

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

<b>THE LINCOLN ELECTRIC COMPANY,</b>	)	
22801 St. Clair Avenue	)	CASE NO.
Cleveland, Ohio 44117	)	
	)	JUDGE
<b>LINCOLN GLOBAL, INC.</b>	)	
17721 Railroad Street	)	<b>COMPLAINT FOR PATENT</b>
City of Industry, California 91748	)	<b>INFRINGEMENT</b>
	)	
Plaintiffs,	)	
	)	<b>DEMAND FOR JURY TRIAL</b>
v.	)	<b>ENDORSED HEREON</b>
	)	
<b>ATLANTIC CHINA WELDING</b>	)	
<b>CONSUMABLES, INC.</b>	)	
5 Giordano Way,	)	
Maple, Ontario L6A 0J2	)	
CANADA	)	
	)	
Defendant.	)	

Plaintiffs, The Lincoln Electric Company (“Lincoln Electric”) and Lincoln Global, Inc. (“Lincoln Global”) (collectively referred to herein as “Lincoln”), bring this action against Defendant, Atlantic China Welding Consumables, Inc. (referred to herein as “Atlantic”), and hereby complain and aver as follows:

1. This is an action for injunctive and monetary relief to recover for the damage caused by, and to prevent further damage arising from the unlawful and unauthorized use of Lincoln’s intellectual property through the infringement of Lincoln’s patents under 35 U.S.C. § 271 by Defendant. Specifically, Lincoln complains and avers that Defendant infringes claims of at least United States Letters Patent No. 6,745,899, entitled, “Wire Payout” (“the ‘899 Patent”) and No. 7,377,388, entitled, “Welding Wire Package” (“the ‘388 Patent”).



### **THE PARTIES**

2. Plaintiff Lincoln Electric is a corporation organized and existing under the laws of the State of Ohio, with a principal place of business at 22801 St. Clair Avenue, Cleveland, Ohio 44117. Lincoln Electric designs, develops, manufactures and sells welding products and accessories, including welding power sources, plasma cutters, and welding consumables such as welding electrodes or “welding wire” which are sold in bulk wire packages. Lincoln Electric is the exclusive licensee of the ‘899 and ‘388 Patents.

3. Plaintiff Lincoln Global is a sister company of Lincoln Electric and is a corporation organized and existing under the laws of the State of Delaware, with a principal place of business at 17721 Railroad Street, City of Industry, California 91748. Lincoln Global possesses extensive technical information and know-how relating to the development, manufacture and sale of welding products and supplies and owns an extensive intellectual property portfolio including patents and patent applications developed by Lincoln Electric relating to welding products and consumables, including bulk welding wire packaging. Lincoln Global is the owner of the ‘899 and ‘388 Patents.

4. On information and belief, Defendant Atlantic is a corporation existing under the laws of CHINA with a North American headquarters located at 5 Giordano Way, Maple, Ontario L6A 0J2, CANADA and a worldwide headquarters located at No. 2 Machongkou Street, Zigong, Sichuan 643010 CHINA.

### **JURISDICTION AND VENUE**

5. This Court has subject matter jurisdiction over this controversy concerning patent infringement pursuant to Title 35 U.S.C. § 271 and § 281 and Title 28 U.S.C. § 1331 and § 1338(a).



6. On information and belief, Atlantic manufactures products that are purposefully directed into Ohio and this judicial district for sale by Atlantic or agents of Atlantic. On information and belief, Atlantic has an established distribution network in Ohio and in this judicial district and derives substantial revenue from the sales of its products in Ohio and in this judicial district. Atlantic has and does ship its products, including the infringing product, into this judicial district through distributors, including, Airgas Great Lakes, located at 6055 Rockside Woods Blvd., Independence, OH 44131, and Michigan Arc Products, Inc.

