

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

CLEAN ENERGY MANAGEMENT)	
SOLUTIONS, LLC,)	
)	
Plaintiff,)	
)	Civil Action No. 2:17-cv-213-RWS-RSP
v.)	
)	JURY TRIAL DEMANDED
LOWE'S HOME CENTERS, LLC,)	
)	
Defendant.)	
_____)	

AMENDED COMPLAINT

For its Complaint, Plaintiff Clean Energy Management Solutions, LLC ("Clean Energy"), by and through the undersigned counsel, alleges as follows:

THE PARTIES

1. Clean Energy is a Texas limited liability company with a place of business located at 1400 Preston Road, Suite 475, Plano, Texas 75093.

2. Defendant Lowe's Home Centers, LLC is a North Carolina company with, upon information and belief a place of business located at 910 East End Boulevard North, Marshall, Texas 75670.





3. By registering to conduct business in Texas and by having a place of business where it regularly conducts business in Marshall, Texas, Defendant Lowe's Home Centers, LLC has a permanent and continuous presence in Texas.





4. Thus, Defendant Lowe's Home Centers, LLC has a regular and established place of business in the Eastern District of Texas.

5. Defendant offers for sale and sells in Marshall, Texas Iris home security and automation management products:

Available for Pickup Today at:
Marshall Lowe's

Sort by **FEATURED**

			
Iris Smart Hub	Iris Security Pack	Iris Home Automation Pack	Iris Lighting Pack
★★★★☆ (30) \$69.99	★★★★☆ (41) \$109.00	★★★★☆ (25) \$115.00	★★★★☆ (2) \$94.99
COMPARE	COMPARE	COMPARE	COMPARE

			
Iris 120-Volt White Smart Plug	Iris 120-Volt White Smart Plug (Works with Amazon Alexa)	Iris White Wireless Home Automation Fob	Iris Next Gen White Wireless Home Automation Care
★★★★☆ (54) \$29.99 was: \$39.99 SAVE 25% thru 06/19/2017	★★★★☆ (28) \$37.99	★★★★☆ (29) \$24.99	★★★★☆ (6) \$29.99
COMPARE	COMPARE	COMPARE	COMPARE

<https://www.lowes.com/pl/Home-automation-Home-automation-security-Electrical/4294546210?refinement=4294711805&inStock=1&rollUpVariants=0> (last accessed June 13, 2017).

6. Defendant offers for sale and sells in Marshall, Texas the Schlage Connect Century Satin Nickel Single-Cylinder Motorized Touchscreen Electronic Entry Door Deadbolt with Keypad:

Schlage Connect Century Satin Nickel Single-Cylinder Motorized Touchscreen Electronic Entry Door Deadbolt with Keypad

Item # 792262 Model # BE469NX CEN 619

☆☆☆☆☆ No reviews

Buy any select Connected Lock and get a hub for Free. Only one free hub per transaction. While Supplies Last. Discount Taken at Time of Purchase. See Associate for Details.

\$271.88

Manufacturer Color/Finish

Satin Nickel

1

ADD TO CART

SAVE SHARE

Ships to Store FREE

FREE Shipping

Ready for pickup on 06/20/2017 at Marshall Lowe's

Ready for delivery by 06/20/2017

<https://www.lowes.com/pd/Schlage-Connect-Century-Satin-Nickel-Single-Cylinder-Motorized-Touchscreen-Electronic-Entry-Door-Deadbolt-with-Keypad/1000066385> (last accessed June 13, 2017).

JURISDICTION AND VENUE

7. This action arises under the Patent Act, 35 U.S.C. § 1 *et seq.*
8. Subject matter jurisdiction is proper in this Court under 28 U.S.C. §§ 1331 and 1338.
9. Upon information and belief, Defendant conducts substantial business in this

forum, directly or through intermediaries, including: (i) at least a portion of the infringements alleged herein; and (ii) regularly doing or soliciting business, engaging in other persistent courses of conduct and/or deriving substantial revenue from goods and services provided to individuals in this district, including, but not limited to, goods and services that infringe the '479 patent.

10. Venue is proper in this district pursuant to §§ 1391(b), (c) and 1400(b).

THE PATENT-IN-SUIT

11. On October 11, 2011, U.S. Patent No. 8,035,479 (the "'479 patent"), entitled "Mesh Network Door Lock" was duly and lawfully issued by the U.S. Patent and Trademark Office. A true and correct copy of the '479 patent is attached hereto as Exhibit A.

