

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

**APEX TOOL GROUP, LLC,**

**Plaintiff,**

**V.**

**LOGGERHEAD TOOLS, LLC,**

**Defendant.**

Case No. \_\_\_\_\_

Judge: \_\_\_\_\_

## JURY TRIAL DEMANDED

## COMPLAINT

Plaintiff Apex Tool Group, LLC (“Apex”), by and through its undersigned counsel, for its relief against Defendant Loggerhead Tools, LLC (“Loggerhead”), alleges as follows:

## Nature of the Action

1. This action arises under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, and the United States Patent Law, 35 U.S.C. § 100, *et seq.*

2. Apex brings this action for a declaratory judgment that U.S. Patent No. 6,889,579 (the “579 patent”) and U.S. Patent No. 7,992,470 (the “470 patent”) are invalid and are not infringed by the Max Axess Locking Wrench that Apex designed, developed, offers to sell, and sells. In a complaint filed on November 9, 2012 in *Loggerhead Tools, LLC v. Sears Holding Corporation*, No. 1:12-cv-9033 (N.D. Ill.), Loggerhead asserted the ’579 patent against Sears Holding Corporation (“Sears”) based upon Sears’s retail sales of the Max Axess Locking Wrench. Apex has an adverse legal interest to Loggerhead by virtue of Loggerhead’s patent infringement claim against Apex’s product. Apex’s reasonable apprehension that Loggerhead will pursue patent infringement claims against it has been amplified by Loggerhead’s founder

and president's recent incendiary statements threatening further legal action with respect to the Max Axess Locking Wrench. Accordingly, Apex seeks the declaration requested herein to establish its right to continue to offer and sell its product in the United States.

### **Jurisdiction and Venue**

3. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 (federal question) and 1338(a) (question related to patents), and under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202 (as a declaratory action in a case of actual controversy within the jurisdiction of a federal court).

4. This Court has personal jurisdiction over Loggerhead because, on information and belief, Loggerhead is an Illinois limited liability company with a principal place of business located in Palos Park, Illinois.

5. Venue is proper in this judicial district under 28 U.S.C. § 1391(b) and (c), as well as 28 U.S.C. § 1400(b).

### **The Parties**

6. Apex is a Delaware limited liability company with its principal place of business located in Sparks, Maryland.

7. On information and belief, Loggerhead is an Illinois limited liability company with a principal place of business located in Palos Park, Illinois. On information and belief, Daniel P. Brown is Loggerhead's founder and president. Mr. Brown also is the named inventor identified on the '579 patent and the '470 patent.

### **Factual Background**

8. In the first half of 2012, Apex designed and developed an innovative locking wrench that was ultimately manufactured and commercialized under the name Max Axess Locking Wrench.

9. In approximately September 2012, Apex began supplying Sears with the Max Axess Locking Wrench for sales in Sears's retail stores and websites. The Max Axess Locking Wrench products that Apex sells to Sears are branded and marketed under Sears's Craftsman line of products. As of the date of this filing, the Max Axess Locking Wrench product that Apex offers is available for sale to consumers in Sears's stores and on Sears's website.

10. In addition to its sales of Craftsman-branded Max Axess Locking Wrench products to Sears, Apex has developed plans to market and sell the Max Axess Locking Wrench under Apex's own brands, such as its Crescent<sup>®</sup> line of products.

11. On November 9, 2012, Loggerhead filed a complaint in this judicial district against Sears, in *Loggerhead Tools, LLC v. Sears Holding Corporation*, No. 1:12-cv-9033 (N.D. Ill.). Among other claims, Loggerhead alleged infringement of the '579 patent against Sears based upon Sears's retail sales of the Max Axess Locking Wrench. Loggerhead manufactures and offers for sale a tool called the "Bionic Wrench," which Loggerhead alleges practices the '579 patent.

