

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

THE GREEN PET SHOP ENTERPRISES,
LLC

Plaintiff,

v.

MAZE INNOVATIONS, INC.

Defendant.

Case No. 1:15-cv-01138

Hon. Matthew F. Kennelly

**MAZE'S LPR 2.3 INITIAL NON-INFRINGEMENT
AND INVALIDITY CONTENTIONS**

Pursuant to Northern District of Illinois Local Patent Rule 2.3, Defendant Maze Innovations, Inc. ("Maze") hereby provides these Initial Non-Infringement and Invalidity Contentions. The Contentions, including the accompanying claim charts, set forth Maze's non-infringement and invalidity contentions with respect to claims 15, 16, 18, and 19 (the "Asserted Claims") of U.S. Patent No. 8,720,218 ("the '218 Patent"). These Contentions only address the non-infringement and invalidity of the Asserted Claims. As shown in Section II below, the accused products identified in the Initial Infringement Contentions of Green Pet Shop Enterprises, LLC ("Green Pet") do not infringe the Asserted Claims because they lack several of the claimed elements of the Asserted Claims. Moreover, as shown in Section III below, the Asserted Claims are invalid in view of several prior art references.

I. PRELIMINARY STATEMENT

These Contentions are based upon Maze's current knowledge, current understanding of the proper construction of the Asserted Claims, current understanding of Green Pet's contentions, and investigation to date. Maze reserves the right to amend and/or supplement its

Contentions. Given that the parties have not yet identified proposed terms for construction or provided proposed constructions and that the Court has not yet made any claim construction ruling in this action, Maze's Contentions may be made in a variety of alternatives, are not intended to be consistent with each other and/or Maze's other contentions in this action, and should not be otherwise construed. Maze's Contentions do not constitute admissions or adoptions of any particular claim scope or construction. Although Maze's Contentions may apply constructions asserted in Green Pet's Contentions, Maze does not acquiesce to those or any other constructions at this time. Rather, Maze's Contentions may apply a variety of constructions in order to provide as full a disclosure as possible in advance of claim construction. Maze objects to any attempt to deduce claim constructions from its Contentions.

As set forth in detail below and in the accompanying claim charts, Exhibits B-1 through B-10, the Asserted Claims are invalid over the cited prior art listed in Tables I (below) under 35 U.S.C. §§ 102 and/or 103. Regarding the obviousness of certain claims under 35 U.S.C. § 103, one or more of the principles enumerated by the United States Supreme Court in *KSR International Co. v. Teleflex Inc.*, 550 U.S. 398 (2007), apply to the Asserted Claims, including, for example:

- (a) combining various claimed elements known in the prior art according to known methods to yield a predictable result;
- (b) making a simple substitution of one or more known elements for another to obtain a predictable result;
- (c) using a known technique to improve a similar device or method in the same way;
- (d) applying a known technique, known device or method ready for improvement to yield a predictable result;
- (e) choosing from a finite number of identified, predictable solutions with a reasonable expectation of success or, in other words, the solution was one which was "obvious to try";

- (f) a known work in one field of endeavor prompting variations of it for use either in the same field or a different field based on given design incentives or other market forces in which the variations were predictable to one of ordinary skill in the art; and/or
- (g) a teaching, suggestion, or motivation in the prior art that would have led one of ordinary skill in the art to modify the prior art reference or to combine the teachings of various prior art references to arrive at the claimed invention.

The above criteria are collectively referred to herein as the “KSR Criteria.”

Maze’s investigation into the facts of this action is ongoing. Maze has not completed its investigation of the facts relating to this case, discovery in this action, or its preparation for trial. This disclosure is without prejudice to Maze’s right to produce evidence of any additional prior art references. Maze reserves the right to modify, amend, or supplement these contentions in view of, without limitation, (1) information provided by Green Pet concerning its infringement allegations, theories, contentions, or facts supporting them; (2) information provided by Green Pet concerning the alleged priority, conception, and reduction to practice dates for any of the Asserted Claims; (3) any change by Green Pet in the claims it is asserting; (4) additional information and prior art obtained through discovery, including without limitation discovery from Green Pet or from third parties; and (5) the Court’s claim construction order or any other basis in law or in fact.

