

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT ARKANSAS

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS, WESTERN DIVISION**

OCT 08 2009

JAMES W. MCCOY, CLERK
James W. McCoy

CAT CLAWS, an Arkansas corporation,

PLAINTIFF

v.

Case No. *4:09-cv-797JLH*

MARMALADE PET CARE LLC, A Washington corporation, and BRANDON BISE, An Individual

This case assigned to District Judge *Holmes*
and to Magistrate Judge *Ray*

DEFENDANTS

**COMPLAINT FOR DECLARATORY RELIEF
(JURY DEMANDED)**

COMES NOW, CAT CLAWS, INC., an Arkansas corporation, and for its Complaint against MARMALADE PET CARE LLC, a Washington limited liability corporation and BRANDON BISE, an individual, avers the following:

PARTIES

1. Plaintiff, Cat Claws, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Arkansas, and has a principal place of business in Morrilton, Arkansas, County of Conway.

2. Brandon F. Bise is the named inventor of patent number D582,611.

There is no record in the Patent Office of an assignment of any rights in and to the aforesaid patent, a copy of which is appended as Exhibit A.

3. Defendant, Marmalade Pet Care LLC, upon information and belief owned, at least in part, by Defendant Bise, and according to the Secretary of State for the State of Washington, is a limited liability corporation organized and existing under and by virtue of the laws of the State of Washington, having a principal place of business in Seattle, State of Washington.

JURISDICTION AND VENUE

4. This is a complaint for declaratory relief in which an actual case or controversy has arisen under the patent laws of the United States and pursuant 28 U.S.C. §2201. This Complaint seeks judicial determination of the invalidity and noninfringement of United States Letters Patent Design number D582,611, the jurisdiction of this court arising pursuant 28 U.S.C. §1338.

5. Venue in this matter arises out of the acts of Defendants in this judicial district creating an actual case or controversy by virtue of the accusation, by Defendants, of patent infringement, and threats of litigation by Defendants against several products manufactured and sold by Plaintiff in this judicial district and others throughout the United States. Plaintiff denies infringement, and asserts invalidity of the patent in suit.

SALIENT FACTS GERMANE TO ALL COUNTS OF THIS COMPLAINT

6. Plaintiff is the manufacturer, since at least the mid '80's and seller of a variety of pet products relating specifically to felines. Defendant, Marmalade Pet Care LLC, upon information and belief, purports to be the owner of all right, title and interest

in and to United States Letters Patent Design number D582,611, issued on December 9, 2008, for a Pet Bed. Defendant Bise is identified as the patentee.

7. On September 25, 2009, counsel for Defendant sent a letter to Plaintiff accusing it of infringement of its purported Letters Patent by virtue of the manufacture and sale of Plaintiff's product line, namely, Big Cat Scratcher, Purrfect Stretch Scratcher, Relax-a-Cat 'large', Relax-a-Cat 'small', Whales 'small, all incarnations', Whales 'large, all incarnations', Whales 'giant, all incarnations', Sleigh, Burger and Fries, Fish and chips, Coupe, Racer, Scoop, Reindeer and Comfort couch. The letter, inter alia, demands damages in the sum of \$60,000.00.

8. Several days later, on September 30, 2009, a second letter was sent to Plaintiff by Defendants' counsel, once again asserting infringement of its purported design patent, alleging infringement by virtue of Plaintiff's product line, namely, Big Cat Scratcher, Purrfect Stretch Scratcher, Relax-a-Cat, 'large' 2008 version, Relax-a-Cat, 'small' 2008 version, Relax-a-Cat 2009 version, Whales 'small, all incarnations', Whales 'large, all incarnations', Whales 'giant, all incarnations', Dolphin Scratcher, Fishbone Scratcher, Burger and Fries, Fish and Chips, Fins-n-Feathers, Reindeer and Crocodile Scratcher, and revising its demand upward to \$80,000.00.

