

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION**

LOWE’S COMPANIES, INC.,)	
)	
Plaintiff,)	
)	
v.)	C.A. NO. _____
)	
U.S. ETHERNET INNOVATIONS, LLC,)	JURY TRIAL DEMANDED
)	
Defendant.)	
_____)	

COMPLAINT FOR DECLARATORY RELIEF

Plaintiff LOWE’S COMPANIES, INC. (“LCI”), for its Complaint against Defendant U.S. ETHERNET INNOVATIONS, LLC (“USEI”) alleges as follows:

PARTIES

1. 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 doing business in this State and District.

2. Upon information and belief, USEI is a limited liability company organized and existing under the laws of the State of Texas, having a principal place of business at 719 West Front Street, Suite 122, Tyler, Texas 75702.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction 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

4. This Court may declare the rights and other legal relations of the parties in this case under Fed. R. Civ. P. 57 and 28 U.S.C. § 2201 *et seq.* because an actual and justiciable controversy exists concerning the rights of, and legal relations between, LCI and USEI.

5. This Court has personal jurisdiction over USEI consistent with the principles underlying the U.S. Constitution and N.C. Gen Stat. § 1-75.4. USEI sent correspondence to this State and District requesting that LCI pay for a license to the Patents or face litigation over their use, and later sent follow-up correspondence to LCI providing a deadline for amicable resolution. Additionally, upon information and belief, USEI is doing business and has done business in this State and District.

6. Venue is proper in this Court under the provisions of 28 U.S.C. § 1391. A substantial part of the events giving rise to LCI's claims occurred in this District, and upon information and belief, USEI is subject to personal jurisdiction in this District.

BACKGROUND FACTS

7. USEI purports to be the owner of a portfolio of U.S. patents (the "Patents") including U.S. Patent Nos. 5,434,872; 5,732,094; 5,307,459; 5,319,752; 5,299,313; 5,412,782; 5,872,920; 6,112,252; 5,485,584; and 5,530,874 relating to certain "ethernet technology." USEI has asserted that "[t]he ethernet technology [covered by the Patents] is utilized in many day-to-day business activities within corporations, including internet connections, data transmission, retail transactions, corporate transactions, networked security system cameras, point of sale information, and inventory management systems."

8. USEI has alleged that LCI has acted unlawfully by using technology products subject to the Patents, and USEI has threatened to enforce alleged rights against LCI.

9. Upon information and belief, USEI has sought to enforce its alleged patent rights against multiple parties both by demand and by litigation, including pursuant to a lawsuit currently pending in the Eastern District of Texas (09-cv-448) against multiple defendants for alleged infringement of certain of the Patents.

10. On or about October 13, 2009, USEI sent a letter to LCI alleging ownership of the Patents. Referring to the Texas lawsuit, USEI stated that it “recently filed a patent infringement lawsuit against nine major corporations believed to be infringing the patents.” However, “to avoid additional protracted litigation with a select group of companies utilizing the technology,” USEI was offering LCI “a license to the patents outside of litigation.” USEI noted that it already had demanded and received license payments from “a number of major corporations.” The letter enclosed a license agreement that would require LCI to pay USEI a significant cash fee payment for a license to the patents, or slightly less if paid promptly “to avoid costly and time-consuming litigation.”

11. Counsel for USEI sent a follow-up letter to LCI on or about January 29, 2010, noting that LCI had not yet purchased the license. Counsel requested a formal response from LCI and provided a deadline of February 15, 2010 in order to avoid litigation.

12. Upon information and belief, LCI has not violated any of USEI’s purported rights and is not liable to USEI, in law or in equity.

CLAIM FOR RELIEF

13. LCI incorporates by reference paragraphs 1-11 as if set forth fully herein.

14. There is an actual and substantial controversy between LCI and USEI of sufficient immediacy and reality to warrant the rendering of a declaratory judgment by this Court. USEI has made a threat to LCI's business by accusing LCI of unlawful actions and requesting that LCI immediately pay a massive license fee.

15. These allegations place a cloud over LCI's business, and in particular LCI's rights and abilities to continue business activities relating to the products accused of violating USEI's alleged rights, and thus will cause uncertainty among customers, prospective customers and suppliers, and elsewhere in the marketplace, likely leading LCI to lose revenue and/or business opportunities.

16. Pursuant to Fed. R. Civ. P. 57 and 28 U.S.C. § 2201 *et seq.* declaratory judgment is proper in this instance to determine the respective rights and legal relations between LCI and USEI. LCI is entitled to a judgment declaring that its conduct has been lawful, and declaring that it has not otherwise violated any purported rights of USEI.

WHEREFORE, Plaintiff Lowe's Companies, Inc., requests the entry of a judgment:

- A. Declaring that LCI has not infringed or otherwise violated any purported rights of USEI, including any provisions of 35 U.S.C. § 1 *et seq.* or any other federal, state, or common law or equitable claim;
- B. Granting LCI its costs, reasonable attorneys' fees, and other litigation expenses, together with such further relief as the Court may deem just and proper.

LCI demands a trial by jury on all issues so triable.

This 12th day of February, 2010.

Respectfully submitted,

s/ Scott M. Tyler

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