

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION
CASE NO. 6:22-CV-00682-BERGER/KELLY**

ATLEISURE, LLC

Plaintiffs,

v.

LOWE'S HOME CENTERS, LLC.

Defendant.

_____ /

**DEFENDANT LOWE'S HOME CENTERS, LLC'S
ANSWER TO FIRST AMENDED COMPLAINT, AFFIRMATIVE DEFENSES,
COUNTERCLAIMS AND DEMAND FOR A JURY TRIAL**

Defendant Lowe's Home Centers, LLC ("Defendant" or "LHC"), by and through undersigned counsel, hereby files its Answer to the First Amended Complaint of Plaintiff ATLeisure, LLC ("Plaintiff" or "ATLeisure"), as follows:

LOWE'S HOME CENTERS, LLC'S ANSWER

LHC responds to the individually numbered paragraphs in the First Amended Complaint (ECF No. 8) below.

I. NATURE OF THE ACTION

COMPLAINT ¶ 1: This is an action for willful patent infringement of ATLeisure's U.S. Patent No. 8,104,492 ("the '492 Patent") (attached as Exhibit 1). ATLeisure asserts the '492 Patent against Defendant for making, using, offering to sell, selling, and/or importing various products for patio and outdoor umbrellas, including, but not limited to those sold under the description "11-ft Blue Solar Powered Crank Offset Patio Umbrella with Base" (Item no: 4097311, Model no: URM819003J-3) ("Accused Umbrellas").

ANSWER ¶ 1: LHC admits that ATLeisure purports to state a claim for patent infringement, but denies the legal sufficiency of ATLeisure's claims and allegations. LHC denies that any LHC product (including the "11-ft Blue Solar Powered Crank Offset Patio Umbrella with Base" (Item no: 4097311, Model no: URM819003J-3)) infringes any claim of the '492 patent or that ATLeisure is entitled to any relief. LHC denies the remaining allegations of Paragraph 1.

II. JURISDICTION AND VENUE

COMPLAINT ¶ 2: ATLeisure's patent infringement claims arise under the patent laws of the United States, Title 35 of the United States Code. Accordingly, this Court has jurisdiction over the subject matter of this Complaint under 28 U.S.C. §§ 1331 and 1338(a).

ANSWER ¶ 2: LHC admits that ATLeisure purports to state a claim for patent infringement, but denies the legal sufficiency of ATLeisure's claims and allegations. LHC does not contest subject matter jurisdiction in this case. LHC denies the remainder of Paragraph 2.

COMPLAINT ¶ 3: This Court has personal jurisdiction over the Defendant by reason of the business that it has transacted and continues to transact in this judicial district and division. In particular, Defendant has made and continues to make, has offered to sell and continues to offer to sell, has sold and continues to sell, has used and continues to use, and has imported and continues to import patio and outdoor umbrellas that infringe valid and enforceable claims of the '492 Patent.

ANSWER ¶ 3: LHC does not contest personal jurisdiction in this case, but denies the legal sufficiency of ATLeisure's claims and allegations. LHC denies that it makes, uses, sells, offers to sell or imports any product that infringes any claim of the '492 patent

and denies the remainder of Paragraph 3.

COMPLAINT ¶ 4: The Court has personal jurisdiction over Defendant pursuant to Florida's Long Arm Statute because Defendant: has operated, conducted, engaged in, or carried on a business or business venture in this state; has committed tortious acts within the state; and/or has engaged in substantial and not isolated activity within this state.

ANSWER ¶ 4: LHC does not contest personal jurisdiction in this case, but denies the legal sufficiency of ATLeisure's claims and allegations. LHC denies that it has committed tortious acts within this State and denies the remainder of Paragraph 4.

COMPLAINT ¶ 5: Venue is proper in this district and division pursuant to 28 U.S.C. § 1391, 28 U.S.C. § 1400, and Local Rule 1.04.

ANSWER ¶ 5: LHC does not contest venue in this case, but denies the legal sufficiency of ATLeisure's claims and allegations and denies that this is the most appropriate or convenient forum. LHC denies the remainder of Paragraph 5.

III. PARTIES

A. Plaintiff ATLeisure, LLC.

COMPLAINT ¶ 6: Plaintiff ATLeisure, LLC is a limited liability company organized under the laws of Georgia, with its principal place of business located at 1040 Boulevard SE, Suite B, Atlanta, Georgia 30312.

