

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION**

LOWE’S HOME CENTERS, INC.)	
)	
Plaintiff,)	
)	CIVIL ACTION NO.:
v.)	
)	
ORION IP, LLC,)	Jury Trial Demanded
)	
Defendant.)	
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COMPLAINT FOR DECLARATORY RELIEF

Plaintiff LOWE’S HOME CENTERS, INC. (hereinafter referred to as “LHC” or “Plaintiff”), for its Complaint against Defendant ORION IP, LLC (hereinafter referred to as “Orion” or “Defendant”), alleges 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 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.
3. Upon information and belief, Defendant Orion is a Delaware limited liability company with a principal place of business at 207 C North Washington Avenue, Marshall, Texas 75670.
4. On information and belief, Defendant Orion is the owner of whatever rights, if any, that exist in U.S. Patent No. 5,615,342 (hereinafter referred to as “the ’342 patent”), which is entitled “Electronic Proposal Preparation System.”

5. On information and belief, Defendant Orion is the owner of whatever rights, if any, that exist in U.S. Patent No. 5,367,627 (hereinafter referred to as “the ’627 patent”), which is entitled “Computer-Assisted Parts Sales Method.”

6. Defendant Orion has filed suit against Lowe’s Companies, Inc. in the U.S. District Court for the Eastern District of Texas, alleging infringement of the ’342 and ’627 patents under 35 U.S.C. § 271. In that action, Orion alleges that Lowe’s Companies, Inc. directly and indirectly infringes the ’342 and ’627 patents via “methods practiced on its various websites (including but not limited to www.lowes.com), making and using supply chain methods, sales methods, sales systems, marketing methods, marketing systems and inventory systems.”

7. As part of LHC’s general operations and business, LHC – and not Lowe’s Companies, Inc. – operates and maintains the Internet website found at www.lowes.com.

8. As a result of Orion’s allegations and general course of conduct against Lowe’s Companies, Inc., LHC has a reasonable apprehension that Defendant Orion will imminently file a complaint against LHC for alleged infringement of the ’342 and ’627 patents.

9. On information and belief, Defendant Orion’s sole business operations consist of licensing and enforcement of United States patents, including the ’342 and ’627 patents. Indeed, Defendant Orion has offered a license under the ’342 and ’627 patents to Lowe’s Companies, Inc., a corporation organized and existing under the laws of the State of North Carolina.

10. On information and belief, Defendant Orion has entered into many contracts with companies in various jurisdictions concerning the ’342 and ’627 patents,

including contracts within the State of North Carolina with or concerning one or more North Carolina entities.

11. On information and belief, Defendant Orion does not make or sell any products or provide any services in connection with or relating to the '342 and '627 patents beyond its efforts to license and enforce said patents.

12. 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; and
- (c) 28 U.S.C. § 1338(a), this being a civil action arising under an Act of Congress relating to alleged patent rights;
- (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.

13. 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, Plaintiff and Defendant.

14. On information and belief, this Court has personal jurisdiction over Defendant Orion consistent with the principles underlying the U.S. Constitution and N.C. Gen. Stat. § 1-75.4.

15. Venue is proper in this Court under the provisions of 28 U.S.C. §§ 1391 and/or 1400.

16. Plaintiff LHC has no liability for infringement of the '342 patent or the '627 patent because, *inter alia*, Plaintiff LHC has not infringed any valid and enforceable claim of either the '342 patent or the '627 patent.

17. There is an actual and substantial controversy between Plaintiff LHC and Defendant Orion of sufficient immediacy and reality to warrant the rendering of a declaratory judgment by this Court. Plaintiff is entitled to a judgment declaring the parties' rights as requested herein.

COUNT I

DECLARATORY JUDGMENT REGARDING ALLEGATIONS OF PATENT INFRINGEMENT

18. Plaintiff incorporates by reference paragraphs 1 through 17 above as if set forth fully herein.

19. There is an actual, substantial, and justiciable controversy between Plaintiff and Defendant Orion concerning Orion's allegations of infringement of the '342 patent.

20. LHC has not infringed and does not infringe, either directly or indirectly, any valid and enforceable claim of the '342 patent.

21. Defendant Orion's allegations of infringement against Lowe's Companies, Inc. place a cloud over Plaintiff LHC's business, and in particular the operation of the Internet website located at www.lowes.com, and likely will cause uncertainty among others in the marketplace, leading Plaintiff to lose revenues and/or business opportunities.

22. Plaintiff is entitled to a judgment declaring that its methods, systems, products, and/or activities is and has been lawful, and otherwise declaring that Plaintiff has not infringed whatever rights, if any, that Defendant Orion may hold in the '342 patent.

23. As a direct and proximate result of Defendant Orion's allegations of infringement of the '342 patent, Plaintiff is suffering irreparable injury to its reputation and goodwill in an amount that cannot presently be ascertained and cannot be compensated adequately by monetary relief alone.

24. There is an actual, substantial, and justiciable controversy between Plaintiff and Defendant Orion concerning Orion's allegations of infringement of the '627 patent.

25. LHC has not infringed and does not infringe, either directly or indirectly, any valid and enforceable claim of the '627 patent.

26. Defendant Orion's allegations of infringement against Lowe's Companies, Inc. place a cloud over Plaintiff LHC's business, and in particular the operation of the Internet website located at www.lowes.com, and likely will cause uncertainty among others in the marketplace, leading Plaintiff to lose revenues and/or business opportunities.

27. Plaintiff is entitled to a judgment declaring that its methods, systems, products, and/or activities is and has been lawful, and otherwise declaring that Plaintiff has not infringed whatever rights, if any, that Defendant Orion may hold in the '627 patent.

28. As a direct and proximate result of Defendant Orion's allegations of infringement of the '627 patent, Plaintiff is suffering irreparable injury to its reputation

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

COUNT II

DECLARATORY JUDGMENT REGARDING PATENT INVALIDITY

29. Plaintiff incorporates by reference paragraphs 1 through 28 above as if set forth fully herein.

30. On information and belief, Plaintiff is entitled to a judgment declaring that the claims of the '342 patent are invalid for failure to comply with the provisions of one or more sections of the patent laws of the United States, 35 U.S.C. § 101 *et seq.*

31. As a direct and proximate result of Defendant Orion's allegations of infringement of the '342 patent, Plaintiff is suffering irreparable injury to its reputation and goodwill in an amount that cannot presently be ascertained and cannot be compensated adequately by monetary relief alone.

32. On information and belief, Plaintiff is entitled to a judgment declaring that the claims of the '627 patent are invalid for failure to comply with the provisions of one or more sections of the patent laws of the United States, 35 U.S.C. § 101 *et seq.*

33. As a direct and proximate result of Defendant Orion's allegations of infringement of the '627 patent, Plaintiff is suffering irreparable injury to its reputation and goodwill in an amount that cannot presently be ascertained and cannot be compensated adequately by monetary relief alone.

WHEREFORE, Plaintiff LHC prays for judgment:

- A. Declaring that LHC has not infringed any valid and enforceable claim of the '342 or 627 patents;
- B. Declaring that the '342 patent is invalid;
- C. Declaring that the '627 patent is invalid;
- D. Declaring that this case is exceptional as against Defendant pursuant to 35 U.S.C. § 285;
- E. Awarding LHC its costs and reasonable attorneys' fees; and
- F. Granting LHC such other and further relief as the Court may deem just and proper.

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

This 11th day of May, 2006.

Respectfully submitted,

s/ J. Mark Wilson

J. Mark Wilson

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