12. The claims of the '479 patent provide an inventive concept and do not claim an abstract idea and. The inventive concept of the '479 patent greatly enhances home or business automation and security. The use of a code from a mesh network key and a mesh network to provide access to a secured area upon authenticating the code is an improvement over the prior art in that it provides the effectiveness of the conventional mechanical door latch locks that had not previously been duplicated by the complicated, high power consuming or ineffective prior art electronic lock structures.

13. The claims of the '479 patent, moreover, do not merely recite the performance of a longstanding business practice on a computer; rather the claims describe a solution necessarily rooted in electromechanical technology to solve a problem specifically arising in the realm of automated security. The patent specification, for example, explains how prior art electronic lock structures were not "pick-proof" low power lock configurations that were compatible with the internal locking mechanisms of universally used conventional key-operated door latch locks. The '479 patent overcame this difficulty, among others, by using an algorithm and an

electromechanical device to lock or unlock a secured area based on sending a code from a mesh network key and wirelessly communicating the code over a mesh network, receiving the code at a mesh network lock controller and providing access to a secured area upon authenticating the code.

14. Clean Energy is the assignee and owner of the right, title and interest in and to the '479 patent, including the right to assert all causes of action arising under said patent and the right to any remedies for infringement of it.

COUNT I – INFRINGEMENT OF U.S. PATENT NO. 8,035,479

15. Clean Energy repeats and realleges the allegations of paragraphs 1 through 14 as if fully set forth herein.

16. Without license or authorization and in violation of 35 U.S.C. § 271(a), Defendant has infringed and continues to infringe at least claims 1 and 15 of the '479 patent by making, using, importing, offering for sale, and/or selling, systems and methods that provide access to a secured area through use of a mesh network, including, but not limited to Iris home security and automation system ("Iris").

17. Upon information and belief, Defendant used the accused Iris via its internal use and testing in the United States, directly infringing one or more claims of the '479 patent.

18. More specifically, Iris is a home control system that integrates door locks using mesh network connectivity. *See* <https://www.irisbylowes.com/about/> ("About") (last accessed June 13, 2017), a true and correct copy of which is attached as Exhibit B. Defendant's Iris sends a code to unlock a door and provide access to a secured area using a mesh network.

Unlock doors & monitor activity remotely.

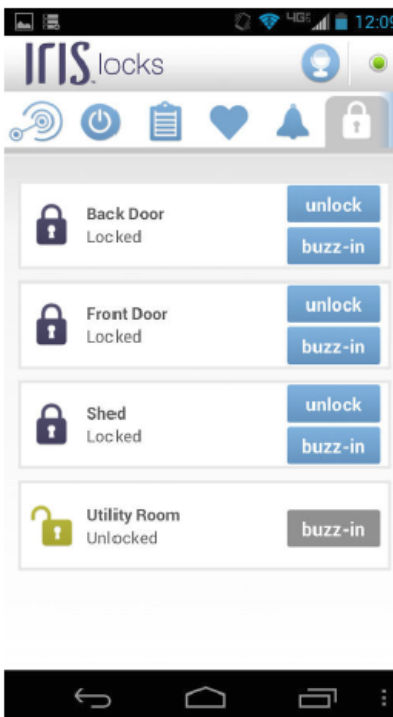
Lock and unlock your home at the push of a button. From now on when you need to let a guest in and are away, you can do it from your smart phone. Add motion sensors, and keep an eye on their activity inside.

<https://www.irisbylowes.com/solutions/convenient-access/> ("Convenient Access") (last accessed June 13, 2017)), a true and correct copy of which is attached as Exhibit C.

Iris Smart Hub is the heart of the Iris network, keeping you in touch with connected devices in your home. By connecting your array of Iris compatible smart products - thermostats, lights, sensors and more from well known brands - you can access and control them all from the Iris app.

