

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

THE LINCOLN ELECTRIC COMPANY,	)	
22801 St. Clair Avenue	)	CASE NO.
Cleveland, Ohio 44117	)	
	)	JUDGE
LINCOLN GLOBAL, INC.	)	
17721 Railroad Street	)	COMPLAINT FOR PATENT
City of Industry, California 91748	)	INFRINGEMENT
	)	
Plaintiffs,	)	
	)	DEMAND FOR JURY TRIAL
v.	)	ENDORSED HEREON
	)	
NATIONAL STANDARD, LLC	)	
1631 Lake Street	)	
Niles, Michigan 49120	)	
	)	
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, National Standard, LLC (referred to herein as “NS”), 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. 6,708,864, entitled, “‘S’ Shaped Cast In Wire” (“the ‘864 Patent”), No. 6,745,899, entitled, “Wire Payout” (“the ‘899 Patent”), and No. 6,820,454, entitled, “‘S’ Shaped Cast In Wire” (“the ‘454 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 ‘864, ‘899, and ‘454 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 ‘864, ‘899, and ‘454 Patents.

4. On information and belief, Defendant NS is a limited liability company existing under the laws of the State of Delaware with a principal place of business at 1631 Lake Street, Niles, Michigan 49120.

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, NS manufactures products that are purposefully directed into Ohio and this judicial district for sale by NS or agents of NS. On information and

belief, NS 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. NS 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.

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 '864, '899, and '454 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. 6,708,864 ("the '864 Patent"), entitled "'S' Shaped Cast In Wire," which was duly and lawfully issued on March 23, 2004, to Otto Ferguson, III and Dennis K. Hartman as the inventors. A true and correct copy of the '864 Patent is attached hereto as Exhibit A. Lincoln Global is the owner of all right, title and interest in the '864 Patent, including the right to sue and recover damages for infringement of the '864

Patent, by virtue of an assignment recorded at Reel/Frame Number 012741/0017 with the U.S. Patent and Trademark Office.

10. Lincoln Global is the owner of U.S. Patent No. 6,745,899 (“the ‘899 Patent”), entitled “Wire Payout,” which was dully 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 B. 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.

11. Lincoln Global is the owner of U.S. Patent No. 6,820,454 (“the ‘454 Patent”), entitled “‘S’ Shaped Cast In Wire,” which was dully and lawfully issued on November 23, 2004, to Otto Ferguson, III and Dennis K. Hartman as the inventors. A true and correct copy of the ‘454 Patent is attached hereto as Exhibit C. Lincoln Global is the owner of all right, title and interest in the ‘454 Patent, including the right to sue and recover damages for infringement of the ‘454 Patent, by virtue of an assignment recorded at Reel/Frame Number 012741/0017 with the U.S. Patent and Trademark Office.

12. Lincoln Electric is the exclusive licensee of the ‘864, ‘899, and ‘454 Patents.

COUNT I

(Infringement of the ‘864 Patent)

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

14. 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 wire drums and spools labeled as NS-115 (“infringing product”), that infringe at least claims 1, 3, 6, 11 and 12 of the ‘864 Patent in violation of 35 U.S.C. § 271.

15. Defendant has been and continues to infringe the '864 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.

16. Defendant will continue to infringe the '864 Patent unless enjoined by this Court.

17. The harm to Lincoln within this judicial district and elsewhere in the United States resulting from Defendant's infringement of the '864 Patent set forth above is irreparable, continuing, and not fully compensable by money damages.

18. 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 '899 Patent)

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

20. 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 wire drums labeled as NS-115 ("infringing product"), that infringe at least claim 28 of the '899 Patent in violation of 35 U.S.C. § 271.

21. 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.

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

23. 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.

24. 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 III

(Infringement of the '454 Patent)

25. Lincoln incorporates by reference the allegations set forth in Paragraphs 1-24 of this Complaint as though fully set forth herein.

26. 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 wire drums and spools labeled as NS-115 ("infringing product"), that infringe at least claims 1, 5 and 14 of the '454 Patent in violation of 35 U.S.C. § 271.

27. Defendant has been and continues to infringe the '454 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.

28. Defendant will continue to infringe the '454 Patent unless enjoined by this Court.

29. The harm to Lincoln within this judicial district and elsewhere in the United States resulting from Defendant's infringement of the '454 Patent set forth above is irreparable, continuing, and not fully compensable by money damages.

30. 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 '864, '899, and '454 Patents;
- (b) for a judgment that the '864, '899, and '454 Patents are valid and enforceable;
- (c) for a judgment under Counts I, II and III that Defendant has infringed claims of the '864, '899, and '454 Patents;
- (d) for a preliminary and permanent injunction under the Count against further infringement of the '864, '899, and '454 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 '864, '899, and '454 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 12, 2009

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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 12, 2009

By: /s/ Clayton L. Kuhnell
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