

1 Michael D. Rounds
Nevada Bar No. 4734
2 Adam K. Yowell
Nevada Bar No. 11748
3 WATSON ROUNDS
5371 Kietzke Lane
4 Reno, NV 89511-2083
Telephone: (775) 324-4100
5 Facsimile: (775) 333-8171
E-Mail: mrounds@watsonrounds.com
6 E-Mail: ayowell@watsonrounds.com

7 Attorneys for Plaintiff

8 **UNITED STATES DISTRICT COURT**
9 **DISTRICT OF NEVADA**

10 KE INVESTMENTS, LLC, a Nevada
11 limited liability company,

Civil Action No. 2:10-cv-02048

12 Plaintiff,

13 v.

**FIRST AMENDED COMPLAINT
FOR PATENT INFRINGEMENT**

14 LOWE’S COMPANIES, INC., a North
Carolina corporation; and LG SOURCING,
15 INC., a North Carolina corporation;
16 LOWE’S HIW, INC., a Washington
corporation,

(JURY DEMAND)

17 Defendants.

18 _____/
19 **COMPLAINT**

20 Plaintiff, through counsel, alleges as follows:

21 **NATURE OF THE CASE**

22 This is an action for patent infringement under the federal Patent Act. Plaintiff seeks
23 money damages and attorneys’ fees and costs, and a permanent injunction against Defendants’
24 further making, using, selling, offering for sale, and/or importing of Defendants’ infringing
25 products.
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27 **JURISDICTION AND VENUE**

28 1. The claim for patent infringement stated in this Complaint arises under 35 U.S.C.

1 § 1 et seq. This Court has original jurisdiction of this action under 28 U.S.C. § 1338(a).

2 2. Venue is proper in the United States District Court for the District of Nevada
3 under 28 U.S.C. §§ 1391(b), 1391(c), and 1400(b).

4 **PARTIES**

5 3. Plaintiff KE Investments, LLC (“KEI”) is a Nevada limited liability company.

6 4. Defendant Lowe’s Companies, Inc. (“Lowe’s”) is a North Carolina corporation.

7 5. Defendant LG Sourcing, Inc. (“LG”) is a North Carolina corporation and a wholly
8 owned subsidiary of Lowe’s.

9 6. Defendant Lowe’s HIW, Inc. (“LHIW”) is a Washington corporation and a wholly
10 owned subsidiary of Lowe’s that operates Lowe’s stores in the State of Nevada and elsewhere.

11 **FACTS COMMON TO ALL CAUSES OF ACTION**

12 7. United States Patent Number 6,715,427 (“the ‘427 Patent”) entitled “Suspended
13 Storage Structure,” issued April 6, 2004. The ‘427 Patent claims an overhead storage system. A
14 true and correct copy of the ‘427 Patent is attached to this Complaint as Exhibit A and is
15 incorporated herein by reference.

16 8. The ‘427 Patent was assigned to, and is currently owned by, KEI.

17 9. United States Patent Number 7,152,535 (“the ‘535 Patent”) entitled “Suspended
18 Storage Shelf,” issued December 26, 2006. The ‘535 Patent claims an overhead storage system.
19 A true and correct copy of the ‘535 Patent is attached to this Complaint as Exhibit B and is
20 incorporated herein by reference.

21 10. The ‘535 Patent was assigned to, and is currently owned by, KEI.

22 11. KEI exclusively licenses Diamond Storage Concepts LLC (“Diamond”), a Nevada
23 limited liability company, to manufacture overhead storage systems embodying the claims of the
24 ‘427 and ‘535 Patents and sell those overhead storage systems throughout the United States
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1 through independent dealers and in large retail outlets.

2 12. In or about April 2003, Lowe's manufactured a product called the Project Storage
3 ceiling storage shelf and offered the Project Storage ceiling storage shelf for sale in its U.S. retail
4 stores.

5
6 13. On July 1, 2003, KEI's predecessor-in-interest in the '427 and '535 Patents and the
7 related United States Patent Number 6,435,105, HyLoft USA, LLC, informed Lowe's that its
8 manufacture and sale of the Project Storage ceiling storage shelf might infringe United States
9 Patent Number 6,435,105.

