

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO**

THE LINCOLN ELECTRIC COMPANY,
AND LINCOLN GLOBAL, INC.,

Plaintiffs,

vs.

SEABERY SOLUCIONES, S.L., SEABERY
NORTH AMERICA INC., HASKELL
INSTRUCTIONAL TECHNOLOGIES INC.,
AND DEPCO ENTERPRISES LLC,

Defendants.

CASE NO. 1:15-CV-1575

JUDGE DONALD C. NUGENT

**COMPLAINT FOR PATENT
INFRINGEMENT**

DEMAND FOR JURY TRIAL

AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiffs The Lincoln Electric Company (“Lincoln Electric”) and Lincoln Global, Inc. (“Lincoln Global”) (collectively, “Lincoln”) hereby file this Amended Complaint against Seabery Soluciones, S.L., Seabery North America Inc., Haskell Instructional Technologies Inc. (“HI Tech Inc.”) and DEPCO Enterprises, LLC (collectively, the “Defendants”) as follows:

This is a patent infringement action to stop Defendant’s infringement of Lincoln’s United States Patent No. 8,747,116 entitled “SYSTEM AND METHOD PROVIDING ARC WELDING TRAINING IN A REAL-TIME SIMULATED VIRTUAL REALITY ENVIRONMENT USING REAL-TIME WELD PUDDLE FEEDBACK” (attached hereto as Exhibit A), United States Patent No. RE45,398 entitled “SYSTEM FOR TRACKING AND ANALYZING WELDING ACTIVITY” (attached hereto as Exhibit B), United States Patent No. 9,293,056 entitled “IMPORTING AND ANALYZING EXTERNAL DATA USING A VIRTUAL REALITY WELDING SYSTEM” (attached hereto as Exhibit C) and United States Patent No. 9,293,057

entitled “IMPORTING AND ANALYZING EXTERNAL DATA USING A VIRTUAL REALITY WELDING SYSTEM” (attached hereto as Exhibit D).

THE PARTIES

1. Lincoln Global, Inc. (“Lincoln Global”) is a corporation organized and existing under the laws of Delaware, with a principal place of business at 17721 Railroad Street, City of Industry, CA 91748. Lincoln Global possesses extensive technical information and know-how relating to the development, manufacture and sale of welding products and supplies, including welding training products and systems, and is the owner of a large portfolio of intellectual property, including certain patents related to welding training technology.

2. The Lincoln Electric Company (“Lincoln Electric”) is a sister company of Lincoln Global and is a corporation organized and existing under the laws of Ohio. Lincoln Electric has a principal place of business at 22801 St. Clair Ave., Cleveland, OH 44117. Lincoln Electric designs, develops, manufactures, and sells welding products and accessories, including welding training machines and systems, in the United States, including this judicial district. Lincoln Electric is licensed in the United States under Lincoln Global patents.

3. On information and belief, Seabery Soluciones, S.L. is a corporation organized and existing under the laws of Spain and has its principal place of business at Almadra 5, Polígono Pesquero Norte, 21002 Huelva, Spain.

4. On information and belief, Seabery North America Inc. is a corporation organized and existing under the laws of the State of Connecticut and has its principal place of business at 101 Merritt Corporate Park, 2nd Floor, Norwalk, Connecticut 06851, United States.

5. On information and belief, HI Tech Inc. is a corporation organized and existing under the laws of the State of Ohio and has its principal place of business at 211 E. North Street, Medina, Ohio 44256, United States.

6. On information and belief, DEPCO ENTERPRISES LLC is a corporation organized and existing under the laws of the State of Kansas and has its principal place of business at 689 S. Highway 69, Pittsburg, Kansas 66762, United States.

JURISDICTION AND VENUE

7. This is an action arising under the patent laws of the United States. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a) and 1367 and 35 U.S.C. §§ 271 and 281.

8. This Court has personal jurisdiction over the Defendants pursuant to the provisions of the Ohio Long Arm Statute, O.R.C. § 2307.382, and the laws of the United States. Defendants maintain an established distribution network for offering for sale, selling and distributing products into and throughout the Northern District of Ohio, including products that infringe the United States patents identified in this Complaint, including the Soldamatic welding training system. Defendants' actions as alleged in this Complaint have caused and continue to cause tortious injury to Lincoln and have enabled Defendants to wrongfully derive substantial revenue from activities within this State. Further, upon information and belief, Defendants derive substantial revenue from activities within this state and judicial district, and have sold a substantial amount of products into this state and judicial district, either directly or through third parties, including at least the Soldamatic products that infringe Lincoln's patents. Further, Defendant HI Tech Inc. resides and has a principal place of business in the Northern District of Ohio

9. Venue is proper in this Judicial District pursuant to 28 U.S.C. § 1391 and 1400(b).

FACTUAL ALLEGATIONS AND BACKGROUND

10. Lincoln is the world leader in the design, development and manufacture of welding machines, welding guns, welding power sources, welding consumables, plasma cutting systems,

and welding training systems, among other things. As a result of Lincoln's efforts over the years, Lincoln is a leading supplier of welding training products in the world, selling to all categories of consumers, including industrial, professional and educational institutions.

