

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Civil Action No. 1:22-cv-1986

CALIFORNIA INNOVATIONS INC.,

*Plaintiff,*

v.

ICE ROVER, INC.,

*Defendant.*

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**COMPLAINT FOR DECLARATORY JUDGMENT OF PATENT NON-  
INFRINGEMENT**

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Plaintiff California Innovations, Inc. (“California Innovations”), by its undersigned counsel, files its complaint for declaratory relief against Defendant Ice Rover, Inc. (“Ice Rover”), a Colorado corporation, and states as follows:

**NATURE OF THE CASE AND BACKGROUND**

1. This is an action for declaratory relief arising in response to allegations that California Innovations is infringing U.S. Patent Nos. 10,272,934 (“the ’934 patent”), D881,673 (“the ’673 patent”), and D893,979 (“the ’979 patent”) through the sale of its hard-sided rolling coolers. These coolers include the Ozark Trail 45 Quart High Performance Rolling Roto-Molded Cooler (“Ozark Trail Rolling Cooler”). California Innovations seeks a declaratory judgment that its Ozark Trail Rolling

Cooler does not infringe the '934, '673, or '979 patents under 35 U.S.C. § 271.

2. On information and belief, Ice Rover is the owner by assignment of the '934, '673, and '979 patents. True copies of the '934, '673, and '979 patents are attached as **Exhibits 1-3**.

### **THE PARTIES**

3. Plaintiff California Innovations is a corporation organized under the laws of Ontario, Canada with its principal place of business at 36 Dufflaw Rd. Toronto, ON, M6A 2W1, Canada.

4. On information and belief, Defendant Ice Rover is a corporation organized under the laws of Colorado with its principal place of business at 1898 South Flatiron Court, Suite 100, Boulder, Colorado 80301.

### **JURISDICTION AND VENUE**

5. California Innovations brings this action under Title 35 of the United States Code, and under 28 U.S.C. §§ 2201 and 2202, to obtain a declaration of non-infringement with respect to the '934, '673, and '979 patents.

6. Because this action arises under the Patent Laws of the United States, this Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a).

7. This Court has personal jurisdiction over Ice Rover because Ice Rover resides in this District.

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

(c) because Ice Rover resides in this District.

**THE SUBSTANTIAL CONTROVERSY BETWEEN THE PARTIES**

9. California Innovations began in Toronto in 1986. The first product California Innovations launched was an automotive sun shield. California Innovations followed up the sun shield with a product called the Safety Shield, which was a promotional product designed to be hung in car windows that encouraged people to not drink and drive. From there, California Innovations developed a trunk organizer that led to a line of automotive accessories including a soft-sided collapsible cooler. All of that led to California Innovations leaving the automotive-accessory business in favor of the soft-sided cooler business. California Innovations' Original Collapsible Cooler proved to be the start of something big—namely, the business of making and selling soft-sided coolers. More information about California Innovations can be found at [www.californiainnovations.com](http://www.californiainnovations.com).

10. In addition to selling soft-sided coolers under its own brands, California Innovations also manufactures hard-sided coolers for Walmart Inc. that Walmart sells under its Ozark Trail brand. Specifically, California Innovations designed, manufactures, and sells to Walmart the Ozark Trail Rolling Cooler. *See, e.g.,* <https://www.walmart.com/ip/Ozark-Trail-45-Quart-High-Performance-Rolling-Roto-Molded-Cooler-with-Microban-Greystone/830208987>.

11. California Innovations is contractually obligated to protect, defend, hold harmless, and indemnify Walmart against any claims of patent infringement.

12. On July 18 and 19, 2022, Ice Rover filed eight separate patent-infringement lawsuits against other defendants in the United States District Court for the Western District of Texas, Waco Division, alleging infringement of the '934, '673, and '979 patents.

13. On August 6, 2022, Ice Rover's litigation counsel, William P. Ramey, III, emailed California Innovations' Chief Executive Officer, Mel Mogil, about Ice Rover's infringement allegations against Walmart relating to the Ozark Trail Rolling Cooler:

Hi Mel,

We understand Walmart reached out to you about our client Ice Rover's infringement allegations. Do you have time to discuss next week?

We attach the complaint for your convenience.

Bill

William P. Ramey, III

14. A copy of Mr. Ramey's email to Mr. Mogil is attached as **Exhibit 4** to this complaint.

15. Attached to Mr. Ramey's email was a draft complaint against Walmart (attached as **Exhibit 5**) alleging that the Ozark Trail Rolling Cooler infringed the '934, '673, and '979 patents. Also attached to the email was a set of claim charts (attached as **Exhibit 6**) purporting to show how the Ozark Trail Rolling Cooler infringes the '934, '673, and '979 patents.

16. Ice Rover's claim charts allege that the Ozark Trail Rolling Cooler

infringes claim 1 of the '934 patent. Claim 1 reads as follows:

An apparatus, comprising:

a body comprised of a plurality of walls and forming an enclosure;

a lid in communication with the body and operable to provide access to the enclosure;

a first wall and an oppositely disposed second wall, the first wall having a first height and the second wall having a second height, the first height being greater than the second height;

a base and a third wall extending from the base to the second wall, the third wall having a first gradient with respect to the base;

a junction affixed to a first side wall, the first side wall position between the first wall and the second wall, the junction having a second gradient with respect to the base, wherein the first and second gradients are relatively parallel; and

a first wheel positioned adjacent to a first side wall and a second wheel positioned adjacent to a second side wall.

17. California Innovations' Ozark Trail Rolling Cooler lacks limitations required by the claims of the '934 patent and, therefore, does not infringe. By way of example and not limitation, claim 1 of the '934 patent requires

*a first wall and an oppositely disposed second wall, the first wall having a first height and the second wall having a second height, the first height being greater than the second height*

California Innovations' Ozark Trail Rolling Cooler does not include this limitation.