7. This Court has personal jurisdiction over the Defendant pursuant to the provisions of the Ohio Long Arm Statute, O.R.C. § 2307.382, and the laws of the United States based on at least the following: (a) on information and belief, Defendant regularly solicits and transacts business in the State of Ohio and in this judicial district; (b) on information and belief, Defendant contracts to supply goods in the State of Ohio and in this judicial district; (c) on information and belief, Defendant has committed acts in the State of Ohio and in this judicial district which constitute a tort; (d) on information and belief, Defendant purposefully directed contacts with the State of Ohio and this judicial district by offering for sale, selling and/or shipping products that infringe the '899 and '388 Patents, as alleged herein, in this judicial district; and (e) Defendant has shipped the infringing product into this judicial district through Defendant's established distribution network in Ohio.

8. Venue is proper in this judicial district pursuant to Title 28 U.S.C. §§ 1391(b) and (c) and 28 U.S.C. § 1400(b).

#### **FACTUAL ALLEGATIONS AND BACKGROUND**

9. Lincoln Global is the owner of U.S. Patent No. 6,745,899 ("the '899 Patent"), entitled "Wire Payout," which was duly and lawfully issued on June 8, 2004, to David J. Barton



as the inventor. A true and correct copy of the '899 Patent is attached hereto as Exhibit A. Lincoln Global is the owner of all right, title and interest in the '899 Patent, including the right to sue and recover damages for infringement of the '899 Patent, by virtue of an assignment recorded at Reel/Frame Number 012642/0639 with the U.S. Patent and Trademark Office.

10. Lincoln Global is the owner of U.S. Patent No. 7,377,388 ("the '388 Patent"), entitled "Welding Wire Package," which was duly and lawfully issued on May 27, 2008, to Christopher Hsu, David J. Barton and Michael A. Carroscia as inventors. A true and correct copy of the '388 Patent is attached hereto as Exhibit B. Lincoln Global is the owner of all right, title and interest in the '388 Patent, including the right to sue and recover damages for infringement of the '388 Patent, by virtue of an assignment recorded at Reel/Frame Number 016020/0365 with the U.S. Patent and Trademark Office.

11. Lincoln Electric is the exclusive licensee of the '899 Patent and the '388 Patent.

## **COUNT I**

### **(Infringement of the '899 Patent)**

12. Lincoln incorporates by reference the allegations set forth in Paragraphs 1-11 of this Complaint as though fully set forth herein.

13. Defendant makes, uses, imports, sells, and/or offers for sale in the United States bulk welding wire in containers, including but not limited to Defendant's bulk welding wire drums containing 550 lbs of 0.035 inch diameter AWS ER70S-6 welding wire labeled as "WIRE PAC SUPER MIG 70" ("infringing product"), that infringe at least claim 28 of the '899 Patent in violation of 35 U.S.C. § 271.

14. Defendant has been and continues to infringe the '899 Patent by making, using, importing, selling, and/or offering for sale the infringing product in the United States, including



in this judicial district, and has been inducing and continuing to induce others to do the same, in violation of 35 U.S.C. § 271.

15. Defendant will continue to infringe the '899 Patent unless enjoined by this Court.

16. The harm to Lincoln within this judicial district and elsewhere in the United States resulting from Defendant's infringement of the '899 Patent set forth above is irreparable, continuing, and not fully compensable by money damages.

17. On information and belief, the Defendant has profited and will continue to profit by its infringing activities. Lincoln has been damaged by Defendant's infringing activities. The amount of monetary damages that Lincoln has suffered by Defendant's infringing acts set forth above cannot be determined without an accounting.

## **COUNT II**

### **(Infringement of the '388 Patent)**

18. Lincoln incorporates by reference the allegations set forth in Paragraphs 1-17 of this Complaint as though fully set forth herein.

19. Defendant makes, uses, imports, sells, and/or offers for sale in the United States bulk welding wire in containers, including but not limited to Defendant's bulk welding wire drums containing 550 lbs of 0.035 or 0.045 inch diameter AWS ER70S-6 welding wire labeled as "WIRE PAC SUPER MIG 70" ("infringing product"), that infringe at least claims 1 and 11 of the '388 Patent in violation of 35 U.S.C. § 271.

20. Defendant has been and continues to infringe the '388 Patent by making, using, importing, selling, and/or offering for sale the infringing product in the United States, including in this judicial district, and has been inducing and continuing to induce others to do the same, in violation of 35 U.S.C. § 271.