ANSWER ¶ 6: LHC lacks sufficient information to either admit or deny the allegations contained in this Paragraph 6 and therefore denies them.

COMPLAINT ¶ 7: ATLeisure designs, manufactures, markets, and sells umbrellas, furniture, and fire pits for outdoor living. Specifically, ATLeisure's patio and outdoor umbrellas are designed, manufactured, sold, and distributed throughout the

United States.

ANSWER ¶ 7: LHC lacks sufficient information to either admit or deny the allegations contained in this Paragraph 7 and therefore denies them.

COMPLAINT ¶ 8: Established in 2011, ATLeisure designs, manufactures, and supplies the outdoor furniture and accessories market with proprietary, innovative products. Headquartered in Atlanta, Georgia, ATLeisure is a fully integrated U.S., European, and China Operation.

ANSWER ¶ 8: LHC lacks sufficient information to either admit or deny the allegations contained in this Paragraph 8 and therefore denies them.

COMPLAINT ¶ 9: ATLeisure represents an exceptional sales and design force with a combined 50 years' experience and is committed to delivering high quality products, patented designs, and superior customer service worldwide. One of ATLeisure's primary product lines is outdoor, patio umbrellas sold under the brands ATLEISURE and SEASONS SENTRY. Its mission is to design items and collections with timeless style and quality.

ANSWER ¶ 9: LHC lacks sufficient information to either admit or deny the allegations contained in this Paragraph 9 and therefore denies them.

COMPLAINT ¶ 10: ATLeisure has positioned itself as a leader of outdoor living products with a continued commitment to "on-trend" patented designs and inventions, use of long-lasting materials and superior engineering.

ANSWER ¶ 10: LHC lacks sufficient information to either admit or deny the allegations contained in this Paragraph 10 and therefore denies them.

COMPLAINT ¶ 11: ATLeisure owns numerous patents and trademarks in the

United States and around the globe for outdoor patio furniture, and in particular for outdoor umbrellas. ATLeisure actively enforces its patents, including through cease and desist letters and litigation where necessary, and it has licensed its patents on numerous occasions.

ANSWER ¶ 11: LHC lacks sufficient information to either admit or deny the allegations contained in this Paragraph 11 and therefore denies them.

B. Defendant Lowe's Home Centers, LLC

COMPLAINT ¶ 12: Defendant Lowe's is a North Carolina limited liability company, with its principal place of business located at 1000 Lowes Blvd., Mooresville, NC 28117. Upon further information and belief, Defendant may be served through its agent for service of process, Corporation Service Company, 1201 Hays Street, Tallahassee, FL 32301-2525.

ANSWER ¶ 12: Admitted.

COMPLAINT ¶ 13: Based on representations of its counsel, Lowe's operates both the retail LOWE's locations and the website <https://www.lowes.com/>. Upon information and belief, Defendant is in the business of designing, manufacturing, distributing, selling, marketing, and importing patio and outdoor umbrellas.

ANSWER ¶ 13: LHC admits the first sentence, but denies the second sentence of Paragraph 13.

COMPLAINT ¶ 14: Defendant is a direct competitor of ATLeisure's umbrella business.

ANSWER ¶ 14: Denied.

IV. FACTUAL BACKGROUND

A. ATLeisure's U.S. Patent No. 8,104,492

COMPLAINT ¶ 15: On January 31, 2012, the United States Patent and Trademark Office duly and legally issued the '492 Patent, titled, "Adjustable Offset Umbrella."

ANSWER ¶ 15: LHC admits that the face of the '492 patent reflects that it was issued by the United States Patent and Trademark Office on January 31, 2012, and that it is titled "Adjustable Offset Umbrella." LHC denies the validity of the '492 patent, or that the '492 patent was duly or legally issued. Except as expressly admitted above, LHC denies each and every allegation of this Paragraph 15.

COMPLAINT ¶ 16: ATLeisure has exclusive rights in the '492 Patent, including the right to use and enforce the patent. ATLeisure marks substantially all of the patented products sold under the '492 Patent with notice in a substantially consistent and continuous manner. Moreover, upon information and belief, LHC is on notice of the '492 Patent and the alleged infringement described herein.

