a diagnostic device to

reformulate protein and carbohydrate substrates. As part of his master's thesis, Mr. Yananton was awarded his second U.S. patent in 1976, which relates to a novel method for rapid identification of bacteria and antibiotic susceptibility patterns—a technique that still is in use today. Mr. Yananton assigned his first two patents to Hoffman-La Roche.

5. Since 1984, as a sole inventor, Mr. Yananton has developed an extensive portfolio of numerous patents and patent applications related to pet products.

6. For instance, from 1984 to 1993, Mr. Yananton was the President of R&D, consulting, and new product development for a company named Commercial Products Research. During that time, Mr. Yananton developed a line of patents related to deodorizing pet products, including puppy training pads and cat litter box pads.

7. In 1993, Mr. Yananton founded Feliners International Inc. and started manufacturing, marketing, and wholesaling the pet deodorizing pads covered by his growing patent portfolio.

8. While at Feliners International, Mr. Yananton invented yet a new technology for which he filed U.S. Patent Application No. 10/033,862 (the "'862 application"), entitled "Absorbent Pad for Entrapping Small and Coarse Particles, Retaining Liquids and Eliminating Odors" in December 2001. The patent at issue in this case – the '260 patent – is one of several patents that claim priority to the '862 application.

### **PARTIES**

9. Plaintiff Mr. Yananton is an individual residing at 1598 Oak Glen Rd., Toms River, New Jersey 08753.

10. On information and belief, Defendant OurPet's Company is a Colorado corporation with its corporate headquarters and principal place of business at 1300 East Street,

Painesville, OH 44077. OurPet's Company may be served via its registered agent for service of process, Corporation Services Company, 1560 Broadway Suite 2090, Denver, CO 80202.

### **JURISDICTION AND VENUE**

11. This action arises under the patent laws of the United States, Title 35 of the United States Code. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

12. This Court has personal jurisdiction over OurPet's. OurPet's has conducted and does conduct business within the State of Texas. OurPet's, directly and/or through intermediaries (including other OurPet's entities, subsidiaries, distributors, sales agents, and others), manufactures, ships, distributes, offers for sale, sells, and/or advertises its products (including, but not limited to, the products that are accused of infringement in this lawsuit) in the United States, the State of Texas, and the Northern District of Texas. OurPet's (directly and/or through intermediaries, including other OurPet's entities, subsidiaries, distributors, sales agents, and others) has purposefully and voluntarily placed one or more of its products (including, but not limited to, the products that are accused of infringement in this lawsuit), as described below in Count I, into the stream of commerce with the expectation that they will be purchased by customers in Texas including the Northern District of Texas. These infringing products have been and continue to be purchased by customers in the Northern District of Texas. OurPet's has committed the tort of patent infringement within the State of Texas, and, more particularly, within the Northern District of Texas as alleged in more detail below.

13. Venue is proper in this district under 28 U.S.C. §§ 1391 and 1400(b).

**COUNT I**

**INFRINGEMENT OF U.S. PATENT NO. 7,726,260**

14. Mr. Yananton refers to and incorporates herein the allegations set forth in Paragraphs 1 through 13 above.

15. United States Patent No. 7,726,260 (the “’260 patent”), entitled “Absorbent Pad for Entrapping Small and Coarse Particles, Retaining Liquids and Eliminating Odors,” was duly and legally issued by the United States Patent and Trademark Office on June 1, 2010 after a full and fair examination. A true and correct copy of the ’260 patent is attached as Exhibit A.

16. Mr. Yananton is the sole owner of the ’260 patent and has the exclusive right to sue for infringement and recover damages for all past, present, and future infringement.

17. OurPet’s has infringed and continues to infringe, either literally or under the doctrine of equivalents, claims of the ’260 patent by making, using, offering to sell, selling (directly or through intermediaries or authorized agents under OurPet’s direction and/or control), and/or by importing, in this judicial district and elsewhere through the United States, certain mat products that use and embody the inventions claimed in the ’260 patent. The infringing mat products include, but are not limited to, OurPet’s products sold under the brand and/or product name: Smart Scoop® Litter Catching Mat. Upon information and belief, OurPet’s infringing mats may be made, used, sold, offered for sale, and/or imported under additional product names and/or brands. OurPet’s is thus liable for direct infringement of the ’260 patent pursuant to 35 U.S.C. § 271(a).

18. Pursuant to 35 U.S.C. § 284, Mr. Yananton is entitled to recover from OurPet’s the damages sustained by Mr. Yananton as a result of OurPet’s wrongful acts in an amount subject to proof at trial, but no less than a reasonable royalty.

19. OurPet's infringement of the '260 patent has damaged and will continue to damage Mr. Yananton, causing irreparable harm for which there is no adequate remedy at law, unless OurPet's is enjoined by this Court.

20. This case is "exceptional" within the meaning of 35 U.S.C. § 285. Mr. Yananton is thus entitled to an award of reasonable attorney's fees and costs of suit.

### **JURY DEMAND**

21. Mr. Yananton hereby requests a trial by jury pursuant to Rule 38 of the Federal Rules of Civil Procedure.

### **PRAYER FOR RELIEF**

22. Plaintiff Mr. Yananton respectfully requests this Court to enter judgment in his favor and against OurPet's granting the following relief:

- A. An adjudication that OurPet's has infringed and continues to infringe claims of the '260 patent;
- B. An award to Mr. Yananton of damages adequate to compensate him for OurPet's acts of infringement, no less than a reasonable royalty, together with prejudgment and postjudgment interest;
- C. An award to Mr. Yananton for his costs of suit and for reasonable attorney's fees, pursuant to 35 U.S.C. § 285 due to the exceptional nature of this case, or as otherwise permitted by law;
- D. A grant of a permanent injunction pursuant to 35 U.S.C. § 283, enjoining OurPet's from further acts of infringement; and
- E. Any further relief that this Court deems just and proper.

Date: March 28, 2012

Respectfully Submitted:

/s/ Donald Puckett

Donald Puckett, Lead Attorney

Texas Bar No. 24013358

Theresa M. Dawson

State Bar No. 24065128

**SKIERMONT PUCKETT LLP**

2200 Ross Ave, Suite 4301W

Dallas, TX 75201

Tel: (214) 978-6600

Fax: (214) 978-6601

donald.puckett@skiermontpuckett.com

terri.dawson@skiermontpuckett.com

*Counsel for Plaintiff Patrick M. Yananton*