9. In a third email exchange between Defendants' counsel and Plaintiff's counsel, Defendants' counsel asserted that it was prepared to litigate the matter if it could not be immediately resolved. It can not be immediately resolved.

COUNT I - INVALIDITY OF PATENT IN SUIT

10. Plaintiff began the manufacture and sale, e.g., of its accused Scratch 'n Shapes product in or about May of 2007. Pursuant 30 U.S.C. 102(a), the vast majority of the subject accused products were manufactured and on sale long prior to the purported invention memorialized in the patent in suit and it is, therefore, invalid and void and of no force and effect.

COUNT II - NONINFRINGEMENT OF PATENT IN SUIT

11. Plaintiff hereby reasserts the allegations contained in Paragraphs 1 through 10 and incorporates the same herein as though fully set forth.

12. Lack of infringement of the patent in suit is premised on several bases, a first of which is the patent is invalid and void and, therefore, of no force and effect and can not be infringed.

COUNT III-NONINFRINGEMENT OF PATENT IN SUIT

13. Finally, Defendants have attempted to expand the scope of their patent well beyond its legitimate scope.

WHEREFORE, Plaintiff prays for relief as follows:


1. A declaration that United States Letters Patent number D582,611 is invalid and void;
2. A declaration that United States Letters patent number D582,611 is not infringed;
3. For attorneys' fees and costs, according to proof; and

4. For such other and further relief as the Court may deem just and proper.

Dated: October 8, 2009

Respectfully submitted,

LAW OFFICES OF DENNIS B. HAASE

By  _____
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Attorney for Plaintiff



US00D582611S

(12) **United States Design Patent** (10) **Patent No.:** **US D582,611 S**
Bise (45) **Date of Patent:** **** Dec. 9, 2008**

(54) **PET BED**
 (76) **Inventor:** **Brandon F. Bise**, 669 W. Emerson St.,
 Seattle, WA (US) 98119
 (**) **Term:** **14 Years**
 (21) **Appl. No.:** **29/299,206**
 (22) **Filed:** **Dec. 20, 2007**
 (51) **LOC (8) Cl. 30-06**
 (52) **U.S. Cl. D30/118**
 (58) **Field of Classification Search D30/118;**
 D1/100, 106, 126-129; D6/334, 349, 361,
 D6/377, 381-382, 595-596, 601-604; 119/8.5
 See application file for complete search history.

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Primary Examiner—Cathy Anne MacCormac
 (74) *Attorney, Agent, or Firm*—Seed IP Law Group PLLC

(57) **CLAIM**

The ornamental design for a pet bed, as shown and described.

DESCRIPTION

FIG. 1 is an isometric view taken from the top and side of a pet bed showing my new design;
 FIG. 2 is a left side elevational view thereof, a right side elevational view being identical;
 FIG. 3 is a top view thereof, the bottom view being identical; and,
 FIG. 4 is a front elevational view thereof, the rear elevational view being identical.