ANSWER ¶ 16: LHC admits that on May 4, 2022 it was served with the First Amended Complaint and filed exhibits, which included a copy of the '492 patent and a purported claim chart. The remainder of Paragraph 16 is denied.

B. Defendant's Accused Umbrellas

COMPLAINT ¶ 17: Upon information and belief, Defendant, either directly or through intermediaries (including distributors, retailers, and others), ships, distributes, offers for sale, sells, and advertises products within the United States, the State of Florida, and this judicial district and division, including through its location at 3500 South Semoran Blvd., Orlando, FL 32822.

ANSWER ¶ 17: Admitted.

COMPLAINT ¶ 18: Upon information and belief, Defendant's Accused Umbrellas

are sold commonly under the allen + roth, SimplyShade, and RST brands. See, e.g., allen + roth 11-ft Blue Solar Powered Crank Offset Patio Umbrella with Base *available* at <https://www.lowes.com/pd/allen-roth-A-R-11-ft-Navy-Tilt-Cantilever/5002181005> (last visited April 1, 2022) (branded as allen + roth®) (“Accused allen + roth Umbrella”).

ANSWER ¶ 18: LHC admits that it has sold umbrellas under the allen + roth, SimplyShade, and RST brands, and that the URL link provided is to a LHC-sold product. LHC denies that any SimplyShade or RST brand umbrellas are accused in this case. The remainder of Paragraph 18 is denied.

COMPLAINT ¶ 19: Upon review of the Accused allen + roth Umbrella and its accompanying instructions (Exhibit 2), the Accused allen + roth Umbrella features ATLeisure’s technology protected by the ‘492 Patent. *Compare* Exhibit 1, p. 1 (‘492 Patent) *with* Exhibit 2, (the Accused allen + roth Umbrella Instructions), depicted below:

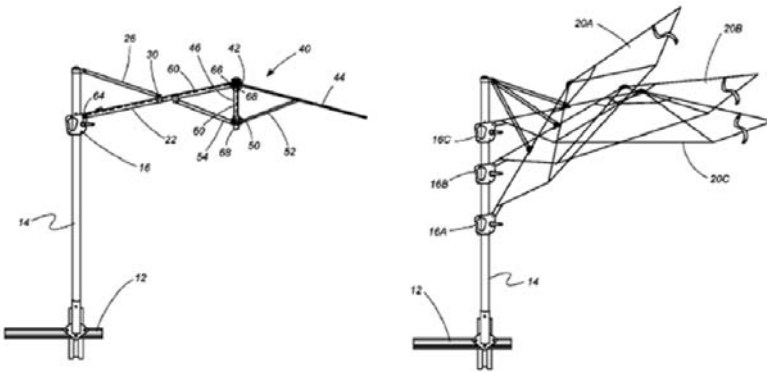


Exhibit 1, p. 1 (‘492 Patent - Adjustable Offset Umbrella):

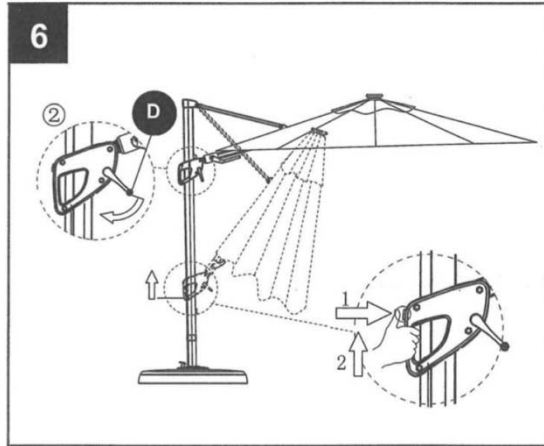


Exhibit 2, (allen + roth 11' Blue Solar Powered Crank Offset Patio Umbrella with Base Instructions)

ANSWER ¶ 19: The allegations in Paragraph 19 are denied.

COMPLAINT ¶ 20. Defendant does not have a license to advertise, sell, or use the '492 Patent.