The citations to the prior art provided in Maze’s invalidity contentions are intended to be exemplary, not exhaustive. Maze has endeavored to cite to the most relevant portions of the identified prior art. Other portions of the identified prior art may additionally disclose, either expressly or inherently, and/or render obvious one or more elements or limitations of the Asserted Claims. Maze reserves the right to rely on uncited portions of the identified prior art to establish the invalidity of the Asserted Claims. Moreover, Maze reserves the right to rely on uncited portions of the identified prior art, other art, or expert testimony to provide context to or

aid in understanding the cited portions of the identified prior art. Maze also reserves the right to rely upon treatises, published industry standards, and similar documents, regardless of whether they are identified in these Contentions, to demonstrate the knowledge of one of ordinary skill in the relevant art. Where Maze cites to a particular drawing or figure, the citation encompasses the description of the drawing or figure, as well as any text associated with the drawing or figure. Similarly, where Maze cites to particular text concerning a drawing or figure, the citation encompasses that drawing or figure as well. Also, where Maze cites to any portion of prior art as disclosing a particular limitation, that citation applies with equal force to all similar or identical limitations in each of the Asserted Claims.

The obviousness combinations of references provided below under 35 U.S.C § 103 are merely exemplary and are not intended to be exhaustive. Additional obviousness combinations of the references identified below are possible, and Maze reserves the right to use any such combinations in this litigation. In particular, Maze is currently unaware of the extent to which Green Pet may contend that limitations of the claims at issue are not disclosed in the art identified by Maze as anticipatory. To the extent that an issue arises with any such limitation, Maze reserves the right to identify other references, the addition of which may make obvious the allegedly missing limitation to the disclosed device or method of operation.

II. INITIAL NON-INFRINGEMENT CONTENTIONS

Local Patent Rule 2.3(a):

(a) Non-Infringement Contentions shall contain a chart, responsive to the chart required by LPR 2.2(c), that identifies as to each identified element in each asserted claim, to the extent then known by the party opposing infringement, whether such element is present literally or under the doctrine of equivalents in each Accused Instrumentality and, if not, the reason for such denial and the relevant distinctions.

The chart required by LPR 2.3(a) is attached hereto as Exhibit A, and is responsive to the chart attached to Green Pet's Initial Infringement Contentions. As explained in detail in Exhibit A, Maze's accused products do not infringe the Asserted Claims because the accused products lack essential elements for each of the Asserted Claims.

Green Pet has not asserted infringement under the doctrine of equivalents in its LPR 2.2 submission. Specifically, Green Pet's stated in its LPR 2.2 submission that it "reserves the right to assert infringement under the doctrine of equivalents . . . after further discovery" and also did not "include an explanation of each function, way, and result that is equivalent and why any differences are not substantial" as required by LPR 2.2(d). Green Pet's LPR 2.2 submission does include a nonsensical statement that "[b]ecause Maze is believed to literally infringe the asserted claims, it also infringes under the doctrine of equivalents, as set forth in Exhibit A." This statement is an incorrect statement of the law and is not an assertion of infringement under the doctrine of equivalents as required by LPR 2.2(d). Accordingly, Exhibit A addresses literal infringement only and Maze reserves the right to respond to an assertion of infringement under the doctrine of equivalents, if Green Pet ever makes such an assertion.

III. INITIAL INVALIDITY CONTENTIONS

Local Patent Rule 2.3(b):

(b) Invalidity Contentions must contain the following information to the extent then known to the party asserting invalidity:

LPR 2.3(b) contains four sub-parts, numbered (1) through (4), which are addressed in order below.

A. Identification of Prior Art

Local Patent Rule 2.3(b)(1):

(1) identification, with particularity, of each item of prior art that allegedly anticipates each asserted claim or renders it obvious. Each prior art patent shall

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