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JAMES BONINI
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON

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U.S. DISTRICT COURT
SOUTHERN DIST. OHIO
WESTERN DIVISION

3:09cv0184

MOTOMAN, INC.
805 Liberty Lane
West Carrollton, Ohio 45449

Plaintiff,

v.

THE LINCOLN ELECTRIC COMPANY
22801 Saint Clair Ave.
Cleveland, OH 44117

and

LINCOLN GLOBAL, INC.
1200 Monterey Pass Road
Monterey Park, California 91754

Defendants.

: Civil Action No.:
:
: Judge THOMAS M. ROSE
:
: Magistrate Judge SHARON L. OVINGTON

: **COMPLAINT FOR DECLARATORY
: JUDGMENT**

Plaintiff Motoman, Inc. ("Motoman"), for its Declaratory Judgment Complaint against Defendants The Lincoln Electric Company ("Lincoln Electric") and Lincoln Global, Inc. ("Lincoln Global"), alleges as follows.

Parties

1. Motoman is a corporation organized and existing under the laws of the state of Delaware whose principal place of business is at 805 Liberty Lane, West Carrollton, Ohio 45449. Motoman designs, manufactures, markets and sells robots, robotic systems, and robotic controls for a wide variety of applications.

2. Upon information and belief, Lincoln Global is a Delaware corporation whose principal place of business is at 1200 Monterey Pass Road, Monterey Park, California 91754. Lincoln Global is licensed to do business in Ohio and has filed an application for such with the Ohio Secretary of State. In its application with the Ohio Secretary of State, Lincoln Global appointed a statutory agent in Ohio, stated that it maintains product samples and displays to be used to promote and market products in Ohio, and stated that it employs individuals in Ohio. As discussed below, Lincoln Global is the assignee of the U.S. Pat. No. 6,942,139 B2 (“the ‘139 Patent”) according to the records at the United States Patent and Trademark Office.

3. Upon information and belief, Lincoln Electric is an Ohio corporation whose principal place of business is at 22801 Saint Clair Ave., Cleveland, Ohio 44117. Upon information and belief, The Lincoln Electric Company designs, manufactures, markets and sells products such as welding products and robotic welding systems, which are sold throughout the United States, including within the State of Ohio and this District. As discussed below, counsel for Lincoln Electric sent a letter to Motoman concerning Motoman’s alleged infringement of the ‘139 Patent in which counsel referred to such patent as Lincoln Electric’s patent. Upon information and belief, Lincoln Electric is an assignee or exclusive licensee or licensee of the ‘139 Patent and/or an agent of Lincoln Global, and Lincoln Electric claims and asserts rights with respect to the ‘139 Patent. Lincoln Electric and Lincoln Global are herein referred to collectively as “Lincoln.”

Jurisdiction and Venue

4. This action arises under the Patent Laws of the United States, 35 U.S.C. §1 *et seq.*, and the Declaratory Judgment Act, 28 U.S.C. §§2201 and 2202.

5. This Court has subject matter jurisdiction under 28 U.S.C. §§1331, 1338(a), 2201(a) and 2202.

6. This Court has personal jurisdiction over Lincoln Electric and Lincoln Global in that both Lincoln Electric and Lincoln Global are licensed to do business in the state of Ohio, both do business in the state of Ohio, and a substantial part of the events giving rise to the claims occurred in this District. Motoman develops, manufactures, markets, offers for sale, receives orders, and processes sales for robots, robotic systems and robotic controls from its offices in West Carrollton, Ohio and Troy, Ohio, both of which are located in this District. Through counsel, Lincoln Electric has recently written to Motoman, asserting that Motoman infringes the '139 Patent. In such letter, counsel indicated that it had been retained by Lincoln Electric and referred to the '139 Patent as Lincoln Electric's patent. Assignment records at the United States Patent and Trademark Office indicate that Lincoln Global is the assignee of U.S. Patent No. 6,942,139. Motoman, therefore, understood such letter was sent on behalf of both Lincoln Electric and Lincoln Global. Such letter was sent to Motoman at its offices in West Carrollton, Ohio. Upon information and belief, Lincoln Electric sells and distributes products such as welding products and robotic welding systems which are sold throughout the United States, including within the State of Ohio and within this District. Upon information and belief, Lincoln Global maintains product samples and displays to be used to promote and market its products in Ohio.

