

JUL 29 2005

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA

U. S. DISTRICT COURT  
W. DIST. OF N. C.

LOWE'S COMPANIES, INC. and )  
LOWE'S HOME CENTERS, INC., )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
SORENSEN RESEARCH & )  
DEVELOPMENT TRUST, )  
 )  
Defendant. )  
\_\_\_\_\_ )

CIVIL ACTION NO.:

5:05 CV 234

Jury Trial Demanded

**COMPLAINT FOR DECLARATORY RELIEF**

Plaintiffs LOWE'S COMPANIES, INC. (hereinafter referred to as "LCI") and LOWE'S HOME CENTERS, INC. (hereinafter referred to as "LHC") (LCI and LHC are referenced together herein as "Plaintiffs"), for their Complaint against Defendant SORENSEN RESEARCH & DEVELOPMENT TRUST (hereinafter referred to as "Sorensen" or "Defendant"), allege as follows:

1. This is an action for Declaratory Judgment and other relief brought under the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201-02.

2. Plaintiff LCI is a corporation organized and existing under the laws of the State of North Carolina, having a principal place of business at 1000 Lowe's Boulevard, Mooresville, North Carolina 28117, and is doing business in this State and District.

3. Plaintiff LHC is a corporation organized and existing under the laws of the State of North Carolina, having offices at 1605 Curtis Bridge Road, North Wilkesboro, North Carolina 28697, and is doing business in this State and District. LHC is a wholly

owned subsidiary of LCI. LHC owns and operates retail home improvement warehouses known as “Lowe’s Home Improvement” warehouses.

4. Upon information and belief, Defendant Sorensen is a trust entity organized, administered, and existing under the laws of California, having a principal place of business at 14431 Bellvista Drive, Rancho Santa Fe, California 92067. On information and belief, Sorensen is in the business of acquiring and holding patents, including those purportedly invented by Mr. Jens O. Sorensen, and seeking licenses for such patents.

5. This Court has jurisdiction over the subject matter of this action on the following grounds:

- (a) 28 U.S.C. §§ 1331, this being a civil action arising under the laws of the United States;
- (b) 28 U.S.C. § 1337(a), this being a civil action arising under an Act of Congress regulating commerce and protecting trade and commerce;
- (c) 28 U.S.C. § 1338(a), this being a civil action arising under an Act of Congress relating to alleged patent rights; and
- (d) 28 U.S.C. § 1332, this being a civil action between citizens of different states in which the amount in controversy exceeds seventy-five thousand dollars (\$75,000.00) exclusive of interest and costs.

6. This Court may declare the rights and other legal relations of the parties in this case under 28 U.S.C. § 2201, and Rule 57, Fed.R.Civ.P., because an actual and justiciable controversy exists concerning the rights of, and legal relations between, Plaintiffs and Defendant.

7. This Court has personal jurisdiction over Defendant consistent with the principles underlying the U.S. Constitution and N.C. Gen. Stat. § 1-75.4 because, among other things, any injury caused to Plaintiffs occurred in the State of North Carolina as a result of Defendant's actions within the State of North Carolina and this District. Sorensen sent letters to this State and District threatening Plaintiff LCI with possible litigation and thus creating a reasonable apprehension of suit by Sorensen against Plaintiffs. Additionally, upon information and belief, Defendant is doing business in this State and District, including its business of seeking patent licenses.

8. Venue is proper in this Court under the provisions of 28 U.S.C. §§ 1391 and/or 1400 because, among other things, (a) this is an action arising out of allegations of patent infringement, (b) Plaintiffs are in this District, (c) a substantial part of the events giving rise to Plaintiffs' claims occurred in this District, and (d) on information and belief, Defendant is subject to personal jurisdiction in this District.

9. Defendant Sorensen has alleged that it owns rights in U.S. Patent No. 4,935,184, entitled "Stabilized Injection Molding When Using a Common Mold Part With Separate Complementary Mold Parts" and issued on June 19, 1990 (hereinafter referred to as "the '184 patent"). A copy of the '184 patent is attached hereto as Exhibit 1.

10. In a letter dated April 16, 2005 (hereinafter referred to as "the April 16 letter"), Defendant Sorensen alleged that Plaintiffs' "Task Force Electric Brad Nailer" (hereinafter referred to as "the Brad Nailer") includes a plastic housing that is "substantially likely to be fabricated utilizing a process that infringes" the '184 patent (hereinafter referred to as "the Accused Process").

11. In the April 16 letter, Sorensen stated that it “is prepared to withdraw the assertion of infringement with respect to any product for which we are provided sufficient proof demonstrating that the process actually used to make the product does not infringe the ’184 patent.” In particular, in order that it may withdraw its assertion of infringement, Sorensen requested that Plaintiffs respond to the following questions with respect to the Accused Process:

1. Was each plastic component of each housing molded in a different and distinct injection-molding machine?
2. Was the first molded plastic component manually moved between the different molding machines by hand?
3. Were no two plastic components of the plastic housing fabricated with any shared mold part?