11. On June 10, 2014, United States Patent No. 8,747,116 (hereinafter "the '116 Patent"), titled "SYSTEM AND METHOD PROVIDING ARC WELDING TRAINING IN REAL-TIME SIMULATED VIRTUAL REALITY ENVIRONMENT USING REAL-TIME WELD PUDDLE FEEDBACK," was duly and legally issued by the United States Patent and Trademark Office to Lincoln Global as assignee. Since that date, Lincoln Global has been, and still is, the owner of all rights, title and interest in the '116 Patent, including the right to exclude the Defendants from making, using, selling, offering to sell, or importing in this district and elsewhere into the United States the patented invention(s) of the '116 Patent.

12. On March 3, 2015, United States Patent No. RE45,398 (hereinafter "the '398 Patent"), titled "SYSTEM FOR TRACKING AND ANALYZING WELDING ACTIVITY," was duly and legally issued by the United States Patent and Trademark Office to Lincoln Global as assignee. Since that date, Lincoln Global has been, and still is, the owner of all rights, title and interest in the '398 Patent, including the right to exclude the Defendants from making, using, selling, offering to sell, or importing in this district and elsewhere into the United States the patented invention(s) of the '398 Patent.

13. On March 22, 2016, United States Patent No. 9,293,056 (hereinafter "the '056 Patent"), titled "IMPORTING AND ANALYZING EXTERNAL DATA USING A VIRTUAL REALITY WELDING SYSTEM," was duly and legally issued by the United States Patent and Trademark Office to Lincoln Global as assignee. Since that date, Lincoln Global has been, and still is, the owner of all rights, title and interest in the '056 Patent, including the right to exclude

the Defendants from making, using, selling, offering to sell, or importing in this district and elsewhere into the United States the patented invention(s) of the '056 Patent.

14. On March 22, 2016, United States Patent No. 9,293,057 (hereinafter "the '057 Patent"), titled "IMPORTING AND ANALYZING EXTERNAL DATA USING A VIRTUAL REALITY WELDING SYSTEM," was duly and legally issued by the United States Patent and Trademark Office to Lincoln Global as assignee. Since that date, Lincoln Global has been, and still is, the owner of all rights, title and interest in the '057 Patent, including the right to exclude the Defendants from making, using, selling, offering to sell, or importing in this district and elsewhere into the United States the patented invention(s) of the '057 Patent.

15. Upon information and belief, Defendant Seabery Soluciones, S.L. manufactures for sale and distribution in the United States, and imports into the United States, the Soldamatic welding training system which infringes each of the '116, '398, '056 and '057 Patents.

16. Upon information and belief, Defendant Seabery North America Inc. offers for sale, sells and distributes in the United States the Soldamatic welding training system which infringes each of the '116, '398, '056 and '057 Patents.

17. Upon information and belief, Defendant HI Tech Inc. buys, sells, offers for sale and distributes in the United States the Soldamatic welding training system which infringes each of the '116, '398, '056 and '057 Patents.

18. Upon information and belief, Defendant DEPCO ENTERPRISES, LLC buys, sells, offers for sale and distributes in the United States the Soldamatic welding training system which infringes each of the '116, '398, '056 and '057 Patents.

COUNT I
Patent Infringement - The '116 Patent

19. Lincoln restates the allegations set forth in paragraphs 1-18 and incorporates them by

reference.

20. On June 10, 2014, United States Patent No. 8,747,116 was duly and legally issued by the United States Patent and Trademark Office to Lincoln Global. Since that date, Lincoln Global has been, and still is, the owner of all rights, title and interest in the '116 Patent, including the right to exclude the Defendants from making, using, selling, offering to sell, or importing in this district and elsewhere into the United States the patented invention(s) of the '116 Patent.

21. The Defendants have directly infringed at least claims 20 to 33 of the '116 Patent through the sale, offer for sale and use in, and through the manufacture and/or importation into, the United States certain products including the Soldamatic welding training system.¹

22. Upon information and belief, at least Defendants Seabery Soluciones, S.L. and Seabery North America Inc. have had actual knowledge of the '116 Patent prior to the filing of this complaint.