10 14. Subsequent to July 1, 2003, Lowe's ceased offering the Project Storage ceiling
11 storage shelf for sale in its U.S. retail stores. Since that time, Lowe's, LG, and/or LHIW have
12 purchased Diamond's and the predecessor HyLoft entities' products covered by KEI's patents,
13 including the '427 and '535 Patents, and have knowledge of the Patents at issue.

14
15 15. In or about February 2010 and March 2010, LG placed a larger-than-average order
16 with KEI's licensee, Diamond, for the three products in Diamond's product line supplied to
17 Lowe's, LG, and/or LHIW, namely, a large overhead storage shelf, a small overhead storage
18 shelf, and a wall shelf. The large and small overhead storage shelf products are covered by the
19 '427 and '535 Patents.

20
21 16. On or about June 8, 2010, Lowe's informed Diamond that it would no longer
22 purchase Diamond's products for future sale in its retail stores.

23 17. In or about October 2010, Defendants Lowe's, LG, and LHIW replaced the three
24 products of Diamond's product line with a Kobalt Overhead Storage Unit 48 x 60 (item #
25 0186958), a Kobalt Overhead Storage Unit 48 x 48 (item # 0186952), and a Kobalt Wall Shelf
26 Kit (item # 0186951) in at least one of the Lowe's retail stores located in Henderson, Nevada and
27 one of the Lowe's retail stores located in Reno, Nevada.
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1 18. On information and belief, Defendants Lowe's and LG copied the three products
2 of Diamond's product line in creating its three replacement products.

3 19. The packaging for the products referred to as the Kobalt Overhead Storage Unit
4 48 x 60 (item # 0186958) and the Kobalt Overhead Storage Unit 48 x 48 (item # 0186952)
5 identifies LG as the distributor of the products.
6

7 20. On information and belief, Defendants Lowe's, LG, and LHIW have made, used,
8 sold, manufactured, and/or offered for sale in the United States, and/or imported into the United
9 States, including in this District, the products referred to as the Kobalt Overhead Storage Unit 48
10 x 60 (item # 0186958) and the Kobalt Overhead Storage Unit 48 x 48 (item # 0186952).

11 21. On information and belief, Defendants Lowe's, LG, and LHIW continue to make,
12 use, sell, manufacture, and/or offer for sale in the United States, and/or import into the United
13 States, including in this District, products referred to as the Kobalt Overhead Storage Unit 48 x
14 60 (item # 0186958) and the Kobalt Overhead Storage Unit 48 x 48 (item # 0186952).
15

16 **CLAIM FOR PATENT INFRINGEMENT UNDER 35 U.S.C. § 271**

17 22. By making, using, selling, manufacturing, and/or offering for sale in the United
18 States, and/or importing into the United States, products referred to as the Kobalt Overhead
19 Storage Unit 48 x 60 (item # 0186958) and the Kobalt Overhead Storage Unit 48 x 48 (item #
20 0186952), Defendants Lowe's, LG, and LHIW have directly infringed and continue to directly
21 infringe one or more claims of the '427 Patent under 35 U.S.C. § 271(a).
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23 23. By making, selling, manufacturing, and/or offering for sale in the United States,
24 and/or importing into the United States, products referred to as the Kobalt Overhead Storage Unit
25 48 x 60 (item # 0186958) and the Kobalt Overhead Storage Unit 48 x 48 (item # 0186952),
26 Defendants Lowe's, LG, and LHIW have induced and continue to induce others to directly
27 infringe one or more claims of the '427 Patent under 35 U.S.C. § 271(b).
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1 24. By making, selling, manufacturing, and/or offering for sale in the United States,
2 and/or importing into the United States, products referred to as the Kobalt Overhead Storage Unit
3 48 × 60 (item # 0186958) and the Kobalt Overhead Storage Unit 48 × 48 (item # 0186952),
4 Defendants Lowe's, LG, and LHIW have contributed and continue to contribute to the
5 infringement of one or more claims of the '427 Patent under 35 U.S.C. § 271(c).
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7 25. Defendants' infringement of the '427 Patent has been, and continues to be, willful.

