

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

LOWE’S COMPANIES, INC.,)	
)	
Plaintiff,)	Civil Action No. 3:12-cv-151
)	
v.)	COMPLAINT
)	
CASCADES BRANDING INNOVATION LLC,)	JURY TRIAL DEMANDED
)	
Defendant.)	
)	

Plaintiff Lowe’s Companies, Inc., through counsel, hereby submits the following complaint for declaratory judgment against Defendant Cascades Branding Innovation LLC (“Cascades”), and alleges as follows:

THE PARTIES

1. Plaintiff Lowe’s Companies, Inc. (“Lowe’s”) is a North Carolina corporation with its principal place of business at 1000 Lowe’s Boulevard, Mooresville, North Carolina, 28117.
2. Upon information and belief, Cascades is an Illinois limited liability company having a place of business at 500 Skokie Boulevard, Suite 350, Northbrook, Illinois, 60062. Cascades purports to be the exclusive licensee and holder of certain rights to U.S. Patent Number 7,768,395, entitled “Brand Mapping” (“the ‘395 Patent”), and U.S. Patent Number 8,106,766, also entitled “Brand Mapping” (“the ‘766 Patent”) (collectively “the Patents”).

JURISDICTION AND VENUE

3. The Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a), in that it involves claims arising under 35 U.S.C. § 1, *et seq.* and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202.
4. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b).

5. Upon information and belief, Cascades has contacts with the State of North Carolina sufficient to confer jurisdiction pursuant to North Carolina's long-arm statute and the United States Constitution. Further, the letter giving rise to the declaratory judgment claims set forth herein was sent by Cascades to Lowe's at its headquarters in Mooresville, North Carolina.

FACTS

6. Upon information and belief, the '395 Patent issued to Dr. Steven K. Gold ("Dr. Gold") on August 3, 2010 from U.S. Patent Application Serial No. 11/758,392, filed June 5, 2007. A copy of the '395 Patent is attached hereto as Exhibit A.

7. Dr. Gold is identified on the face of the '395 Patent as the sole inventor.

8. Upon information and belief, the '766 Patent issued to Dr. Gold on January 31, 2012 from U.S. Patent Application Serial No. 12/846,478, filed July 29, 2010. A copy of the '766 Patent is attached hereto as Exhibit B.

9. Dr. Gold is identified on the face of the '766 Patent as the sole inventor.

10. The '766 Patent is a continuation of the '395 Patent; both of which claim priority to U.S. Provisional Application Serial No. 60/885,773, filed on January 19, 2007.

11. Upon information and belief, on or about February 4, 2011, Dr. Gold assigned his entire right, title and interest to the Patents to N99 LLC ("the Gold-N99 Assignment").

12. Upon information and belief, on or about February 8, 2011, the Gold-N99 Assignment was recorded with the USPTO.

13. Upon information and belief, there are no assignments of the Patents recorded with the USPTO subsequent to the Gold-N99 Assignments.

14. On or about February 27, 2012, counsel for Cascades wrote a letter to Lowe's ("the Cascades Letter") claiming to be the holder of all substantial rights in the Patents and

claiming to have exclusive rights to license the Patents. A copy of the Cascades Letter is attached hereto as Exhibit C.

15. In the Cascades Letter, Cascades accuses Lowe's of infringing the Patents with its "Lowe's app" for "various smart phones, like the iPhone."

16. The Cascades Letter purports to "inform" Lowe's of "Lowe's Companies' infringement of the '395 patent and the '766 patent," offers to license the Patents to Lowe's, and then states that the license offer may be revoked or modified at any time before it is accepted.

17. Upon information and belief, Cascades has attempted to enforce the Patents against numerous other parties through litigation and demand letters like the one sent to Lowe's on February 27, 2012.

18. As a result, Lowe's has formed the reasonable apprehension and belief that Cascades will sue Lowe's for infringement of the Patents unless Lowe's agrees to what it views as an unreasonable licensing demand, and Cascades' demand letter and unreasonable licensing demand have placed a cloud of uncertainty over Lowe's business.

19. Lowe's reasonably believes that it is not infringing the Patents, and that the Patents are invalid for failure to comply with one or more of the conditions for patentability set forth in 35 U.S.C. §§ 101, 102, 103 and 112.