12. Sorensen indicated in the April 16 letter that a “yes” response to the above-quoted questions would indicate that the Accused Process does not infringe the ’184 patent.

13. On or about June 7, 2005, after a diligent and reasonable investigation into Sorensen’s allegations, Plaintiffs responded to Sorensen via letter (hereinafter referred to as “the June 7 letter”) that the Accused Process “clearly does not infringe any claim of the ’184 patent.” In particular, Plaintiffs responded that the answer to each of Sorensen’s above-quoted three questions is “yes.”

14. The Accused Process does not infringe the ’184 patent because, *inter alia*, the housing and grip components of the Brad Nailer are molded in different and wholly distinct injection-molding machines.

15. The Accused Process does not infringe the '184 patent because, *inter alia*, after molding of the housing component of the Brad Nailer in a first injection-molding machine, such component is moved by hand to a different injection-molding machine.

16. The Accused Process does not infringe the '184 patent because, *inter alia*, no two components of the housing of the Brad Nailer are manufactured with any shared mold part.

17. In view of Plaintiffs' non-infringement of the '184 patent, Plaintiffs requested in the June 7 letter that Sorensen "immediately withdraw [its] assertion of infringement of the '184 patent."

18. By letter dated June 10, 2005, Sorensen indicated that it would not withdraw its assertions of infringement of the '184 patent based on the information provided in the June 7 letter, instead demanding "conclusive evidence" of non-infringement.

19. The Accused Process does not infringe any valid and enforceable rights of Sorensen in the '184 patent.

20. There is an actual, substantial, and justiciable controversy between Plaintiffs and Defendant of sufficient immediacy and reality to warrant the rendering of a declaratory judgment by this Court. Defendant Sorensen has made a clear threat against Plaintiffs' business sufficient to create in Plaintiffs a reasonable apprehension of suit by Sorensen concerning its alleged patent rights. Plaintiffs are entitled to a judgment declaring their rights as requested herein.

## COUNT I

### **DECLARATORY JUDGMENT REGARDING ALLEGATIONS OF PATENT INFRINGEMENT**

21. Plaintiffs incorporate by reference paragraphs 1 through 20 above as if set forth fully herein.

22. There is an actual, substantial, and justiciable controversy between Plaintiffs and Defendant Sorensen concerning Sorensen's allegations that Plaintiff LCI has infringed the '184 patent, and by implication that Plaintiff LHC, as LCI's primary channel of distribution for the accused product, also has infringed the '184 patent.

23. These allegations place a cloud over Plaintiffs' business activities and will cause uncertainty among customers, prospective customers, suppliers, and others in the marketplace, likely leading Plaintiffs and/or their related companies to lose revenues and/or business opportunities.

24. On information and belief, the Accused Process does not infringe the '184 patent, as alleged by Sorensen.

25. Plaintiffs are entitled to a judgment declaring that the Accused Process does not infringe the '184 patent.

26. Plaintiffs are entitled to a judgment declaring that any and all making, using, selling, offering for sale, and/or importing into the United States of any product made by the Accused Process is and has been lawful, and otherwise declaring that Plaintiffs have not infringed whatever rights, if any, that Defendant Sorensen may hold in the '184 patent.

27. As a direct and proximate result of Sorensen's allegations of patent infringement, Plaintiffs are suffering irreparable injury to their reputation and goodwill in

an amount that cannot presently be ascertained and cannot be compensated adequately by monetary relief alone.

WHEREFORE, Plaintiffs Lowe's Companies, Inc. and Lowe's Home Centers, Inc. pray that this Court enter judgment:

- (a) Declaring that Plaintiffs have not infringed any purported patent rights of Sorensen in the '184 patent, or otherwise violated any provision of the patent laws of the United States, in connection with the Accused Process or any product made according to the Accused Process that is made, used, imported, sold and/or offered for sale by Plaintiffs, or either of them, or their related companies;
- (b) Permanently enjoining Sorensen, its successors, assigns, and any other related persons and/or entities from asserting the '184 patent against Plaintiffs in connection with the Accused Process or any product made according to the Accused Process that is made, used, imported, sold and/or offered for sale by Plaintiffs, or either of them, or their related companies;
- (c) Finding in favor of Plaintiffs and declaring this case to be exceptional pursuant to 35 U.S.C. § 285;
- (d) Awarding Plaintiffs their attorneys' fees and other costs and expenses;
- (e) Awarding interest to Plaintiffs to the extent permitted by law; and
- (f) Awarding to Plaintiffs such further relief as the Court deems just and proper.

**PLAINTIFFS HEREBY DEMAND A TRIAL BY JURY ON ALL ISSUES SO TRIABLE.**

This 29<sup>th</sup> day of July, 2005.



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