ANSWER ¶ 20: The allegations in Paragraph 20 are denied. As shown on the face of the '492 patent (Exh. 1 to Amended Complaint), the original assignee of that patent is Southern Sales & Marketing Group, Inc. ("Southern Sales"). On or about March 23, 2006, Southern Sales entered into an agreement with Lowe's Companies Inc. ("LCI") entitled Lowe's Master Standard Buying Agreement ("LMSBA"). In Art. V. Sec. 7 of the LMSBA, Southern Sales expressly granted to LCI and LCI's wholly owned subsidiaries (collectively, the "Lowe's Licensed Companies"), a covenant not to sue Lowe's Licensed Companies "during the term of this Agreement and for a period of two (2) years after its termination in respect to [Lowe's Licensed Companies'] purchase, use, sale, distribution, and promotion of products and packaging that incorporate in whole or in part the ... patent ... of the Vendor [Southern Sales]." On information and belief, and as shown on the face of the '492 patent, Southern Sales was the owner of that patent when it issued on January 31, 2012 and continued as the owner until the '492 patent was later assigned in 2013. On

information and belief, the LMSBA between LCI and Southern Sales remains fully in force and in effect. Defendant Lowe's Home Centers, LLC is a wholly-owned subsidiary of LCI. In light of these facts, Defendant is a recipient and beneficiary of the referenced covenant not to sue by Southern Sales, which covenant remains in force to prevent ATLeisure (or any other owner of the '492 patent) from suing LHC for infringement of the '492 patent.

C. Defendant's [Alleged] Patent Infringement

COMPLAINT ¶ 21: Defendant infringes at least Claim 1 of the '492 Patent. See, e.g., Exhibit 3 (Preliminary Claim Chart) (analyzing the Accused allen + roth Umbrella against Claim 1).

ANSWER ¶ 21: The allegations in Paragraph 21 are denied.

COMPLAINT ¶ 22: Defendant has committed and continues to commit acts of patent infringement, whether literally or under the doctrine of equivalents, within the United States, in the State of Florida, and in this judicial district and division. For example, upon information and belief, Defendant has offered for sale and sold various patio and outdoor umbrellas, including the Accused Umbrellas. On further information and belief, Lowe's sells the Accused Umbrellas across the United States, including in Orlando, Florida.

ANSWER ¶ 22: The allegations in Paragraph 22 are denied.

V. COUNT I: [ALLEGED] INFRINGEMENT OF THE '492 PATENT

COMPLAINT ¶ 23: ATLeisure restates and realleges Paragraphs 1 to 22 as if fully stated herein.

ANSWER ¶ 23: LHC realleges its answers to Paragraphs 1 to 22 as if fully stated herein.

COMPLAINT ¶ 24: Upon information and belief, Defendant manufactures,

imports, offers for sale and/or sells products in the United States and in this judicial district directly infringe one or more claims of the '492 Patent, literally or under the doctrine of equivalents, as set forth in the claim chart attached as Exhibit 3.

ANSWER ¶ 24: The allegations in Paragraph 24 are denied.

COMPLAINT ¶ 25: Defendant has failed to cease its actions in response to cease & desist letters from ATLeisure's counsel to Defendant. To the extent Defendant has infringed or continued to infringe after knowledge of the '492 Patent, such infringement was deliberate, knowing, and willful.

ANSWER ¶ 25: LHC denies that any cease & desist letters were directed to LHC from ATLeisure's counsel and that any letter from ATLeisure's counsel required LHC to cease & desist any actions. The remaining allegations in Paragraph 25 are denied.

COMPLAINT ¶ 26: ATLeisure, under 35 U.S.C. § 284, may recover damages adequate to compensate for the Defendant's infringement.

ANSWER ¶ 26: The allegations in Paragraph 26 are denied.

COMPLAINT ¶ 27: ATLeisure has been, and continues to be, damaged and irreparably harmed by the Defendant's infringement, which will continue unless this Court enjoins the Defendant.

ANSWER ¶ 27: The allegations in Paragraph 27 are denied.

COMPLAINT ¶ 28: The Court should declare this an exceptional case under 35 U.S.C. § 285, entitling ATLeisure to recover treble damages and attorneys' fees.

ANSWER ¶ 28: The allegations in Paragraph 28 are denied.

ATLEISURE PRAYER FOR RELIEF

ATLeisure's prayer for relief does not contain statements that require a response under Fed. R. Civ. P. 8 and 10. To the extent a response is required, LHC denies all relief

claimed in the First Amended Complaint prayer and otherwise, and further denies that ATLeisure is entitled to any relief whatsoever. LHC requests judgment in its favor on all claims and causes of action in this suit.