- Iris Smart Hub allows you to set up a wireless home security network and control Iris-compatible smart products through the Iris by Lowe's App on your iOS or Android
- Can be paired with over 80 devices, including lights, thermostats, sensors and more to create your ideal home atmosphere
- Compatible with ZigBee and Z-Wave radios
- Works with a variety of home safety and appliance brands including GE, Schlage, Kwikset, Whirlpool, Honeywell, First Alert, Osram Lightify, Genie, NYCE, Keen, Orbit, PetSafe and more

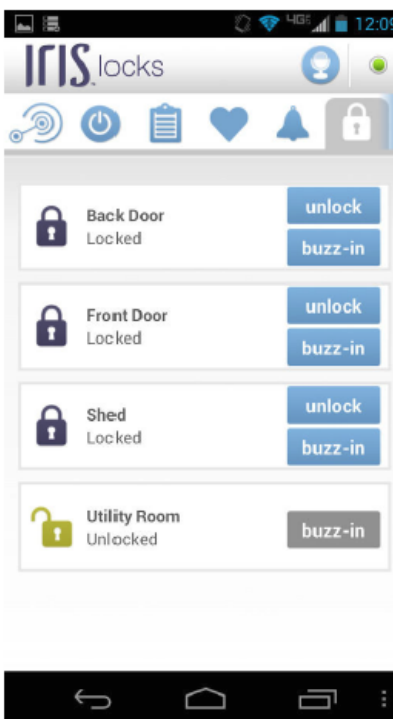
<https://www.lowes.com/pd/Iris-Smart-Hub/1000142105> ("Smart Hub") (last accessed Mar. 20, 2017), a true and correct copy of which is attached as Exhibit D. It sends a code to unlock a door and provide access to a secured area using a mesh network.



http://media.bestofmicro.com/H/9/476253/original/iris_app.jpg ("Iris App") (last accessed June 13, 2017), a true and correct copy of which is attached as Exhibit E. The Iris hub is a full function device that communicates with an end node, router node and integrated coordinator node. *See* Convenient Access; Smart Hub.

The \$60 hub has antennas for ZigBee, Z-Wave and Bluetooth wireless radios -- covering the bases for typical smart-home connection standards. In theory, Iris should be widely compatible with third party devices. You plug it into your router so you can control your devices from anywhere over Wi-Fi. And it uses four AA batteries as a backup in case power goes down -- Lowe's has an optional cellular backup plan for \$5 a month so you can access the system even when your router is offline.

<https://www.cnet.com/products/iris-by-lowes-second-generation/review/> (last accessed June 13, 2017), a true and correct copy of which is attached as Exhibit F.



Iris App.

One of the great things about Iris is that it's a mesh network. This means not all devices need to be able to talk to the hub to work. They simply need to be able to talk to certain other devices, which in turn can talk to the hub. However; not every device is capable of repeating signals.

The best device for repeating ZigBee and Z-Wave signals is the Iris Smart Plug (Item #690407). e.g. You have a few contact sensors on the far side of your house which keep getting their signal dropped, then add a smart plug somewhere in-between. A Previous Model Smart Plug (Item #388564) is also capable of helping out. However; please note Previous Model Smart Plugs will not repeat Z-Wave, only ZigBee.

<https://support.irisbylowes.com/link/portal/30143/30206/Article/628/What-if-my-hub-does-not-have-enough-range-to-reach-all-of-my-devices-with-Next-Gen> (last accessed June 13, 2017), a true and correct copy of which is attached as Exhibit G. The Z-wave mesh network used by Iris forwards data from node to node to a destination so that data (unlock or lock command) reaches the destination even if a node fails or is not within range.

The Z-Wave wireless mesh networking technology enables any node to talk to other adjacent nodes directly or indirectly through available relays. A master controller node controls any additional nodes. The nodes communicate directly with one another if they're within range. If two nodes that want to communicate aren't within range, they can link with another node that both can access and exchange information. A Z-Wave network

See Lou Frenzel, *What's The Difference Between ZigBee And Z-Wave?* (available at <http://electronicdesign.com/communications/what-s-difference-between-zigbee-and-z-wave> (last accessed June 13, 2017)), a true and correct copy of which is attached as Exhibit H. Iris uses the coordinator node integrated in the full-function device to establish the network and define the main parameters for the mesh network.



See <http://i.imgur.com/8A3zSKw.jpg> (last accessed Mar. 20, 2017), a true and correct copy of which is attached as Exhibit I.

The ZM5304 is a fully self-contained module that includes a Z-Wave modem and built-in antenna. The module comes with full FCC modular approval and is pre-scanned for CE approval, making hardware integration and approval very simple. The ZM5304 provides hardware-assisted frequency agility, enabling the module to switch away from a noisy channel without communication or software overhead.

