

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

H2 INTELLECT LLC,

Plaintiff,

vs.

**THE HOME DEPOT, INC.,
HOME DEPOT U.S.A., INC., AND
HOME DEPOT PRODUCT AUTHORITY, LLC,**

Defendants.

Civil Action No. 2:24-cv-00694

JURY TRIAL DEMANDED

**PLAINTIFF H2 INTELLECT’S INFRINGEMENT CONTENTIONS TO DEFENDANTS
THE HOME DEPOT, INC., HOME DEPOT U.S.A., INC., AND HOME DEPOT
PRODUCT AUTHORITY, LLC PURSUANT TO LOCAL PATENT RULES 3-1 AND 3-2**

Pursuant to Local Patent Rules 3-1 and 3-2, Plaintiff H2 Intellect (“Plaintiff”) hereby provides its disclosure of asserted claims and preliminary infringement contentions and accompanying document production.

Plaintiff’s disclosures are based on publicly available materials regarding the accused infringing products of Defendants The Home Depot, Inc., Home Depot U.S.A., Inc., and Home Depot Product Authority, LLC (collectively, “Defendants” or “Home Depot”) that describe or discuss aspects of operation of these products. Plaintiff has not had access to any discovery of Defendants’ materials at this point, and certain information is not yet available to Plaintiff that may be relevant to its infringement claims. This includes information related to potentially other products or services that may be infringing Plaintiff’s asserted patents. Plaintiff expects that information will be revealed in future discovery that may result in the identification of additional accused products or services, additional instances of infringement by Defendant, and may also enable Plaintiff to assert additional claims based on the information.

Furthermore, it is possible that information to be provided in confidential discovery could be inconsistent with Plaintiff's understanding of the public information of the accused products and systems here, necessitating amendment of Plaintiff's contentions. Plaintiff's investigation is ongoing and Plaintiff reserves the right to supplement or alter its disclosures herein based on additional information obtained concerning Defendants' products.

I. Disclosure of Asserted Claims and Preliminary Infringement Contentions

A. Infringed Claims

The following table identifies U.S. Patent No. 8,433,296 (the "'296 patent") and U.S. Patent No. 11,948,171 (the "'171 Patent") (collectively the "Asserted Patents"), and each claim of those patents that is alleged to be infringed, directly and/or indirectly, by Defendants.

Asserted Patents	Asserted Claims
8,433,296	1–15
11,948,171	1–84

Plaintiff's investigation is ongoing and it reserves the right to augment and supplement its identification of asserted claims based upon additional information obtained through discovery.

B. Accused Products and/or Instrumentalities

The Accused Instrumentalities of which Plaintiff is aware are identified in Exhibits A–B, which are attached. Plaintiff reserves the right, in response to discovery or as otherwise permitted, to supplement its identification of Accused Instrumentalities. Any product or service that operates in materially the same manner are included within the scope of the Accused Instrumentalities, regardless whether it is listed in Exhibits A–B.

Plaintiff's investigation is ongoing. Plaintiff expressly reserves the right to augment and

supplement its preliminary identification of infringing products based upon additional information obtained through discovery, or as permitted under the Patent Rules. Plaintiff expects that this disclosure may be subject to amendment or supplementation to identify and accuse additional products developed or made available after the date on which these contentions are served, or of which Plaintiff was not aware at the time that these contentions were prepared.

C. Claim Charts for Literal Infringement

Plaintiff's preliminary infringement charts are provided as attached Exhibits A–B. In each claim chart, the discussion for dependent claims should be read as incorporating by reference the discussion corresponding to the claims on which they depend. In addition, the discussion for each row in the chart should be read within the context of the discussion for the entire claim to which that row pertains.

In the charts, unless otherwise indicated, Accused Products refer to the Accused Products in Exhibits A–B, and any product or service that operates in materially the same manner.

Plaintiff's investigation is ongoing and reserves the right to augment and supplement its preliminary claim charts based upon additional information obtained through discovery.

D. Doctrine of Equivalents

Unless otherwise noted in the claim charts, Plaintiff alleges that Defendants infringe literally all claims identified above. To the extent any differences are alleged to exist between the above-identified claims and Defendants' infringing conduct, such differences are insubstantial and Defendants' products and processes perform substantially the same function, in substantially the same way, to yield substantially the same result, and therefore Defendants infringe under the doctrine of equivalents.

Plaintiff's investigation is ongoing and reserves the right to augment and supplement its disclosure concerning the doctrine of equivalents based upon additional information obtained

through discovery or based upon the Court's claim construction.