SEPARATE DEFENSES

Without conceding or assuming any burden of proof or burden of production, LHC asserts the following separate defenses to ATLeisure's First Amended Complaint:

FIRST SEPARATE DEFENSE

(Non-infringement)

LHC does not directly or indirectly infringe, and has not directly or indirectly infringed, any claim of the '492 patent, either literally or under the doctrine of equivalents.

SECOND SEPARATE DEFENSE

(Invalidity)

The asserted claims of the '492 patent are invalid for failure to comply with one or more provisions of Title 35 of the United States Code, including without limitation 35 U.S.C. §§ 101, 102, 103, and/or 112. On information and belief, the applicant of the '492 patent forfeited the May 5, 2008 filing date of provisional application no. 61/050,353 by adding substantial new matter (both text and drawing(s)) to application no. 12/435,640 filed May 5, 2009; said new matter enlarged and changed the scope of all issued claims. LHC asserts that the claims of the '492 patent are not supported by the disclosure of the provisional application no. 61/050,353 filed May 5, 2008, that said provisional application fails to (1) adequately provide a written description of the claimed invention, and (2) enable a person of skill in the art to make and use the claimed invention. In view of these facts, the priority date for the '492 patent is May 5, 2009. On information and belief, the '492 patent claims are invalid over the prior art.

THIRD SEPARATE DEFENSE
(Inequitable Conduct / Unclean Hands)

The '492 patent expired on January 31, 2020, based on ATLeisure's failure to pay maintenance fees; as of that date, the patent was legally null and void. See Exhibit 1 (Printout from PTO records showing expiration of '492 patent as of 02/22/2020). Public records of the United States Patent Office ("PTO") show that – in addition to the '492 patent – ATLeisure had previously let expire three additional patents, also for failure to pay maintenance fees:

ATLeisure Patent No.	Date of Expiration Due to Failure to Pay Maintenance Fees
6,889,953	5/10/2013
7,604,015	10/20/2017
7,882,846	2/8/2019

On information and belief, the delay in paying the maintenance fee for the '492 patent was not unintentional. On information and belief, ATLeisure allowed the '492 patent to lapse after it abandoned the technologies in the 6,889,953, 7,604,015, and 7,882,846 patents.

On information and belief, on February 29, 2020, attorney James Claus (PTO reg. no. 62173) filed with the PTO a document entitled Petition to Accept Unintentionally Delayed Payment of Maintenance Fee in an Expired Patent ("Petition"). Exhibit 2. The purpose of the Petition was to obtain reinstatement of the '492 patent. To do so, the Petition was required to and did allege that "The Undersigned [James Claus] Certifies that the Delay in Payment of the Maintenance Fee to this Patent was Unintentional."

On information and belief, James Claus did not prosecute the '492 patent. On information and belief, James Claus is not, and at the time of the Petition, was not, an

employee of ATLeisure or the attorney of record for the '492 patent. On information and belief, until being retained to file the Petition, James Claus was not responsible for paying maintenance fees for the '492 patent.

In the Petition, James Claus did not assert that he had been granted power of attorney, or was representing the assignee of record. Exhibit 2. Indeed, James Claus did not select the option in the Petition showing that he was "an attorney or agent registered to practice before the Patent and Trademark Office who has been given power of attorney in this application." Rather, Mr. Claus selected the box indicating that he signed the Petition as "An attorney or agent registered to practice before the Patent and Trademark Office." Exhibit 2.

On information and belief, James Claus did not make the appropriate inquiry to ascertain that, in fact, the delay was unintentional. On information and belief, James Claus did not have personal knowledge that the delay in paying the maintenance fee for the '492 patent was in fact unintentional, or he knew that the delay in payment was intentional.

On information and belief, the statement of unintentional delay in the Petition was made without basis and with an intent to deceive, and it was material to the decision of the PTO. The PTO would not have accepted the fee and would not have reinstated the '492 patent without the statement of unintentional delay. 37 CFR 1.378 ("Any petition to accept an unintentionally delayed payment of a maintenance fee must include ... A statement that the delay in payment of the maintenance fee was unintentional.")