12. In multiple recent news articles with national distribution, Loggerhead's Mr. Brown has threatened action to enjoin the sale of Apex's Max Axess Locking Wrench product in the United States on the ground that it violates Loggerhead's alleged patent rights.

13. For instance, a November 8, 2012 article published by The New York Times cited Mr. Brown as saying that "he believes that the Max Axess wrench copies his own."

14. Similarly, in an ABC News interview that aired on or around November 14, 2012 on ABC's nationally televised news program "ABC World News with Diane Sawyer," and subsequently was published online on ABC's website, Mr. Brown asserted that Apex's Max Axess Locking Wrench product is a "knockoff" of the Bionic Wrench. The interview further

quotes Mr. Brown as saying: “If you take [Apex’s Max Axess Locking Wrench and Loggerhead’s Bionic Wrench] apart and look at the plates, they’re virtually the same. . . . It’s our patent. We’ve got it covered.” Mr. Brown further stated in the video broadcast of his interview that it would be “lying” to say that Apex’s product was “not the same wrench.”

15. Furthermore, in an interview published online on November 26, 2012 by The New York Times, Mr. Brown described what he called the “piracy model for patent theft” and maintained his assertions that he would fight to enforce his alleged patent rights. Specifically, with respect to the events giving rise to this complaint, Mr. Brown said: “This is the single most deplorable ethical and business situation I have been in, and I have been working in business for over 30 years. Emotionally, I am mad, and physically I am ready to fight.”

16. The ’579 patent and the ’470 patent both include claims that correspond to the Bionic Wrench product Loggerhead offers. These patents share substantially the same written descriptions and claim limitations. During the prosecution of the ’470 patent, Mr. Brown conceded that certain claims of the ’470 patent were not patentably distinct from those of the ’579 patent when he opted to subject the ’470 patent to a terminal disclaimer in light of a double patenting rejection from the United States Patent and Trademark Office based upon the ’579 patent. Notably, the Max Axess Locking Wrench uses a mechanism that Mr. Brown expressly argued to the patent office was different from the invention claimed in the ’470 and ’579 patents.

**COUNT I**  
**Request for Declaratory Judgment of Patent**  
**Non-Infringement and Invalidity of the '579 Patent**

17. Apex re-alleges and incorporates herein by reference the allegations contained in Paragraphs 1 through 16.

18. Apex has a reasonable apprehension that Loggerhead will assert the '579 patent against Apex or Apex's current and future customers in the United States for alleged infringement of the '579 patent, based on Loggerhead's allegation against Sears that the Max Axess Locking Wrench infringes the '579 patent and Mr. Brown's various public statements made in recent interviews.

19. Apex's use, offer for sale, and sale of its Max Axess Locking Wrench product has not infringed and does not infringe any valid claim of the '579 patent.

20. Apex has not indirectly infringed and does not indirectly infringe any valid claim of the '579 patent.

21. Any claim of the '579 patent that Loggerhead asserts is infringed by Apex's Max Axess Locking Wrench product is invalid for failure to meet the requirements of the patent laws of the United States, including one or more of 35 U.S.C. §§ 101, 102, 103, and/or 112.

22. An actual and justiciable controversy has arisen between Apex and Loggerhead that is properly presented for judicial relief under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202. Loggerhead has sued Sears for patent infringement based on the allegation that Apex's Max Axess Locking Wrench infringes the '579 patent. Loggerhead's patent infringement claim—as well as Mr. Brown's public pronouncements of his intention to “fight” to enforce his company's perceived rights—establish that Apex and Loggerhead have adverse legal interests with respect to the sale of Apex's Max Axess Locking Wrench product. Loggerhead's

and its president's actions have and will continue to negatively affect Apex's legal relations concerning its sales of the Max Axess Locking Wrench product in the United States. Loggerhead has taken a position that puts Apex in the position of either pursuing allegedly illegal behavior or abandoning that which Apex claims a right to do, namely, continuing to offer and sell the Max Axess Locking Wrench. Apex thus requests a judicial determination and declaration of the respective rights of the parties.