E. Priority Claim to an Earlier Application

The table below shows, for patents that claim priority to an earlier application, the priority date to which each asserted claim is entitled based on such earlier application.

Asserted Patents	Claims	Priority Date from Earlier Application
11,948,171	All Asserted Claims	May 1, 2009

Plaintiff's investigation is ongoing and Plaintiff reserves the right to augment and supplement its disclosure concerning priority date. In addition, Plaintiff is producing documents under P.R. 3-2(b) that show conception and reduction to practice of the claimed invention before the priority date of the original patent application referenced above, which is May 1, 2009. Based on those documents and other information from Plaintiff, Plaintiff alleges a priority date for all claims of the Asserted Patents as early as March 11, 2008. Plaintiff's investigation is ongoing and Plaintiff reserves the right to allege a priority date that is earlier or later depending on how the investigation and discovery in this case unfolds.

F. Practice of the Claimed Invention

Plaintiff has no apparatus, product, device, or other instrumentality that practices the claimed inventions.

II. Document Production Accompanying disclosure

A. Local Patent Rule 3-2(a)

Plaintiff is unaware of any documents (e.g., contracts, purchase orders, invoices, advertisements, marketing materials, offer letters, beta site testing agreements, and third party or joint development agreements) evidencing any discussion with, disclosure to, or other manner of providing to a third party, or sale of or offer to sell, the claimed invention prior to the date of

application for the patents in suit. Plaintiff's investigation is ongoing and reserves the right to augment and supplement its disclosure based upon the Court's claim construction order or other information.

B. Local Patent Rule 3-2(b)

Plaintiff identifies the following documents as potentially responsive to P.R. 3-2(b): H2-HD_000000001 – H2-HD_000000090. Plaintiff's investigation is ongoing and reserves the right to augment and supplement its disclosure based upon the Court's claim construction or other information.

C. Local Patent Rule 3-2(c)

Plaintiff identifies the following documents as responsive to P.R. 3-2(c): H2-HD_000000091 – H2-HD_000001487.

III. Statement and Reservation of Rights

These contentions are based upon Plaintiff's current knowledge, understanding, and investigation to date regarding Defendants' infringement of the asserted claims of the Asserted Patents. Plaintiff reserves the right to rely on any documents or evidence Defendants may later produce or that otherwise become known through discovery, including in expert discovery and/or at trial, and to amend these contentions. Plaintiff also reserves the right to seek adverse inferences as discovery sanctions for Defendants' failure to produce documents. *See, e.g., BNSF Ry. Co. v. Bhd. of Maint. of Way Emps.*, 550 F.3d 418, 424 (5th Cir. 2008) ("The logic supporting the adverse inference rule is that a party fails to produce evidence in its control in order to conceal adverse facts."); *In re Williams*, 298 F.3d 458, 463 (5th Cir. 2002) ("Similarly, courts routinely permit the jury to draw an adverse inference from a party's bad faith suppression or destruction of material documents.").

Moreover, depositions of Defendants' witnesses have not yet taken place. Plaintiff's

investigation thus remains ongoing, and these infringement contentions are subject to supplementation and revision. Plaintiff reserves the right to supplement or amend these contentions for good cause or for any other valid reason, including as additional information becomes available and based on any further claim construction rulings by the Court.

These contentions may be made in a variety of alternatives, and not all interpretations are necessarily intended or required to be consistent with each other and/or with Plaintiff's other contentions in this action. Plaintiff's contentions do not constitute admissions or adoptions of any particular construction or claim scope. Plaintiff objects to any attempt by Defendants to derive alleged claim construction positions from these contentions.

These contentions are provided without prejudice to Plaintiff's right to rely on expert opinions, deposition testimony of fact witnesses, and documentary or physical evidence subsequently produced during discovery, among other materials. These contentions are not intended to identify all evidence of infringement by Defendants. Nor are these contentions intended to identify all legal theories for Defendants' infringement. Rather, consistent with the Local Rules, these contentions are intended only to set forth where in the Accused Products each element of the asserted claims are found.

To the extent these contentions contain any information subject to attorney-client privilege or attorney work-product immunity, the disclosure of any protected information in these contentions is inadvertent and does not constitute a waiver of any such privilege or immunity. Plaintiff reserves all rights under all such privileges and immunities.

Date: November 1, 2024

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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing document was served by email on all counsel of record on November 1, 2024.

Rex A. Mann
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