

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IRON GATE SECURITY, INC.

Plaintiff,

- against -

LOWE’S COMPANIES, INC.

Defendant.

Index No. 15-cv-8814 (KBF)

**LOWE’S COMPANIES, INC.’S
ANSWER TO PLAINTIFF’S SECOND
AMENDED COMPLAINT AND
AFFIRMATIVE DEFENSES**

Defendant Lowe’s Companies, Inc. (“Lowe’s”), by and through its attorneys, respectfully submits this Answer and Affirmative Defenses in response to Plaintiff Iron Gate Security, Inc.’s (“Plaintiff”) Second Amended Complaint For Patent Infringement, and requests a trial by jury on all issues so triable, as follows:

NATURE OF THE ACTION

1. Lowe’s admits that the Complaint purports to allege an action for patent infringement arising under Title 35 of the United States Code, but denies that the Complaint states a valid claim.

PARTIES

2. Lowe’s is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 2, and therefore denies the same.

3. Lowe’s admits that it is a North Carolina corporation and that it has a place of business at 1000 Lowe’s Boulevard, Mooresville, North Carolina 28117. Lowe’s denies the remaining allegations of Paragraph 3.

JURISDICTION AND VENUE

4. Lowe's admits that the Complaint purports to allege an action for patent infringement arising under Title 35 of the United States Code, but denies that the Complaint states a valid claim. Lowe's admits that this Court has jurisdiction over the subject matter of this case pursuant to 28 U.S.C. §§ 1331 and 1338(a), but denies that the Complaint states a valid claim.

5. Lowe's contests venue in this action since Lowe's denies that it has conducted any infringing activity in this venue as alleged in the Complaint, and denies that this venue is convenient. Lowe's denies the remaining allegations of Paragraph 5.

6. Lowe's does not contest personal jurisdiction in this action only. Lowe's denies that it has conducted any infringing activity as alleged in the Complaint and further denies that it has directly or through intermediaries conducted any infringing activity in this forum. Lowe's denies the remaining allegations of Paragraph 6.

BACKGROUND

7. Lowe's admits that Exhibit A is what purports to be a copy of U.S. Patent No. 6,288,641, entitled on its face "Assembly, And Associated Method, For Remotely Monitoring a Surveillance Area." However, Lowe's denies that U.S. Patent No. 6,288,641 was duly and lawfully issued. Additionally, Lowe's is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 7, and therefore denies the same.

8. Lowe's is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 8, and therefore denies the same.

9. Lowe's is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 9, and therefore denies the same.

10. Lowe's is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 10, and therefore denies the same.

11. Lowe's is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 11, and therefore denies the same.

12. Lowe's admits that Exhibit B is what purports to be a copy of U.S. Patent No. 7,203,693, entitled on its face "Instantly Indexed Databases for Multimedia Content Analysis and Retrieval." However, Lowe's denies that U.S. Patent No. 7,203,693, was duly and lawfully issued. Additionally, Lowe's is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 12, and therefore denies the same.

13. Lowe's is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 13, and therefore denies the same.

14. Lowe's is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 14, and therefore denies the same.

15. Lowe's is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 15, and therefore denies the same.

16. Lowe's is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 16, and therefore denies the same.

FIRST CLAIM

Alleged Infringement of U.S. Patent No. 6,288,641 By Lowe's

17. Lowe's incorporates herein by reference its answers to Paragraphs 1-16.

18. Lowe's denies the allegations of Paragraph 18.

19. Lowe's denies the allegations of Paragraph 19.

20. Lowe's admits that Iris cameras operate with Iris mobile apps, the Iris Smart Hub and/or backend servers. Lowe's denies the remaining allegations of Paragraph 20.

21. Lowe's denies the allegations of Paragraph 21.

22. Lowe's admits that certain mobile apps for the Iris system have been available for download via Apple iTunes and Google Play Store. Lowe's denies the remaining allegations of Paragraph 22.