On information and belief, the '492 patent was prosecuted by competent outside counsel. Moreover, PTO records reflect that ATLeisure and/or its outside counsel

appointed a specific firm - Dennemeyer & Co. – as agent to receive notices about and otherwise handle patent maintenance fees for the ‘492 patent. Exhibit 3 (PTO maintenance fee statement for the ‘492 patent indicating Dennemeyer & Co., 2 N. Riverside Pl., Ste 1500, Chicago, IL” as “Current Maintenance Fee Address”). PTO records for the ‘492 patent reflect that on September 23, 2019, the PTO mailed a maintenance fee reminder to ATLeisure and/or its agent Dennemeyer. Exhibit 4 (PTO printout showing entry for “09-23-2019” to be “Maintenance Fee Reminder Mailed”). Nonetheless, despite reminders from the PTO, ATLeisure permitted the ‘492 patent to expire for nonpayment of maintenance fees.

On information and belief, the representations made in the Petition violated ATLeisure’s duty of candor and constituted inequitable conduct rendering the ‘492 patent unenforceable.

Discovery may lead to identification of additional acts of inequitable conduct during the prosecution of the ‘492 patent.

FOURTH SEPARATE DEFENSE

(Damages Limitation and Failure of Patent Marking)

Upon information and belief, ATLeisure’s claim for damages is limited or barred by its failure to comply with the patent marking and notice requirements of 35 U.S.C. § 287. On information and belief, ATLeisure and/or its agent/licensee failed to mark certain of its products that ATLeisure claims embody the ‘492 patented technology, including the Backyard Creations 10’ x 13’ offset umbrella, sold through Menard, model no. UMB-952371. Discovery may lead to identification of additional products ATLeisure claims embody the ‘492 patent that ATLeisure failed to mark and/or failed to adequately ensure that ATLeisure licensees marked with the ‘492 patent number.

ATLeisure is also barred from recovering any damages incurred more than six years prior to suit filing pursuant to 35 U.S.C. § 286.

FIFTH SEPARATE DEFENSE
(Prosecution History Estoppel)

Upon information and belief, by reason of the proceedings in the United States Patent and Trademark Office during the prosecution of the applications of the '492 patent and/or during the prosecution of any IPR involving the '492 patent, and by reasons of amendments, disclaimers, disavowals, admissions, representations, arguments, and/or statements made therein by or on behalf of the applicants for the '492 patent, ATLeisure is estopped from asserting surrendered claim scope or asserting infringement by equivalents.

SIXTH SEPARATE DEFENSE
(License and Patent Exhaustion)

To the extent that ATLeisure or a predecessor in interest has granted a '492 patent license or covenant not to sue to LHC, an LHC affiliated entity, upstream suppliers of LHC (or a LHC affiliated entity) or has otherwise been paid for an accused product, LHC is entitled to the benefit of that license, covenant not to sue and/or payment under, inter alia, the doctrines of license and/or patent exhaustion. Defendant incorporates by reference the factual allegations in its answer to Amended Complaint par. 20 *supra*, establishing that ATLeisure is prevented from bringing this action against Defendant in light of a covenant not to sue granted to, inter alia, LHC by a predecessor in interest in the '492 patent, Southern Sales.

SEVENTH SEPARATE DEFENSE
(Lack of Standing)

Upon information and belief, ATLeisure does not own all right, title, and interest in

and to the '492 patent and therefore lacks standing to sue LHC on its own. On further information and belief, ATLeisure is, at most, a co- owner of that patent with Yada Technology's successor in interest. Accordingly, to maintain suit, the current co-owner of the '492 patent must voluntarily join ATLeisure as plaintiff in this suit or the suit must be dismissed.

EIGHTH SEPARATE DEFENSE
(Intervening Rights)

On information and belief, Atleisure's potential damages recovery from LHC for alleged infringement of the '492 patent is limited, in whole or in part, due to the expiration of the '492 patent as a consequence of failure to pay maintenance fees.

NINTH SEPARATE DEFENSE
(Failure to State a Claim)

The First Amended Complaint fails to state a claim upon which relief can be granted.

OTHER DEFENSES

LHC reserves its rights to assert additional defenses, whether available now or in the future, as discovery proceeds.

JURY TRIAL DEMANDED

Pursuant to Federal Rule of Civil Procedure 38, Defendant hereby demands a trial by jury on all issues so triable.

DEFENDANT LHC'S COUNTERCLAIMS

The Parties

1. Based on assertions by ATLeisure, ATLeisure has a principal place of business located in Atlanta, Georgia.

2. Based on assertions by ATLeisure, ATLeisure is the alleged owner and assignee of United States Patent Nos. 8,104,492 (“the ‘492 Patent”).