COUNT I
(Declaratory Judgment of Noninfringement)

20. Lowe's incorporates the allegations in the previous paragraphs herein by reference.

21. By way of the Cascades Letter, Cascades has asserted that Lowe's is infringing certain claims of the Patents.

22. Lowe's disputes Cascades' assertion that Lowe's is infringing the asserted claims of the '395 Patent. Among other reasons, Lowe's does not infringe the asserted claims of the '395 Patent because Lowe's does not perform any of the steps required by claim 1 of the patent. Furthermore, the "Lowe's app" (as Lowe's understands that term) requires user input to identify a first location of the device and thus does not provide for "identifying a first location of the device independently of any location-specifying input by the user to the device" as required by claim 1 of the '395 Patent. Because all other asserted claims of the '395 Patent depend upon claim 1, Lowe's does not infringe the asserted dependent claims of the '395 Patent either.

23. Lowe's disputes Cascades' assertion that Lowe's is infringing the asserted claims of the '766 Patent. Among other reasons, Lowe's does not infringe the asserted claims of the '766 Patent because Lowe's does not perform any of the steps required by claim 1 of the patent. Furthermore, the "Lowe's app" (as Lowe's understands that term) requires user input to identify a first location of the device and thus does not provide for "identifying a first location of the device independently of any location-specifying input by the user to the device" as required by claim 1 of the '766 Patent. Because all other asserted claims of the '766 Patent depend upon claim 1, Lowe's does not infringe the asserted dependent claims of the '766 Patent either.

24. By virtue of the matters alleged above, there is a substantial and continuing justiciable controversy within the meaning of 28 U.S.C. §§ 2201 and 2202 between Lowe's and Cascades with respect to Cascades' allegations of infringement, and Lowe's is entitled to a declaratory judgment that it is not infringing and has not infringed the Patents.

COUNT II
(Declaratory Judgment of Invalidity)

25. Lowe's incorporates the allegations in the previous paragraphs herein by reference.

26. Cascades has asserted that Lowe's is infringing the Patents.

27. Upon information and belief, the '395 and '766 Patents are invalid and/or void under the United States patent laws, including but not limited to provisions of 35 U.S.C. §§ 102, 103 and/or 112 for at least one or more of the following reasons:

a. The alleged inventions claimed in the Patents were known or used by others in this country, or were patented or described in printed publications in this or a foreign country, before the alleged inventions thereof by Dr. Gold.

b. The alleged inventions claimed in the Patents were patented or described in printed publications in this or a foreign country, or were in public use or on sale in this country, more than one year prior to the first date of the application for the Patents in the United States.

c. The alleged inventions claimed in the Patents are described in patents granted on applications filed in the United States by third persons prior to the alleged inventions thereof by Dr. Gold;

d. The alleged inventions claimed in the Patents were invented by another in this country before Dr. Gold's alleged invention thereof, and the earlier inventions were not abandoned, suppressed, or concealed.

e. Any differences between the alleged inventions claimed in the Patents and the prior art are such that the alleged inventions of the Patents are such that the subject matter of the alleged inventions would have been obvious at the time of the alleged

inventions by persons of ordinary skill in the arts to which the subject matter pertains;
and/or

f. The Patents fail for lack of enablement.

28. By virtue of the matters alleged above, there is a substantial and continuing justiciable controversy within the meaning of 28 U.S.C. §§ 2201 and 2202 between Lowe's and Cascades with respect to the validity of the Patents, and Lowe's is entitled to a declaratory judgment that the Patents are invalid.

PRAYER FOR RELIEF

WHEREFORE, Lowe's prays for the following relief:

1. The Court enter judgment in favor of Lowe's and declare that the Patents are not infringed by Lowe's and that the Patents are invalid.
2. The Court grant preliminary and permanent injunctions enjoining and restraining Cascades and its agents, servants, and employees, and all persons in active concert or participation with Cascades, from stating or representing, directly or indirectly, to any person that Lowe's has infringed the Patents.
3. The Court declare this matter an exceptional case pursuant to 35 U.S.C. § 285.
4. The Court require Cascades to pay to Lowe's its reasonable costs and expenses, including attorneys' fees, incurred in the preparation and prosecution of this action;
5. Lowe's have such other and further relief as this Court may deem just; and
6. That all matters so triable be tried by a jury.

This the 5th day of March, 2012.

/s/ John F. Morrow, Jr.

John F. Morrow, Jr. (N.C. State Bar No. 23382)

Jacob S. Wharton (N.C. State Bar No. 37421)

WOMBLE CARLYLE SANDRIDGE & RICE, PLLC

Attorneys for Plaintiff Lowe's Companies, Inc.

One West Fourth Street

Winston-Salem, NC 27101

Telephone: (336) 721-3584

Fax: (336) 733-8429

jmorrow@wcsr.com

jwharton@wcsr.com