23. Lowe's denies the allegations of Paragraph 23.

24. Lowe's admits that the Lowe's website contains information about the Iris Hub. Lowe's denies the allegations of Paragraph 24.

25. Lowe's denies the allegations of Paragraph 25.

26. Lowe's denies the allegations of Paragraph 26.

27. Lowe's denies the allegations of Paragraph 27.

28. Lowe's denies the allegations of Paragraph 28.

29. Lowe's denies the allegations of Paragraph 29.

30. Lowe's denies the allegations of Paragraph 30.

SECOND CLAIM

Alleged Infringement of U.S. Patent No. 7,203,693 By Lowe's

31. Lowe's incorporates herein by reference its answers to Paragraphs 1-30.

32. Lowe's denies the allegations of Paragraph 32.

33. Lowe's denies the allegations of Paragraph 33.

34. Lowe's denies the allegations of Paragraph 34.

35. Lowe's denies the allegations of Paragraph 35.

36. Lowe's denies the allegations of Paragraph 36.

37. Lowe's denies the allegations of Paragraph 37.

38. Lowe's denies the allegations of Paragraph 38.

WILLFUL INFRINGEMENT

- 39. Lowe's denies the allegations of Paragraph 39.
- 40. Lowe's denies the allegations of Paragraph 40.
- 41. Lowe's denies the allegations of Paragraph 41.
- 42. Lowe's denies the allegations of Paragraph 42.
- 43. Lowe's denies the allegations of Paragraph 43.
- 44. Lowe's denies the allegations of Paragraph 44.
- 45. Lowe's denies the allegations of Paragraph 45.
- 46. Lowe's denies the allegations of Paragraph 46.
- 47. Lowe's denies the allegations of Paragraph 47.
- 48. Lowe's denies the allegations of Paragraph 48.
- 49. Lowe's denies the allegations of Paragraph 49.
- 50. Lowe's denies the allegations of Paragraph 50.
- 51. Lowe's denies the allegations of Paragraph 51.
- 52. Lowe's denies the allegations of Paragraph 52.

DEMAND FOR JURY TRIAL

Lowe's hereby demands a jury trial on all issues so triable to a jury.

WHEREFORE, Lowe's denies that Plaintiff is entitled to the requested relief identified in items A-G of its Prayer for Relief, or any other relief whatsoever in this action. Lowe's further denies each and every allegation of the Second Amended Complaint as set forth herein or to which Lowe's has not specifically admitted or specifically responded.

AFFIRMATIVE DEFENSES

Further answering Plaintiff's Second Amended Complaint and as additional defenses thereto, Lowe's asserts the following Affirmative Defenses, without admitting any allegation not

otherwise admitted and without assuming the burden of proof when such burden would otherwise be on Plaintiff. Lowe's reserves the right to allege additional Affirmative Defenses as they become known throughout the course of discovery.

First Affirmative Defense
(Failure to State a Claim)

The Complaint fails to state a claim upon which relief may be granted.

Second Affirmative Defense
(Non-Infringement of U.S. Patent No. 6,288,641)

Lowe's has not directly or indirectly infringed, either literally or under the doctrine of equivalents, any valid and enforceable claim of U.S. Patent No. 6,288,641.

Third Affirmative Defense
(Invalidity of U.S. Patent No. 6,288,641)

Plaintiff's purported claims for infringement are barred because U.S. Patent No. 6,288,641 is invalid for failure to comply with one or more of the requirements of 35 U.S.C. §§ 1 *et seq.*, including, but not limited to, 35 U.S.C. §§ 101, 102, 103, 112 and/or 119, the judicial doctrine of double patenting, and the rules, regulations and laws pertaining thereto.

Fourth Affirmative Defense
(Non-Infringement of U.S. Patent No. 7,203,693)

Lowe's has not directly or indirectly infringed, either literally or under the doctrine of equivalents, any valid and enforceable claim of U.S. Patent No. 7,203,693.