7. Venue in this Court is proper pursuant to 28 U.S.C. §§1391 and 1400(b) because events giving rise to this action took place within this District and because, upon information and belief, Lincoln regularly conducts business in the State of Ohio and this District.

The Patent-In-Suit

8. On or about Sept. 13, 2005, the United States Patent and Trademark Office issued the '139 Patent, , entitled "Robotic Cylinder Welding," to Geoff M. Lipnevicius. A true and correct copy of the '139 Patent is attached to this Complaint as Exhibit 1. The cover page of the '139 Patent identifies Lincoln Global, Inc. of Monterey Park, California as the assignee of the '139 Patent.

Facts

9. Among the products developed, offered for sale and sold in the United States by Motoman are robotic welding systems that are capable of welding workpieces of varying shapes and sizes.

10. On or about February 12, 2009, counsel for Lincoln sent a letter to Motoman (a copy of which is attached as Exhibit 2) enclosing a copy of the '139 Patent and asserting that the sale and use of certain Motoman pipe welding robot systems infringe the '139 Patent. In the February 12, 2009 letter, Lincoln demanded that Motoman, and all of its related parents, affiliates and subsidiaries, cease and desist the accused activity immediately and provide an accounting for past activities for which Lincoln asserted were infringing.

11. Neither Motoman's pipe welding robot systems nor any other Motoman robotic welding system infringe any valid claim of the '139 Patent, and Motoman intends to continue to offer for sale and to sell such robotic welding systems in the United States.

12. An actual, substantial and continuing case or controversy exists between Motoman and Lincoln as to Lincoln's accusation of Motoman's alleged infringement of the '139 Patent. Motoman has a reasonable apprehension that it and/or its customers will face a patent infringement lawsuit by Lincoln relating to Motoman's pipe welding robot systems. Lincoln's

threatening contact with Motoman demanding Motoman to cease and desist any accused activity and provide an accounting for past accused activities has created a threat to Motoman's business that it is entitled to have resolved.

**Count 1: Declaratory Judgment That Motoman Robotic
Welding Systems Do Not Infringe The '139 Patent**

13. Motoman realleges and incorporates by reference the allegations set forth in the preceding paragraphs.

14. Lincoln has alleged that certain Motoman pipe welding robot systems infringe the '139 Patent.

15. Motoman's robotic welding systems do not infringe any valid claim of the '139 Patent.

**Count 2: Declaratory Judgment That The '139 Patent Is
Invalid**

16. Motoman realleges and incorporates by reference the allegations set forth in the preceding paragraphs.

17. Upon information and belief, the '139 Patent is invalid under 35 U.S.C. §§102, 103, and/or 112.

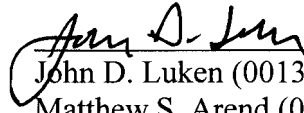
Prayer For Relief

Motoman requests the following alternative and cumulative relief:

1. A declaration that the manufacture, use, sale, offer for sale, or importation of Motoman's robot welding systems does not infringe the '139 Patent;
2. A declaration that the '139 Patent is invalid;
3. An award of reasonable attorneys' fees pursuant to 35 U.S.C. §285 and applicable law;

4. An award of Motoman's costs and expenses of this action; and
5. Such other and further relief as the Court may deem just and proper.

Respectfully submitted,



John D. Luken (0013326) (Trial Attorney)
Matthew S. Arend (0079688)
DINSMORE & SHOHL LLP
1900 Chemed Center
255 East Fifth Street
Cincinnati, Ohio 45202
Telephone: (513) 977-8200
Facsimile: (513) 977-8141
john.luken@dinslaw.com
matthew.arend@dinslaw.com

Counsel for Plaintiff, Motoman, Inc.