1 Claim, 4 Drawing Sheets

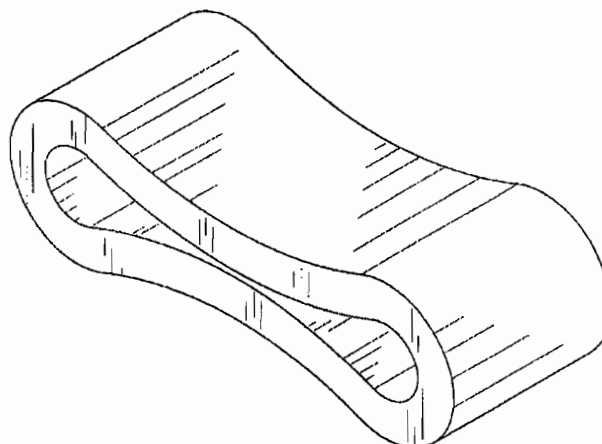


EXHIBIT A

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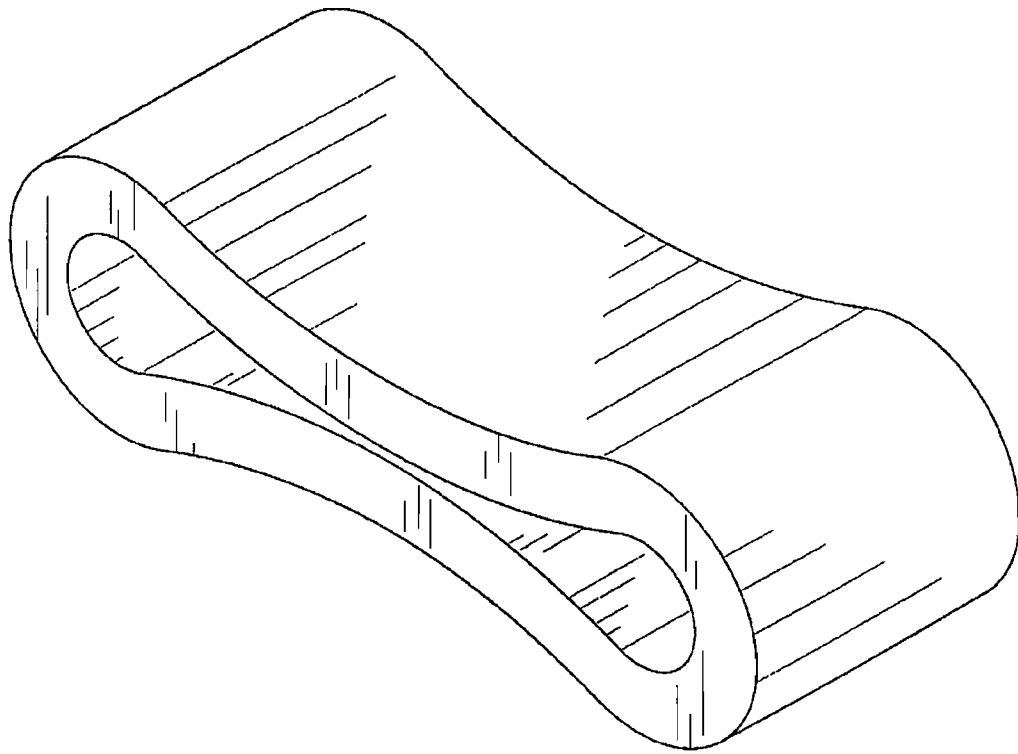


FIG. 1

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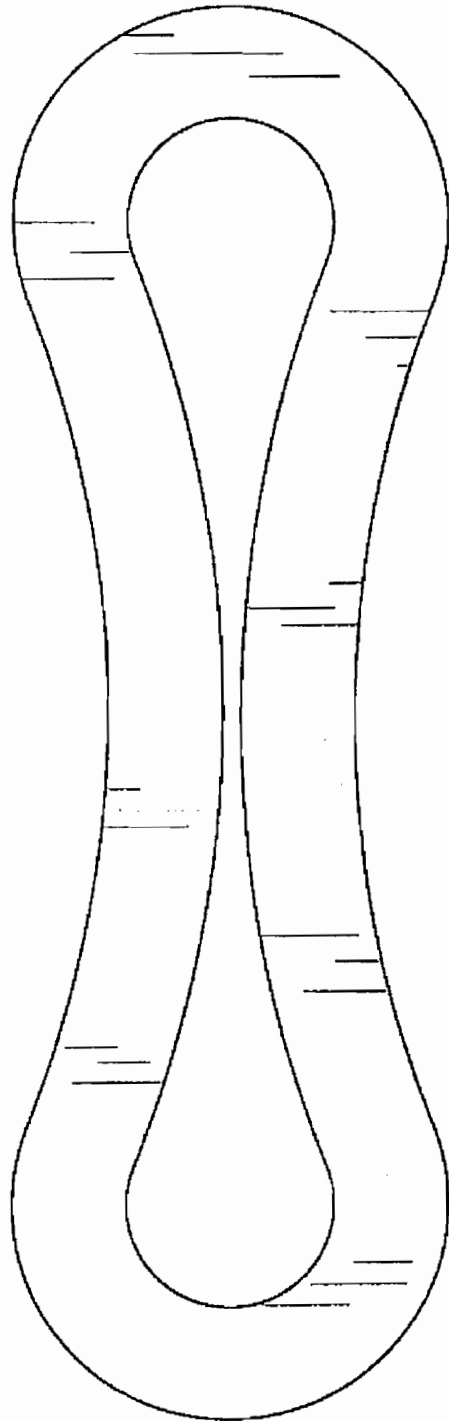