Fifth Affirmative Defense
(Invalidity of U.S. Patent No. 7,203,693)

Plaintiff's purported claims for infringement are barred because U.S. Patent No. 6,288,641 is invalid for failure to comply with one or more of the requirements of 35 U.S.C. §§ 1 *et seq.*, including, but not limited to, 35 U.S.C. §§ 101, 102, 103, 112 and/or 119, the judicial doctrine of double patenting, and the rules, regulations and laws pertaining thereto.

Sixth Affirmative Defense
(Prosecution History Estoppel)

Plaintiff's claims are barred in whole or in part by the doctrine of prosecution history estoppel because the amendments and arguments made during the prosecution limit the scope of the claims of U.S. Patent Nos. 6,288,641 and 7,203,693 and bar Plaintiff's allegations of infringement, whether literally or under the doctrine of equivalents.

Seventh Affirmative Defense
(Collateral Estoppel)

Plaintiff's claims are barred in whole or in part by the doctrine of collateral estoppel because rulings made during other proceedings limit the scope, interpretations and enforceability of the claims of U.S. Patent Nos. 6,288,641 and 7,203,693 and bar Plaintiff's allegations of infringement, whether literally or under the doctrine of equivalents.

Eighth Affirmative Defense
(Prosecution Laches)

Plaintiff's claims are barred, in whole or in part, under the doctrine of prosecution laches because Plaintiff's unreasonable delay in prosecuting the patents-in-suit materially prejudiced Lowe's.

Ninth Affirmative Defense
(License, First Sale, Exhaustion)

Plaintiff's claims are barred, in whole or in part, under the doctrines of license, first sale, and exhaustion because Plaintiff has granted implied and/or express licenses, directly and/or indirectly, to U.S. Patent Nos. 6,288,641 and 7,203,693.

Tenth Affirmative Defense
(Statutory Limitations on Damages and Costs)

Plaintiff's claims for damages and costs, if any, are statutorily limited by the provisions of 35 U.S.C. §§ 286, 287, and/or 288.

Eleventh Affirmative Defense
(Improper Venue/Forum Non Conveniens)

The venue is improper or unduly inconvenient. *See* 28 U.S.C. §1391, *et seq.*

Twelfth Affirmative Defense
(No Enhanced Damages)

Lowe's has engaged in all relevant activities reasonably and in good faith, Lowe's has a good faith belief that U.S. Patent Nos. 6,288,641 and 7,203,693 are invalid and that Lowe's does not infringe, thereby precluding Iron Gate, even if it prevails, from recovering attorney's fees, costs, or other enhanced damages under 35 U.S.C. §§284 and 285.

Thirteenth Affirmative Defense
(Unenforceability of U.S. Patent No. 7,203,693)

U.S. Patent No. 7,203,693 ("the '693 Patent") is unenforceable due to the inequitable conduct of at least the four named inventors (i.e., Ingrid Birgitta Carlbom ("Inventor Carlbom"), Yves D. Jean ("Inventor Jean"), Agata Opalach ("Inventor Opalach"), and Gopal S. Pingali ("Inventor Pingali")) during the filing and prosecution of the application for the '693 Patent. Upon information and belief, these individuals deceived the Patent Office by deliberately withholding material information from the Patent Office in violation of their duty of candor under 37 C.F.R. § 1.56. This intent to deceive is the single most reasonable inference to be drawn from the evidence.

A. The '693 Patent

The '693 Patent (Ex. B to Second Amended Complaint) is directed to "[t]echniques for indexing multimedia data substantially or concurrently with its capture to convert a real world

event into an accessible database in real time.” ’693 Patent, Abstract. Independent Claim 1, the only claim identified by Plaintiff in the Second Amended Complaint, is representative of the remaining claims of the ’693 Patent, and recites:

A method for use in indexing, in a database, data associated with a domain-specific event, the method comprising the steps of:

processing sensor data obtained in accordance with the event in real time, the sensor data comprising motion data of one or more objects or one or more people associated with the domain-specific event;

obtaining pre-existing data associated with the domain-specific event; and

indexing data associated with the domain-specific event in the database, contemporaneous with capture of the data associated with the domain-specific event being indexed, based on at least a portion of the processed real time sensor data and at least a portion of the obtained pre-existing data, wherein the indexing step further comprises generating an index usable to retrieve at least a portion of the data associated with the domain-specific event by creating one or more cross-indexes between at least a portion of the processed real time sensor data and at least a portion of the obtained pre-existing data.