18. By way of further example and not limitation, claim 1 of the '934 patent requires

*a base and a third wall extending from the base to the second wall, the third wall having a first gradient with respect to the base*

California Innovations' Ozark Trail Rolling Cooler does not include this limitation.

19. By way of further example and not limitation, claim 1 of the '934 patent requires

*a junction affixed to a first side wall, the first side wall position between the first wall and the second wall, the junction having a second gradient with respect to the base, wherein the first and second gradients are relatively parallel; and*

California Innovations' Ozark Trail Rolling Cooler does not include this limitation.

20. California Innovations' Ozark Trail Rolling Cooler does not infringe claim 1 of the '934 patent for at least the above reasons. Claims 2-23 each depend from Claim 1. Because California Innovations' Ozark Trail Rolling Cooler does not infringe claim 1, it therefore does not infringe claims 2-23. And because independent method claim 24 includes limitations similar to those discussed above, California Innovations' Ozark Trail Rolling Cooler does not infringe claim 24. Accordingly, California Innovations' Ozark Trail Rolling Cooler does not infringe any claim of the '934 patent.

21. Ice Rover's claim charts also allege that the Ozark Trail Rolling Cooler infringes the designs claimed in the '673 and '979 patents.

22. The handle for the Ozark Trail Rolling Cooler includes chunky grips, which are composed of a material that is different from the material of the remaining structural elements of the handle. These contrasting materials provide contrasting surface appearances, namely stippled, rubberized chunks juxtaposed against smooth, metallic surfaces, providing a chunky, industrial visual theme. In

contrast, the design claimed in both the '673 and '979 patents provides a thinner, streamlined visual theme, with the surface shading of the figures communicating a uniform material and consistent surface appearance throughout the claimed design, including the opposing enlarged-diameter portions. For example, as shown in Figure 4 of both the '673 and '979 patents, surface shade lines on different portions of the claimed handle are colinear across the entire width of the handle, including the enlarged-diameter portions, communicating uniformity of material and surface appearance.

23. California Innovations' Ozark Trail Rolling Cooler does not infringe the '673 and '979 patents for at least the above reasons.

24. By virtue of the foregoing, California Innovations has a real and imminent belief that suit will be filed against it or its indemnitee, Walmart, and that an actual and substantial case and controversy exists between the parties that is of sufficient immediacy and reality to warrant declaratory relief. California Innovations requests the declaration of the Court that California Innovations does not infringe and has not infringed any claim of the '934, '673, and '979 patents.

**FIRST CLAIM FOR RELIEF**  
**(Declaratory Judgment of Noninfringement of the '934 Patent)**

25. California Innovations realleges and incorporates paragraphs 1 through 24 as if fully set forth in this paragraph.

26. An actual and substantial controversy exists between the parties with

respect to infringement of the '934 patent to warrant the issuance of a declaratory judgment.

27. A judicial declaration is necessary and appropriate so that California Innovations may ascertain its rights regarding the '934 patent.

28. Pursuant to 28 U.S.C. §§ 2201 and 2202, California Innovations is entitled to a declaratory judgment that it has not infringed and does not infringe, directly or indirectly, any claim of the '934 patent.

**SECOND CLAIM FOR RELIEF**

**(Declaratory Judgment of Noninfringement of the '673 Patent)**

29. California Innovations realleges and incorporates paragraphs 1 through 28 as if fully set forth in this paragraph.

30. An actual and substantial controversy exists between the parties with respect to infringement of the '673 patent to warrant the issuance of a declaratory judgment.

31. A judicial declaration is necessary and appropriate so that California Innovations may ascertain its rights regarding the '673 patent.

32. Pursuant to 28 U.S.C. §§ 2201 and 2202, California Innovations is entitled to a declaratory judgment that it has not infringed and does not infringe, directly or indirectly, any claim of the '673 patent.

**THIRD CLAIM FOR RELIEF**

**(Declaratory Judgment of Noninfringement of the '979 Patent)**

33. California Innovations realleges and incorporates paragraphs 1



through 32 as if fully set forth in this paragraph.

34. An actual and substantial controversy exists between the parties with respect to infringement of the '979 patent to warrant the issuance of a declaratory judgment.

35. A judicial declaration is necessary and appropriate so that California Innovations may ascertain its rights regarding the '979 patent.

36. Pursuant to 28 U.S.C. §§ 2201 and 2202, California Innovations is entitled to a declaratory judgment that it has not infringed and does not infringe, directly or indirectly, any claim of the '979 patent.

#### **JURY DEMAND**

37. California Innovations hereby demands a trial by jury on all claims so triable.

#### **PRAYER FOR RELIEF**

WHEREFORE, California Innovations respectfully prays for this Court to grant the following relief:

38. A declaration that California Innovations does not infringe and has not infringed, either directly or indirectly, any claim of the '934, '673, or '979 patents;

39. An order that Ice Rover and each of their officers, employees, agents, attorneys, and any persons in active concert or participation with them are restrained and enjoined from further claiming that the '934, '673, or '979 patents are infringed by California Innovations or further representing that California

Innovations' products infringe the '934, '673, or '979 patents;

40. An order declaring that California Innovations is a prevailing party and that this in an exceptional case, awarding California Innovations its costs, expenses, and reasonable attorney's fees under 35 U.S.C. § 285 and other applicable provisions; and

41. That California Innovations is granted such other and additional relief as the Court deems just and proper.

Dated: August 9, 2022.

Respectfully submitted,

*/s/ Lee F. Johnston*

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