Z-Wave Serial Interface Module with Antenna at p. 1 (available at http://z-wave.sigmadesigns.com/wp-content/uploads/ZM5304_br.pdf (last accessed June 13, 2017)), a true and correct copy of which is attached as Exhibit J. The end node (e.g., smartphone) is a reduced function device which is capable of communicating with the mesh network and does not participate in the routing of the command to lock or unlock the door. See Iris App.

With the Iris app, your smartphone controls all the connected devices around your home. Turn lights on and off, receive alerts from burglar alarms, stream live video feeds, and more. You can even automate events. For example, when you walk into a room, lights will turn on.

About. The code for locking and unlocking is received at the lock controller and enables the locking or unlocking of the door.

Schlage Connect Century Satin Nickel Single-Cylinder Motorized Touchscreen Electronic Entry Door Deadbolt with Keypad

Item # 792262 Model # BE469NX CEN 619

☆☆☆☆☆ No reviews



See <https://www.lowes.com/pd/Schlage-Connect-Century-Satin-Nickel-Single-Cylinder-Motorized-Touchscreen-Electronic-Entry-Door-Deadbolt-with-Keypad/1000066385> (last accessed June 13, 2017), a true and correct copy of which is attached as Exhibit K.

- Employs Z-Wave®, a wireless technology that makes your house smarter, safer, and far more convenient

Id. Iris will unlock the door upon authentication of the code.

Unlock doors & monitor activity remotely.

Lock and unlock your home at the push of a button. From now on when you need to let a guest in and are away, you can do it from your smart phone. Add motion sensors, and keep an eye on their activity inside.

See Convenient Access.

19. Upon information and belief, Defendant's Iris components are sold at stores located in Texas, including, but not limited to stores located in Marshall, Longview, Plano, Allen, McKinney, Richardson and Dallas.

20. Clean Energy filed a complaint against Lowe's Companies, Inc. on March 20, 2017, accusing Lowes Companies, Inc. of infringing the '479 patent based on Iris. (Case No. 2:17-cv- 213, Dkt. 1.)

21. In lieu of filing an answer to the Complaint, Lowe's Companies, Inc. filed a motion to dismiss (Case No. 2:17-cv-213, Dkt. 11), wherein the motion states "LCI [Lowe's Companies, Inc.] is the parent to Lowe's Home Centers, LLC ('LHC'), which operates numerous stores across the United States, including a store in Marshall, TX, as noted in the Complaint." (*Id.* at p. 3.)

22. According to Lowe's Companies, Inc.'s Form 10-K for the fiscal year ended January 29, 2016 at p. 14, Defendant Lowe's Home Centers, LLC is a wholly-owned subsidiary of Defendant Lowe's Companies, Inc.

23. Consequently, as the wholly-owned subsidiary of Lowe's Companies, Inc., Defendant also was on notice of the '479 patent since, at the latest, the date Lowe's Companies, Inc was served the Complaint in Case No. Case No. 2:17-cv-213.

24. Defendant continues to offer to sell and sell the accused Iris home security and automation system after the date it was put on notice of the '479 patent.

25. Upon information and belief, Defendant's continued infringement despite its knowledge of the '479 patent and the accusations of infringement has been objectively reckless and willful.

26. In particular, Defendant's customers' and end-users' use of the accused Iris home security and automation system and services associated therewith are facilitated by the use of technology patented under the '479 patent. Thus, Defendant's customers and end-users are able to use a code from a mesh network key and a mesh network to provide access to a secured area upon authenticating the code when using the Iris home security and automation system and associated service.

27. On information and belief, in order to generate profits and revenues, Defendant markets and promotes, e.g., through its websites and sales personnel, the use of its products and services that infringe the '479 patent when used as intended by Defendant's customers and end-users. Defendant's customers and end-users use such products and services (including, e.g., the Iris home security and automation system). Defendant further instructs its customers and end-users how to use such products and services in a manner that infringe the '479 patent (e.g., through technical documentation, instructions, and technical support). Defendant further instructs its customers and end-users to infringe the '479 patent through the products and services themselves, e.g., through instructions and intuitive user interfaces, such as those found in the Iris app.

28. In particular, Defendant instructs its customers and end-users through at least "DIY instructions" how to install and setup the Iris home automation system:

Smart Plans

Start for free with the Basic plan, or upgrade for advanced controls. All Iris plans include an easy DIY installation, no long-term contracts, and no activation fees.