The ’693 Patent includes a Summary of the Invention section, which states that “[t]he present invention provides techniques for indexing multimedia data substantially concurrently or contemporaneously with its capture to convert a real world event into an accessible database in real time. ’693 Patent, 1:64-67. The improvement of the invention is thus related to real time indexing of multimedia data. The Background of the Invention section discloses that the deficiencies of previous systems “extends to the indexing and retrieval of multimedia data associated with any real time and/or real world event.” ’693 Patent, 1:54-56.

The ’693 Patent claims priority to three provisional applications. *See* ’693 Patent, Cover (“Related U.S. Application Data”); *see also* 1:8-17. Two of these provisionals are relevant to the inequitable conduct—Provisional Application No. 60/299,335 and Provisional Application No. 60/299,355 (“the Provisional Applications”)—and are described below.

Provisional Application No. 60/299,335 (“the ’335 Provisional”), filed June 19, 2001, and to which the ’693 Patent claims priority, describes the LucentVision system and is attached hereto as Exhibit A. *See* ’335 Provisional, Abstract (“We present LucentVision . . .”). The ’335 Provisional also states “LucentVision has been used to enhance live television and Internet broadcasts with game analysis and virtual replays in more than 250 international tennis matches.” *Id.* The ’335 Provisional further states that “[t]his system has been used in live television and Internet broadcasts of more than 250 international tennis matches since 1998” and “[o]ur system successfully tracked the ball on hundreds of servers at the 1999 World Championships in Hanover, the 1999 Paris Open, and the 2000 US Open.” *Id.* at pp. 3, 12.

Provisional Application No. 60/299,355 (“the ’355 Provisional”), filed June 19, 2001 also describes the LucentVision system and is attached hereto as Exhibit B. *See* ’355 Provisional, Abstract (“This paper presents one such sports visualization system called LucentVision.”). The ’355 Provisional also states that the system has been used in over 250 international tennis matches since 1998. *Id.*, at Introduction. The ’355 Provisional further states that “Figure 3 displays all the captured motion trajectories for each player . . . for the entire match (the semifinal of the ATP Championship in Cincinnati in 1999).” *Id.*, at § 4.1. The ’355 Provisional describes use of the system in other tennis matches including the ATP Championship at Montreal in 1999; the 2000 U.S. Open Final; and the World Championships in 1999. *Id.*, at §§ 4.1; 4.4; 4.2, 4.5 respectively.

Upon information and belief, the disclosures of the ’335 Provisional and ’355 Provisional are relevant to the disclosure of the ’693 Patent since the Provisional Applications are incorporated by reference and are relied upon for the priority claim of the ’693 Patent.

Because the '693 Patent was filed before March 16, 2013, it is governed by the provisions of the Patent Act in effect prior to enactment of the America Invents Act ("AIA").

Pre-AIA 35 U.S.C. § 102 provides, in pertinent part:

A person shall be entitled to a patent unless —

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for patent, or

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

B. The Duty of Candor and Disclosure

37 C.F.R. § 1.56(a) provides, in pertinent part: "Each individual associated with the filing and prosecution of a patent application has a duty of candor and good faith in dealing with the Office, which includes a duty to disclose to the Office all information known to that individual to be material to patentability as defined in this section. The duty to disclose information exists with respect to each pending claim until the claim is cancelled or withdrawn from consideration, or the application becomes abandoned. . . . The duty to disclose all information known to be material to patentability is deemed satisfied if all information known to be material to patentability of any claim issued in a patent was cited by the Office or submitted to the Office in the manner prescribed by §§ 1.97(b)-(d) and 1.98. . . . [N]o patent will be granted on an application in connection with which fraud on the Office was practiced or attempted or the duty of disclosure was violated through bad faith or intentional misconduct."