23. Upon information and belief, the Defendants have profited from and will continue to profit from their respective infringing activities. Lincoln has been and will continue to be damaged by the Defendants' infringing activities and is entitled to recover damages adequate to compensate it for such infringement, but, in no event, less than a reasonable royalty. The amount of monetary damages Lincoln has suffered by the acts of the Defendants set forth above cannot be determined without an accounting.

24. The harm to Lincoln within this judicial district and elsewhere in the United States resulting from the acts of infringement of the '116 Patent by the Defendants is irreparable, continuing, not fully compensable by money damages, and will continue unless the Defendants' infringing activities are enjoined.

¹ Plaintiffs have corrected the asserted claims for each of the '116 and '398 Patents in each of paragraphs 21 and 28 of this Amended Complaint, as compared to the claims identified in the proposed Amended Complaint attached to

25. Defendants' infringing activities related to the Soldamatic welding training system complained of herein make this an exceptional case entitling Lincoln to the recovery of its reasonable attorneys' fees under 35 U.S.C. § 285 and other applicable law.

COUNT II
Patent Infringement - The '398 Patent

26. Lincoln restates the allegations set forth in paragraphs 1-25 and incorporates them by reference.

27. On March 3, 2015, United States Patent No. RE45,398 was duly and legally issued by the United States Patent and Trademark Office to Lincoln Global as assignee. Since that date, Lincoln Global has been, and still is, the owner of all rights, title and interest in the '398 Patent, including the right to exclude the Defendants from making, using, selling, offering to sell, or importing in this district and elsewhere into the United States the patented invention(s) of the '398 Patent.

28. The Defendants have directly infringed at least claims 89 to 93, 95 to 98, 100, 101, 103, 124 to 128, 130 to 133, 136, 137, 143 to 148, 161, and 167 to 172 of the '398 Patent through the sale, offer for sale and use in, and through the manufacture and/or importation into, the United States certain products including the Soldamatic welding training system.

29. Upon information and belief, at least Defendants Seabery Soluciones, S.L. and Seabery North America Inc. have had actual knowledge of the '398 Patent prior to the filing of this complaint.

30. Upon information and belief, the Defendants have profited from and will continue to profit from their respective infringing activities. Lincoln has been and will continue to be damaged by the Defendants' infringing activities and is entitled to recover damages adequate to

Lincoln's Motion to Amend the Complaint (Docket No. 48). No other changes were made.

compensate it for such infringement, but, in no event, less than a reasonable royalty. The amount of monetary damages Lincoln has suffered by the acts of the Defendants set forth above cannot be determined without an accounting.

31. The harm to Lincoln within this judicial district and elsewhere in the United States resulting from the acts of infringement of the '398 Patent by the Defendants is irreparable, continuing, not fully compensable by money damages, and will continue unless the Defendants' infringing activities are enjoined.

32. Defendants' infringing activities related to the Soldamatic welding training system complained of herein make this an exceptional case entitling Lincoln to the recovery of its reasonable attorneys' fees under 35 U.S.C. § 285 and other applicable law.

COUNT III
Patent Infringement - The '056 Patent

33. Lincoln restates the allegations set forth in paragraphs 1-32 and incorporates them by reference.

34. On March 22, 2016, United States Patent No. 9,293,056 was duly and legally issued by the United States Patent and Trademark Office to Lincoln Global as assignee. Since that date, Lincoln Global has been, and still is, the owner of all rights, title and interest in the '056 Patent, including the right to exclude the Defendants from making, using, selling, offering to sell, or importing in this district and elsewhere into the United States the patented invention(s) of the '056 Patent.

35. The Defendants have directly infringed claims 1 to 20 of the '056 Patent through the sale, offer for sale and use in, and through the manufacture and/or importation into, the United States certain products including the Soldamatic welding training system.

36. Upon information and belief, at least Defendants Seabery Soluciones, S.L. and

Seabery North America Inc. have had actual knowledge of the claims of the '056 Patent prior to the filing of this complaint.

37. Upon information and belief, the Defendants have profited from and will continue to profit from their respective infringing activities. Lincoln has been and will continue to be damaged by the Defendants' infringing activities and is entitled to recover damages adequate to compensate it for such infringement, but, in no event, less than a reasonable royalty. The amount of monetary damages Lincoln has suffered by the acts of the Defendants set forth above cannot be determined without an accounting.

38. The harm to Lincoln within this judicial district and elsewhere in the United States resulting from the acts of infringement of the '056 Patent by the Defendants is irreparable, continuing, not fully compensable by money damages, and will continue unless the Defendants' infringing activities are enjoined.