**COUNT II**  
**Request for Declaratory Judgment of Patent**  
**Non-Infringement and Invalidity of the '470 Patent**

23. Apex re-alleges and incorporates herein by reference the allegations contained in Paragraphs 1 through 22.

24. Apex has a reasonable apprehension that Loggerhead will assert the '470 patent against Apex or Apex's current and future customers in the United States for alleged infringement of the '470 patent, based on Loggerhead's current allegation against Sears that the Max Axess Locking Wrench infringes the '579 patent and Mr. Brown's various public statements made in recent interviews. The '470 patent is related to the asserted '579 patent, and includes a similar written description and claim limitations as the '579 patents. Mr. Brown conceded in filings to the United States Patent and Trademark Office that certain claims of the '470 patent are not patentably distinct from the '579 patent. Both patents include claims that correspond to the Bionic Wrench product Loggerhead offers for sale in the United States and referenced repeatedly in its November 9, 2012 complaint against Sears.

25. Apex's use, offer for sale, and sale of its Max Axess Locking Wrench product has not infringed and does not infringe any valid claim of the '470 patent.

26. Apex has not indirectly infringed and does not indirectly infringe any valid claim of the '470 patent.

27. Any claim of the '470 patent that Loggerhead asserts is infringed by Apex's Max Axess Locking Wrench product is invalid for failure to meet the requirements of the patent laws of the United States, including one or more of 35 U.S.C. §§ 101, 102, 103, and/or 112.

28. An actual and justiciable controversy has arisen between Apex and Loggerhead that is properly presented for judicial relief under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202. Loggerhead has sued Sears for patent infringement based on the allegation that Apex's Max Axess Locking Wrench infringes the '579 patent, which is related and similar to the '470 patent. Loggerhead's patent infringement claim—as well as Mr. Brown's public pronouncements of his intention to “fight” to enforce his company's perceived rights—establish that Apex and Loggerhead have adverse legal interests with respect to the sale of Apex's Max Axess Locking Wrench product. Loggerhead's and its president's actions have and will continue to negatively affect Apex's legal relations concerning its sales of the Max Axess Locking Wrench product in the United States. Loggerhead has taken a position that puts Apex in the position of either pursuing allegedly illegal behavior or abandoning that which Apex claims a right to do, namely, continuing to offer and sell the Max Axess Locking Wrench. Apex thus requests a judicial determination and declaration of the respective rights of the parties.

**PRAYER FOR RELIEF**

**WHEREFORE**, Apex prays that this Court:

A. Declare that Apex's Max Axess Locking Wrench product has not infringed and does not infringe any claim of the '579 patent;

B. Declare that Apex's Max Axess Locking Wrench product has not infringed and does not infringe any claim of the '470 patent;

C. Declare that the '579 patent, and each and every claim thereof, is unenforceable and/or invalid;

D. Declare that the '470 patent, and each and every claim thereof, is unenforceable and/or invalid;

E. Enter an order enjoining Loggerhead, its officers, directors, servants, managers, employees, agents, attorneys, successors, and assignees, as well as any and all persons in active concert or participation with any of them, from directly or indirectly charging Apex's Max Axess Locking Wrench product with infringement of any claim of the '579 patent;

F. Enter an order enjoining Loggerhead, its officers, directors, servants, managers, employees, agents, attorneys, successors, and assignees, as well as any and all persons in active concert or participation with any of them, from directly or indirectly charging Apex's Max Axess Locking Wrench product with infringement of any claim of the '470 patent;

G. Declare this case exceptional under 35 U.S.C. § 285 and award Apex its reasonable attorneys' fees, expenses, and costs incurred in this action; and

H. Grant Apex such other and further relief as this Court may deem just and proper.



**JURY DEMAND**

Apex hereby demands a jury trial on all issues appropriately triable by a jury.

Dated: December 21, 2012

Respectfully submitted,

By: /s/ Marcus E. Sernel

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