37 C.F.R. § 1.56(b)(1) provides, in pertinent part: "[I]nformation is material to patentability when it is not cumulative to information already of record or being made of record in the application, and (1) It establishes, by itself or in combination with other information, a prima facie case of unpatentability of a claim;"

37 C.F.R. § 1.56(c) provides, in pertinent part: “Individuals associated with the filing or prosecution of a patent application within the meaning of this section are: (1) Each inventor named in the application; [and] (2) Each attorney or agent who prepares or prosecutes the application;”

37 C.F.R. § 1.97(b)-(d) provide timing for filing an information disclosure statement and that if properly filed, it will be considered by the Office.

37 C.F.R. §1.98 provides, in pertinent part: “(a) Any information disclosure statement filed under §1.97 shall include the items listed in paragraphs (a)(1), (a)(2) and (a)(3) of this section. (1) A list of all patents, publications, applications, or other information submitted for consideration by the Office. U.S. patents and U.S. patent application publications must be listed in a section separately from citations of other documents.”

C. The LucentVision System

The LucentVision system is prior art to the '693 Patent and is material to the claims of the '693 Patent. As described above, the LucentVision system is described in the Provisional Applications. From this disclosure, it is apparent that the LucentVision system was in public use and/or on sale in the United States more than one year prior to the earliest priority date of the '693 Patent. The public use and/or sale and its public use in the United States is further supported by the disclosure in multiple other publications as described below which pre-date the '693 Patent. Upon information and belief, the LucentVision system described in these publications is the same as that disclosed in the Provisional Applications to which the '693 Patent claims priority. This public use and/or sale is a statutory bar under § 102(b) and was not disclosed to the Patent Office.

First, the LucentVision system is described in “LucentVision™: A System for Enhanced Sports Viewing,” VISUAL '99, LNCS 1614, pp. 689-696, Springer-Verlag, 1999 (“LucentVision 1999”), attached hereto as Exhibit C. This paper was authored by three of the four inventors of the '693 Patent (Inventors Pingali, Jean, and Carlbom). LucentVision 1999 describes the system as follows:

LucentVision™ is a networked visual information system that archives sports action in real time using visual processing. LucentVision provides a variety of visual and textual content-based queries on the archived information, and presents the query results in multiple forms including animated visualization of court coverage and virtual-replay of action from arbitrary viewpoints. LucentVision is the first system to process sports video in real time to provide action summaries in live broadcasts.

LucentVision 1999, Abstract.

LucentVision 1999 describes use of the LucentVision system at various tennis tournaments, including the ATP Championship at Cincinnati in August 1998. *See Id.*, at p. 692. This is a use of the system within the United States more than one year prior to the earliest filing date of the '693 Patent, a statutory bar under pre-AIA § 102(b). Further, because this paper was published more than one year prior to the earliest filing date of the '693 Patent, the paper itself qualifies as prior art under pre-AIA § 102(b). Thus, LucentVision 1999 is material to the patentability of the '693 Patent.

Further, real time tracking technology for tennis broadcasts is described in “Real Time Tracking for Enhanced Tennis Broadcasts,” Computer Vision and Pattern Recognition, 1998. Proceedings, IEEE, 1998 (“LucentVision 1998”) which is attached hereto as Exhibit D. This paper was also authored by three of the inventors of the '693 Patent (Inventors Pingali, Jean, and Carlbom). This paper is prior art under pre-AIA § 102(b). The bibliographic information for this article can be found in Exhibit C, p. 696, References, Reference 6. On information and

belief, this paper describes the real time tracking technology used in LucentVision, and hence claimed in the '693 Patent and thus, LucentVision 1998 is material to the patentability of the '693 Patent.