39. Defendants' infringing activities related to the Soldamatic welding training system complained of herein make this an exceptional case entitling Lincoln to the recovery of its reasonable attorneys' fees under 35 U.S.C. § 285 and other applicable law.

COUNT IV
Patent Infringement - The '057 Patent

40. Lincoln restates the allegations set forth in paragraphs 1-39 and incorporates them by reference.

41. On March 22, 2016, United States Patent No. 9,293,057 was duly and legally issued by the United States Patent and Trademark Office to Lincoln Global as assignee. Since that date, Lincoln Global has been, and still is, the owner of all rights, title and interest in the '057 Patent, including the right to exclude the Defendants from making, using, selling, offering to sell, or importing in this district and elsewhere into the United States the patented invention(s) of the

'057 Patent.

42. The Defendants have directly infringed claims 1 to 20 of the '057 Patent through the sale, offer for sale and use in, and through the manufacture and/or importation into, the United States certain products including the Soldamatic welding training system.

43. Upon information and belief, at least Defendants Seabery Soluciones, S.L. and Seabery North America Inc. have had actual knowledge of the claims of the '057 Patent prior to the filing of this complaint.

44. Upon information and belief, the Defendants have profited from and will continue to profit from their respective infringing activities. Lincoln has been and will continue to be damaged by the Defendants' infringing activities and is entitled to recover damages adequate to compensate it for such infringement, but, in no event, less than a reasonable royalty. The amount of monetary damages Lincoln has suffered by the acts of the Defendants set forth above cannot be determined without an accounting.

45. The harm to Lincoln within this judicial district and elsewhere in the United States resulting from the acts of infringement of the '057 Patent by the Defendants is irreparable, continuing, not fully compensable by money damages, and will continue unless the Defendants' infringing activities are enjoined.

46. Defendants' infringing activities related to the Soldamatic welding training system complained of herein make this an exceptional case entitling Lincoln to the recovery of its reasonable attorneys' fees under 35 U.S.C. § 285 and other applicable law.

PRAYER FOR RELIEF

WHEREFORE, Lincoln prays for judgment that:

1. United States Patent No. 8,747,116 was duly and legally issued, is valid, and

is enforceable;

2. United States Patent No. RE45,398 was duly and legally issued, is valid, and is enforceable;

3. United States Patent No. 9,293,056 was duly and legally issued, is valid, and is enforceable;

4. United States Patent No. 9,293,057 was duly and legally issued, is valid, and is enforceable;

5. The Defendants have directly infringed one or more of the claims of each of the '116, '398, '056 and '057 Patents;

6. The Defendants, their respective officers, agents, servants and employees, and those persons in active concert or participation with any of them be enjoined from further infringement of both of the '116,'398, '056 and '057 Patents, including being enjoined from manufacturing, importing, distributing, selling and offering for sale the Soldamatic welding training system;

7. An accounting be had for the profits and damages arising out of the Defendants' infringement of the '116, '398, '056 and '057 Patents;

8. Lincoln be awarded damages arising out of the Defendants' infringement of the '116, '398, '056 and '057 Patents, with interest, but no less than a reasonable royalty;

9. Lincoln be awarded its attorneys' fees, costs, and expenses in this action;

10. Lincoln be awarded pre-judgment and post-judgment interest on its damages, as allowed by law; and

11. Lincoln be awarded such other relief as this Court may deem just, equitable, and proper.

SECOND CLAIM FOR RELIEF
DEMAND FOR JURY TRIAL

Lincoln hereby demands a jury trial on all issues so triable.

<p>Dated: April 18, 2016</p>	<p>By: <u>/s/ John S. Cipolla</u> John S. Cipolla (0043614) CALFEE, HALTER & GRISWOLD LLP The Calfee Building 1405 East Sixth Street Cleveland, OH 44114 Tel: (216) 622-8200 Fax: (216) 241-0816 jcupolla@calfee.com</p> <p>Of Counsel:</p> <p>Terrance J. Wikberg <i>Pro Hac Vice</i> PERKINS COIE LLP 700 13th Street, NW Suite 600 Washington, D.C. 20005 Tel: (202) 654-6201 Fax: (202) 654-9149</p> <p><i>Attorneys for Plaintiffs The Lincoln Electric Company, and Lincoln Global, Inc.</i></p>
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was filed using the Court's CM/ECF System on April 18, 2016. Notice of this filing will be served to all parties by operation of the Court's electronic filing system, and parties may access this filing through the Court's system.

/s/ John S. Cipolla
One of the Attorneys for Plaintiff