21. Defendant will continue to infringe the '388 Patent unless enjoined by this Court.

22. The harm to Lincoln within this judicial district and elsewhere in the United States resulting from Defendant's infringement of the '388 Patent set forth above is irreparable, continuing, and not fully compensable by money damages.

23. On information and belief, the Defendant has profited and will continue to profit by its infringing activities. Lincoln has been damaged by Defendant's infringing activities. The amount of monetary damages that Lincoln has suffered by Defendant's infringing acts set forth above cannot be determined without an accounting.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs Lincoln Electric and Lincoln Global pray:

- (a) for a judgment that Lincoln Global owns the '899 and '388 Patents;
- (b) for a judgment that the '899 and '388 Patents are valid and enforceable;
- (c) for a judgment under Counts I and II that Defendant has infringed claims of the '899 and '388 Patents;
- (d) for a preliminary and permanent injunction under Counts I and II against further infringement of the '899 and '388 Patents by Defendant, its officers, directors, employees, agents, licensees, servants, successors, and assigns, and any and all persons acting in privity with it, either directly or by inducing others to infringe;
- (e) for an order that Defendant destroy all infringing goods and products and tooling used to make the infringing goods and products and any other products infringing the '899 and '388 Patents;



- (f) for an order directing Defendant to file with the Court and serve upon Lincoln's counsel within thirty (30) days after entry of any permanent injunction issued by this Court, a sworn written statement as provided in 15 U.S.C. § 1116 setting forth in detail the manner and form in which Defendant has complied with the injunction and order to destroy;
- (g) for an accounting to establish Lincoln's damages and for judgment against the Defendant awarding this damage amount together with legal interest from the date of accrual thereof;
- (h) for an assessment of costs against the Defendant;
- (i) for a finding that this action is exceptional and for an award to Lincoln of its reasonable attorney fees incurred in this action under 35 U.S.C. § 285; and
- (j) for such other and further relief as may be just and appropriate.

Respectfully submitted,

Dated: August 13, 2009

By: /s/ Clayton L. Kuhnell  
Frederic X. Shadley (0028584)  
Clayton L. Kuhnell (0073863)  
Risto Pribisich (0081758)  
James L. Weinberg (motion to appear *pro hac*  
*vice* pending)  
ULMER & BERNE LLP  
1660 West 2<sup>nd</sup> Street, Suite 1100  
Cleveland, Ohio 44113-1448  
Phone: (216) 583-7000  
Fax: (216) 583-7001  
Email: [fshadley@ulmer.com](mailto:fshadley@ulmer.com)  
[ckuhnell@ulmer.com](mailto:ckuhnell@ulmer.com)  
[rpribisich@ulmer.com](mailto:rpribisich@ulmer.com)  
[jweinberg@ulmer.com](mailto:jweinberg@ulmer.com)



**OF COUNSEL:**

Robert M. Masters  
Terrance J. Wikberg  
PAUL, HASTINGS, JANOFSKY & WALKER LLP  
875 15<sup>th</sup> St., N.W.  
Washington, DC 20005  
Phone: (202) 551-1700  
Email: [robmasters@paulhastings.com](mailto:robmasters@paulhastings.com)  
[terrywikberg@paulhastings.com](mailto:terrywikberg@paulhastings.com)

*Attorneys for Plaintiffs The Lincoln Electric  
Company and Lincoln Global, Inc.*



**PLAINTIFFS' DEMAND FOR JURY TRIAL**

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure and Rule 38.1 of the Local Rules of this Court, Plaintiffs Lincoln Electric and Lincoln Global hereby demand a jury trial.

Dated: August 13, 2009

By: /s/ Clayton L. Kuhnell  
Frederic X. Shadley (0028584)  
Clayton L. Kuhnell (0073863)  
Risto Pribisich (0081758)  
James L. Weinberg (motion to appear *pro hac*  
*vice* pending)

**OF COUNSEL:**

Robert M. Masters  
Terrance J. Wikberg  
PAUL, HASTINGS, JANOFSKY & WALKER LLP

*Attorneys for Plaintiffs The Lincoln Electric  
Company and Lincoln Global, Inc.*