

For Immediate Release

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Katten Secures Federal Circuit Reversal in Lucky Litter IP Matter

CHICAGO – Katten Muchin Rosenman LLP is pleased to announce that on October 6, 2010, the U.S. Court of Appeals for the Federal Circuit vacated a U.S. International Trade Commission (ITC) limited exclusion order that prevented Lucky Litter LLC from importing the original versions of Lucky Litter's ScoopFree automatic litter boxes. The Federal Circuit ruled that the asserted claims of the patent-in-suit were either invalid or not infringed. Katten partner **Eric C. Cohen** and associates **Carolyn M. Passen** and **Jeremy C. Daniel** represented Lucky Litter in the hearing before the ITC and on the appeal. Katten partner **Mark S. Zolno**, Chair of the firm's Customs and International Trade Practice, represented the client before U.S. Customs and Border Protection.

The ITC action commenced in 2007 as a result of a complaint filed by Applica Consumer Products, Inc. Applica alleged that Lucky Litter's ScoopFree products infringed claims 27, 33, 41 and 42 of U.S. Patent Re. 36,847, and Applica argued to the ITC that the ScoopFree products unfairly competed with its LitterMaid brand of automatic litter boxes. In 2008, the ITC issued a limited exclusion order barring importation of the original models of ScoopFree products, based on its finding that the original ScoopFree products infringed claim 33. The ITC rejected Applica's arguments that claims 27, 41 and 42 were infringed, and rejected Lucky Litter's arguments that claim 33 was invalid.

Before the ITC's exclusion order became effective, Lucky Litter had designed around claim 33 by eliminating a non-essential feature of the original ScoopFree products. A Katten team of litigation and international trade lawyers, accompanied by Alan Cook, Lucky Litter's president, presented both redesigned and new ScoopFree products to U.S. Customs officials, who issued letter rulings that those products were not covered by the exclusion order. Thus, the ITC's exclusion order did not prevent Lucky Litter from importing those products, and did not prevent the company from shipping products to its customers.

In its October 6 decision, the Federal Circuit reversed the ITC's interpretation of claim 33, and held that the claim was obvious over a prior art patent that disclosed all of its features, except for a mode selector switch. The court held that adding a mode selector switch to the prior art patent "would have been trivial to one of ordinary skill in the art." The court also rejected Applica's arguments that the ITC should have found that claims 27, 41 and 42 were infringed, finding "those arguments to be without merit."

Katten's Patent Litigation Practice has represented a wide range of domestic and international companies in patent litigation in federal trial courts, the ITC, and before the U.S. Court of Appeals for the Federal Circuit. Katten's Customs and International Trade Practice represents domestic and

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international companies before U.S. Customs, and in disputes before the U.S. International Trade Commission and the Court of International Trade.

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