Further detail on the LucentVision system is disclosed in “LucentVision: Converting Real World Events Into Multimedia Experiences,” Pingali et al., Multimedia and Expo, ICME, Vol. 3. IEEE, 2000 (“LucentVision 2000”) which is attached hereto as Exhibit E. This paper was authored by all four inventors of the '693 Patent. Upon information and belief, the paper was presented at the conference identified in Exhibit F at WP0.03. LucentVision 2000 discloses the same system as that of LucentVision 1999, with “a real-time tracking subsystem” and where “[t]he database is continually updated with motion data which is merged with other dynamic aspects of the environment.” Ex. E, at § 2. LucentVision 2000 also provides additional disclosure regarding the public use of the LucentVision system. *See, e.g., Id.*, at § 4.1 (“LucentVision has already been used to capture data in over 10 major ATP Tour tournaments”), *see also Id.*, at § 5 (“LucentVision has been used in worldwide television broadcasts of 11 international tournaments in the last one year).

While many of the tennis matches described in the Provisional Applications (described above) were outside the United States, upon information and belief there was use of the LucentVision system in the United States (e.g., all or part of the actual system located in the United States as well as broadcast of the tennis matches in the US, on TV and/or the Internet, etc.). *See* LucentVision 1999 at 692 (“ATP Championship in Cincinnati, USA, in August 1998). Lowe’s expects to obtain more information on the usage of the system, and possible sale of the system, more than one year prior the earliest filing date of the '693 Patent through fact and expert discovery.

Section 1.56 requires that the information be either cited by the Patent Office or disclosed in the manner prescribed in §§1.97(b)-(d) and 1.98. 37 C.F.R. § 1.56(a) The above cited information was neither cited by the Patent Office nor submitted in the manner prescribed in §§1.97(b)-(d) and 1.98.

This prior use and/or sale of the LucentVision system in this country was not disclosed to the Patent Office in accordance with the above recited Rules, is not cumulative to material information already of record before the Patent Office, and is material to the patentability of the claims of the '693 Patent.

D. The Individuals Involved and Their Duty of Candor

At least each of the four named inventors (i.e., Inventors Carlbom, Jean, Opalach, and Pingali) signed a declaration and power of attorney filed on October 15, 2002, with the Patent Office. This document is attached as Exhibit G. This signed declaration indicates that each inventor has read and understands the contents of the application and understands the duty of disclosure under § 1.56. Thus, the inventors were each substantively involved with the prosecution of the '693 Patent and had a duty to disclose material information to the Patent Office.

Thus, upon information and belief, at least the four inventors were associated with at least the filing of the application to the '693 Patent, and each is subject to the duty of candor to the Patent Office.

E. Requirement of Novelty

Upon information and belief, the invention described in the '693 Patent was used and/or sold more than one year prior to the earliest filing date of the '693 Patent. The prior use of the system of the '693 Patent is disclosed in LucentVision 1998, LucentVision 1999, and

LucentVision 2000 (collectively, “the LucentVision Publications”), as well as the Provisional Applications, as described above. This prior use and/or sale of the system, more than one year prior to the priority date of the ’693 Patent is a statutory bar under pre-AIA 35 U.S.C. § 102(b). Furthermore, all or part of the invention is described in LucentVision 1998 and LucentVision 1999 which qualify as printed publications more than one year prior to the date of application for patent in the United States.

F. The LucentVision System Disclosure Is Material To the ’693 Patent

Upon information and belief, the prior publications of descriptions of the LucentVision system in LucentVision 1999 and LucentVision 1998 were not disclosed to the Patent Office, are not cumulative to material information already of record before the Patent Office, and are material to the patentability of the claims of the ’693 Patent. The LucentVision Publications each disclose each and every element of at least claim 1 of the ’693 Patent. Claim 1 is the only claim identified in the Second Amended Complaint. Thus, the LucentVision Publications were material because the Patent Office would not have allowed the claims of the ’693 Patent if it had been aware of these publications.