8 **CLAIM FOR PATENT INFRINGEMENT UNDER 35 U.S.C. § 271**

9 26. By making, using, selling, manufacturing, and/or offering for sale in the United
10 States, and/or importing into the United States, products referred to as the Kobalt Overhead
11 Storage Unit 48 × 60 (item # 0186958) and the Kobalt Overhead Storage Unit 48 × 48 (item #
12 0186952), Defendants Lowe's, LG, and LHIW have directly infringed and continue to directly
13 infringe one or more claims of the '535 Patent under 35 U.S.C. § 271(a).
14

15 27. By making, selling, manufacturing, and/or offering for sale in the United States,
16 and/or importing into the United States, products referred to as the Kobalt Overhead Storage Unit
17 48 × 60 (item # 0186958) and the Kobalt Overhead Storage Unit 48 × 48 (item # 0186952),
18 Defendants Lowe's, LG, and LHIW have induced and continue to induce others to directly
19 infringe one or more claims of the '535 Patent under 35 U.S.C. § 271(b).
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21 28. By making, selling, manufacturing, and/or offering for sale in the United States,
22 and/or importing into the United States, products referred to as the Kobalt Overhead Storage Unit
23 48 × 60 (item # 0186958) and the Kobalt Overhead Storage Unit 48 × 48 (item # 0186952),
24 Defendants Lowe's, LG, and LHIW have contributed and continue to contribute to the
25 infringement of one or more claims of the '535 Patent under 35 U.S.C. § 271(c).
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27 29. Defendants' infringement of the '535 Patent has been, and continues to be, willful.
28

Prayer for Relief

WHEREFORE, KEI requests that the Court:

A. enter a judgment against Defendants Lowe’s, LG, and LHIW for infringement of the ‘427 Patent;

B. permanently enjoin Defendants Lowe’s, LG, and LHIW from infringing the ‘427 Patent and inducing, aiding, abetting, or contributing to infringement of the ‘427 Patent by others;

C. award monetary damages together with interest and costs to KEI and against Defendants Lowe’s, LG, and LHIW for infringement of the ‘427 Patent pursuant to 35 U.S.C. § 284;

D. enter a judgment against Defendants Lowe’s, LG, and LHIW for infringement of the ‘535 Patent;

E. permanently enjoin Defendants Lowe’s, LG, and LHIW from infringing the ‘535 Patent and inducing, aiding, abetting, or contributing to infringement of the ‘535 Patent by others;

F. award monetary damages together with interest and costs to KEI and against Defendants Lowe’s, LG, and LHIW for infringement of the ‘535 Patent pursuant to 35 U.S.C. § 284;

G. award treble damages to KEI and against Defendants Lowe’s, LG, and LHIW pursuant to 35 U.S.C. § 284;

H. enter a judgment that this is an exceptional case pursuant to 35 U.S.C. § 285;

I. award reasonable attorneys’ fees to KEI and against Defendants Lowe’s, LG, and LHIW for infringement of the ‘427 and ‘535 Patents pursuant to 35 U.S.C. § 285;

J. award such other further relief as the Court may deem appropriate.

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Dated this 30th day of November, 2010.

/s/ Michael D. Rounds
Michael D. Rounds (NV Bar No. 4734)
Adam K. Yowell (NV Bar No. 11748)
Watson Rounds
5371 Kietzke Lane
Reno, Nevada 89511
Tel: (775) 324-4100
Fax: (775) 333-8171

Attorneys for Plaintiff

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DEMAND FOR JURY TRIAL

Plaintiff KE Investments, LLC hereby demands a jury trial under Fed. R. Civ. P. 38(b) for all issues triable by jury.

Respectfully submitted this 30th day of November, 2010.

/s/ Michael D. Rounds
Michael D. Rounds (NV Bar No. 4734)
Adam K. Yowell (NV Bar No. 11748)
Watson Rounds
5371 Kietzke Lane
Reno, Nevada 89511
Tel: (775) 324-4100
Fax: (775) 333-8171

Attorneys for Plaintiff