FIG. 2

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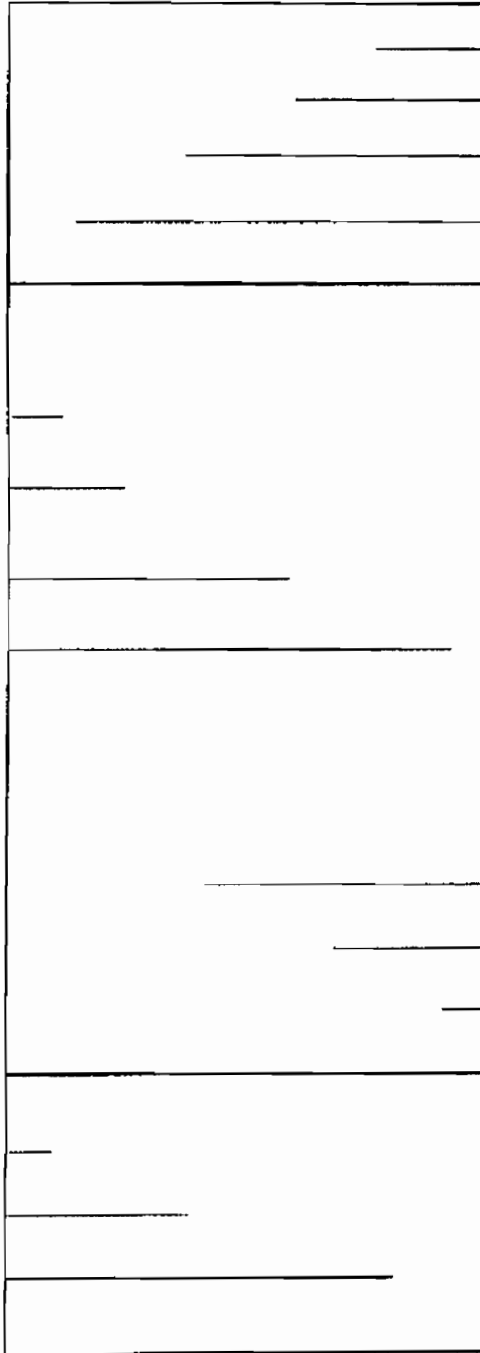


FIG. 3

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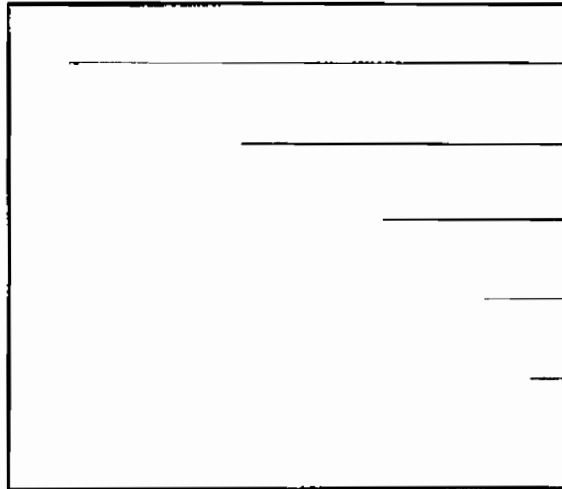


FIG. 4