Further, the LucentVision Publications also provide proof of use of the LucentVision system in the United States prior to the effective filing date of the ’693 Patent. For example, the prior art discloses “[t]hus far, the system has been run in three international tennis tournaments—both outdoors (ATP Championship at Cincinnati, USA, in August 1998) and indoors” Ex. C (LucentVision 1999) at 692. This public use also qualifies the system as prior art under 35 U.S.C. § 102(b).

Thus, it can be clearly seen that this disclosure of the LucentVision system is material to the claimed subject matter of the ’693 Patent.

None of the inventors named herein disclosed the above information to the Patent Office as required by § 1.56 in the manner prescribed. For example, no information disclosure was submitted to the Patent Office regarding the prior use and/or sale of the LucentVision system or citing the LucentVision Publications described above. This failure to disclose was “but for” material, as the Patent Office would not have allowed at least claim 1 of the '693 Patent, and most likely the other similar claims of the Patent, if it had been aware that the subject matter had been publicly disclosed in the LucentVision Publications more than one year before the priority date of the '693 Patent.

G. There Was Specific Intent To Deceive The Patent Office

Since the earlier publications describing the LucentVision system were authored by three of the named inventors, those inventors can reasonably be presumed to have knowledge of those publications. Further, upon information and belief, because these publications describe the use of the LucentVision system, the named inventors had knowledge of the prior use of the LucentVision system. Further, since the inventors can be reasonably presumed to have authored the relevant provisional applications describing the LucentVision system (indeed, the provisional applications appear to be drafts of papers for publication), the inventors can reasonably be presumed to be aware of the LucentVision system's prior use.

Because each of the inventors can reasonably be presumed to be aware of the information and its disclosure, the most reasonable inference is that the information described above relating to the LucentVision system was intentionally withheld from the Patent Office to deceive the Patent Office and allow the '693 Patent to issue. Deceptive intent can clearly be inferred because there was no attempt to comply with the required disclosure to the Patent Office and the inventors knew or should have known that the '693 Patent would not have issued if that had

disclosed the LucentVision Publications and the prior use and/or sale of the LucentVision system to the Patent Office.

The inventors' failure to disclose this information, which was known to them at the time the filed the '693 Patent application and throughout its prosecution, constitutes inequitable conduct and renders unenforceable claims 1-25 of the '693 Patent.

PRAYER FOR RELIEF

WHEREFORE, Lowe's prays for the following judgment and relief:

A judgment denying and dismissing all of Plaintiff's claims against Lowe's with prejudice and denying Plaintiff's request for damages and injunctive relief;

That the Court find this case to be an exceptional case and that Lowe's be awarded its costs and attorney fees incurred in having to defend this action pursuant to 35 U.S.C. § 285 and as otherwise allowed; and

That Lowe's be granted such other and additional relief as this Court deems just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Lowe's hereby respectfully requests a jury trial on all issues and claims so triable.

Dated: August 17, 2016

HUNTON & WILLIAMS LLP

By: /s/ Shawn Patrick Regan
Shawn Patrick Regan
200 Park Avenue
New York, NY 10166-0005

212-309-1000
Fax: 212-309-1100
Email: sregan@hunton.com

Michael A. Oakes
(admitted *pro hac vice*)
Steven L. Wood
(admitted *pro hac vice*)
2200 Pennsylvania Avenue, NW
Washington, DC 20037
202-955-1500
Fax: 202-778-7459
Email: moakes@hunton.com
Email: swood@hunton.com

*Attorneys for Defendant
Lowe's Companies, Inc.*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 17th day of August, 2016, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send a Notice of Electronic Filing to counsel of record listed below:

Gregory S. Gewirtz
Jonathan Andrew David
Alexander Solo
LERNER, DAVID, LITTENBERG,
KRUMHOLZ & MENTLIK, LLP
600 South Avenue West
Westfield, NJ 07090
908-654-4500
Fax: 908-654-7866
Emails:
ggewirtz@ldlkm.com
jdavid@ldlkm.com
asolo@ldlkm.com

Attorneys for Plaintiff

/s/ Shawn Patrick Regan
Shawn Patrick Regan