3. Counterclaimant Lowe’s Home Centers, LLC (“LHC”) is a North Carolina limited liability company, with its principal place of business located at 1000 Lowes Blvd., Mooresville, NC 28117.

Jurisdiction and Venue

4. This Court has subject matter over these Counterclaims pursuant to 28 U.S.C. §§ 1331, 1338, and 2201.

5. ATLeisure is subject to the personal jurisdiction of this Court.

6. Venue in this district is proper under 35 U.S.C. § 1391 as to these counterclaims.

COUNTERCLAIM COUNT I

(Invalidity of U.S. Patent No. 8,104,492)

7. LHC realleges and incorporates by reference the allegations in paragraphs 1–6 above.

8. ATLeisure has asserted that LHC infringes the ‘492 Patent.

9. An actual controversy exists between ATLeisure and LHC regarding the validity of the ‘492 Patent.

10. All claims of the ‘492 Patent are invalid for failing to meet one or more conditions for patentability set forth in 35 U.S.C. §§ 101, 102, 103, and/or 112.

COUNTERCLAIM COUNT II

(Non-infringement of U.S. Patent No. 8,104,492)

11. LHC realleges and incorporates by reference the allegations in paragraphs 1–6.

above.

12. ATLeisure has asserted that LHC infringes the ‘492 Patent.

13. An actual controversy exists between ATLeisure and LHC regarding infringement of the ‘492 Patent.

14. LHC has not infringed and does not infringe any valid, enforceable claim of the ‘492 Patent literally, directly, contributorily, by way of inducement, and/or under the doctrine of equivalents.

LHC’S PRAYER FOR RELIEF

Based on the foregoing, Defendant and Counterclaimant Lowe’s Home Centers, LLC respectively requests the following relief:

1. That ATLeisure take nothing on its First Amended Complaint;
2. That ATLeisure’s First Amended Complaint be dismissed with prejudice and that all relief requested by ATLeisure be denied with prejudice;
3. That the Court deny any injunctive relief in favor of ATLeisure and against LHC;
4. That the Court enter judgment declaring that LHC does not infringe any claim of the ‘492 Patent;
5. That the Court enter judgment declaring that the ‘492 Patent claims are invalid;

6. That the Court find this to be an exceptional case under 35 U.S.C. § 285, entitling LHC to an award of its reasonable attorneys' fees;

7. That the Court award to LHC its costs and expenses associated with this case; and

8. That the Court award to LHC such other relief, in law or in equity, as this Court deems just and proper.

[signature on the following page]

Date: May 18, 2022

Respectfully submitted,

LOTT & FISCHER, PL

/s/ Ury Fischer

Ury Fischer
Florida Bar No. 048534
E-mail: ufischer@lottfischer.com
Giulia C. Farrior
Florida Bar No. 1011300
E-mail: gfarrior@lottfischer.com
255 Aragon Avenue, Third Floor
Coral Gables, FL 33134
Telephone: (305) 448-7089
Facsimile: (305) 446-6191

And

LAW OFFICE OF STEVE MALIN, PLLC

/s/ Steven Malin

*Steven Malin
E-mail: steve@malinlawfirm.com
1400 Preston Rd
Suite 400
Plano, TX 75093
Telephone: (214) 800-5117

***Counsel for Defendant Lowe's Home Centers,
LLC***

**To be admitted pro hac vice*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 18, 2022, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to electronically receive Notices of Electronic Filing.

/s/ Ury Fischer
Ury Fischer

SERVICE LIST

ATLeisure, LLC v. Lowe's Home Centers, LLC
United States District Court, Middle District of Florida
CASE NO. 6:22-CV-00682-WWB-GJK

Service via CM/ECF generated Notices of Electronic Filing:

ALLEN DYER DOPPELT AND GILCHRIST PA

Trevor F. Ward

E-mail: tward@allendyer.com

Florida Bar No. 1031171

Ryan T. Santurri

E-mail: rsanturri@allendyer.com

Florida Bar No. 15698

255 South Orange Avenue, Suite 1401

Orlando, FL 32801

Telephone: (407) 841-2330

Facsimile: (407) 841-2343

Counsel for Plaintiff ATLeisure, LLC