<https://www.irisbylowes.com/> (last accessed June 13, 2017), a true and correct copy of which is attached as Exhibit L. Defendant also offers online support via the website

https://support.irisbylowes.com/ics/support/default.asp?deptID=30206&_referrer= (last accessed June 13, 2017)

29. Defendant still further make such products and services accessible to its customers and end-users via brick-and-mortar stores and online, thus enabling and encouraging its customers and end-users to use such products and services to infringe the '479 patent.

30. On information and belief, even though Defendant has been aware of the '479 patent and that its customers and end-users infringe the '479 patent since, at the latest, March 27, 2017, Defendant has neither made any changes to the functionality, operations, marketing, sales, technical support, etc. of such products and services to avoid infringing the '479 patent nor informed its customers or end-users how to avoid infringing the '479 patent. To date, Defendant has not identified a single action that it has taken to avoid infringement (e.g., by designing around or notifying its customers or end-users how to avoid infringement) by itself or its customers or end-users since it became aware of the '479 patent.

31. On information and belief, Defendant itself is unaware of any legal or factual basis that its actions solely, or in combination with the actions of its customers and end-users, do not constitute direct or indirect infringement of the '479 patent. To date, Defendant has not produced any opinion of counsel, request for opinion of counsel, evaluation, analysis, or investigation relating to the validity, scope, interpretation, construction, enforceability, unenforceability, or the infringement or potential infringement of any claim of the '479 patent.

32. As such, on information and belief, despite the information Defendant obtained from the Complaint in Case No. 2:17-cv-213, Defendant continues to specifically intend for and encourage its customers and end-users to use its products and/or services in a manner that infringe the claims of the '479 patent. In addition, since at least the filing of the Complaint in Case No. 2:17-cv-213, Defendant has deliberately avoided taking any actions (e.g., designing around, or providing notice to its customers) to avoid confirming that its actions continue to specifically encourage its customers and end-users to use its products and/or services in a manner that infringe the claims of the '479 patent.

33. Defendant's actions of, *inter alia*, making, importing, using, offering for sale, and/or selling such products and/or services constitute an objectively high likelihood of infringement of the '479 patent, which was duly issued by the United States Patent and Trademark Office and is presumed valid. Since at least the filing of the Complaint in Case No. 2:17-cv-213, Defendant is aware that there is an objectively high likelihood that its actions constituted, and continue to constitute, infringement of the '479 patent and that the '479 patent is valid. Despite Defendant's knowledge of that risk, on information and belief, Defendant has not made any changes to the relevant operation of its products and/or services and have not provided its end-users and/or customers with instructions on how to avoid infringement the '479 patent. Instead, Defendant has continued to, and still are continuing to, among other things, make, use, offer for sale, and/or sell products and/or services patented under the '479 patent. As such, Defendant willfully, wantonly and deliberately infringed and is infringing the '479 patent in disregard of Clean Energy's rights under the '479 patent.

34. Clean Energy is entitled to recover from Defendant the damages sustained by Clean Energy as a result of Defendant's infringement of the '479 patent in an amount subject to

proof at trial, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

JURY DEMAND

Clean Energy hereby demands a trial by jury on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Clean Energy requests that this Court enter judgment against Defendant as follows:

- A. An adjudication that Defendant has infringed the '479 patent;
- B. A judgment that Defendant has induced infringement of the '479 patent;
- C. An award of damages to be paid by Defendant adequate to compensate Clean Energy for Defendant's past infringement of the '479 patent and any continuing or future infringement through the date such judgment is entered, including interest, costs, expenses and an accounting of all infringing acts including, but not limited to, those acts not presented at trial;
- D. A declaration that this case is exceptional under 35 U.S.C. § 285, and an award of Clean Energy's reasonable attorneys' fees;
- E. An award of enhanced damages pursuant to 35 U.S.C. § 284 for Defendant's willful infringement of the '479 patent subsequent to the date of its notice of the '479 patent; and
- F. An award to Clean Energy of such further relief at law or in equity as the Court deems just and proper.

Dated: June 20, 2017

/s/ Richard C. Weinblatt
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CERTIFICATE OF SERVICE

I hereby certify that on June 20, 2017, I electronically filed the above document with the Clerk of Court using CM/ECF which will send electronic notification of such filing to all registered counsel.

/s/ L. Charles van Cleef
L. Charles van Cleef