

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

EDISON WELDING INSTUTE, INC.)	
1250 Arthur E. Adams Drive)	
Columbus, OH 43221-3585)	CIVIL ACTION NO. 2:12-cv-1040
)	
and)	
)	
REALWELD SYSTEMS, INC.)	
1250 Arthur E. Adams Drive, Ste. 204)	
Columbus, OH 43221-3585)	
)	
Plaintiffs,)	
)	
v.)	
)	
LINCOLN GLOBAL, INC.,)	
17721 Railroad Street)	JURY TRIAL DEMANDED
City of Industry, CA 91748)	
)	
Defendant.)	

COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiffs Edison Welding Institute, Inc. (“EWI”) and RealWeld Systems, Inc. (“RWS”), (collectively “Plaintiffs”) by and through counsel, hereby file this Complaint for a declaratory judgment against Defendant Lincoln Global, Inc. (“Lincoln”). In support thereof, Plaintiffs state the following:

NATURE AND BASIS OF THE ACTION

1. This is an action for a declaratory judgment brought pursuant to 28 U.S.C. §§2201-2202 seeking a declaration of non-infringement and invalidity of U.S. Patent No. 8,274,013 B2, (“Patent-In-Suit” or the “‘013 Patent”).

PARTIES

2. EWI is a corporation for non-profit organized and existing under the laws of the State of Ohio, having its principal place of business at 1250 Arthur E. Adams Drive, Columbus, Ohio 43221-3585

3. RWS is a corporation organized and existing under the laws of the State of Ohio, having its principal place of business at 1250 Arthur E. Adams Drive, Suite 204, Columbus, Ohio 43221-3585.

4. 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 is a wholly owned subsidiary of Lincoln Electric Holdings, Inc. Lincoln Global is involved in the development, manufacture and sale of welding products and supplies.

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331, 1332, 1338 and 2201.

6. This Court has personal jurisdiction over Lincoln Global pursuant to 35 U.S.C. §293.

7. Venue is proper in this district pursuant to 35 U.S.C. §293.

FACTS COMMON TO ALL COUNTS

8. EWI provides applied research, manufacturing support, and strategic services to its member companies located worldwide.

9. RWS is the commercialization entity for RealWeld Trainer™, a welding training solution. RWS is a subsidiary of EWI.

10. On or about November 1, 2012, Lincoln Global sent a cease and desist notice to EWI and RWS stating that the RealWeld trainer “infringes” its U.S. Patent No. 8,274,013 B2 (the “Patent-in-Suit”). A copy of the November 1, 2012 letter is attached as Exhibit 1.

11. The November 1, 2012 demanded that Plaintiffs “immediately stop manufacturing, using, selling, offering for sale, and/or importing” the RealWeld trainer. The letter further demanded, *inter alia*, that Plaintiffs provide an accounting of all sales and profits, disclose the identity of all customers, provide a notice to all distributors and customers, and turn over the entire RealWeld trainer inventory.

12. The letter threatened that unless Plaintiffs complied with these demands then “Lincoln will take appropriate legal actions.”

13. As a result of the November 1, 2012 letter, an actual and justiciable controversy exists between EWI and RWS, on the one hand, and Lincoln Global, on the other hand, regarding the validity of the Patent-In-Suit and its infringement by Plaintiffs.

COUNT I
DECLARATION OF NON-INFRINGEMENT AND/OR INVALIDITY
OF THE ‘975 PATENT

14. Paragraphs 1 through 13 are hereby incorporated by reference as if set forth in full.

15. Lincoln Global has asserted it is the owner of all right and interest in the Patent-In-Suit entitled “System for Tracking and Analyzing Welding Activity.” A copy of the Patent-In-Suit is attached as Exhibit 2.

16. One or more claims of the Patent-In-Suit are invalid for violation of one or more provisions of U.S.C. §§102, 103, 112 and/or 282.

17. EWI has not and does not directly or indirectly infringe any valid and enforceable claim of the Patent-In-Suit.

18. RWS has not and does not directly or indirectly infringe any valid and enforceable claim of the Patent-In-Suit.

19. EWI is entitled to a declaration that one or more claims of the Patent-In-Suit are invalid and that it has not and does not directly or indirectly infringe any valid and enforceable claim of the Patent-In-Suit.

20. RWS is entitled to a declaration that one or more claims of the Patent-In-Suit are invalid and that it has not and does not directly or indirectly infringe any valid and enforceable claim of the Patent-In-Suit.

DEMAND FOR JURY TRIAL

21. Plaintiffs demand a trial by jury on all issues so triable.

REQUESTED RELIEF

WHEREFORE, Plaintiffs request this Court to:

- (a) enter an order declaring that one or more claims of the Patent-In-Suit are invalid;
- (b) enter an order declaring that EWI has not and does not directly or indirectly infringe any valid and enforceable claim of the Patent-In-Suit;
- (c) enter an order declaring that RWS has not and does not directly or indirectly infringe any valid and enforceable claim of the Patent-In-Suit;
- (d) enter an order declaring that this is an exceptional case and award to Plaintiffs their costs and reasonable attorneys' fees incurred in prosecuting this action;
- (e) award Plaintiffs their costs pursuant to 28 U.S.C. §1920; and
- (f) grant such other and further relief as the Court deems just and proper.

Respectfully Submitted,

/s/Drew H. Campbell

Drew H. Campbell (0047197)

Gregory J. Krabacher (0079259)

dcampbell@bricker.com

gkrabacher@bricker.com

BRICKER & ECKLER, LLP

100 South Third Street

Columbus, Ohio 43215

Telephone: (614) 227-2300

Facsimile: (614) 227-2390

*Attorneys for Plaintiffs Plaintiffs Edison Welding
Institute, Inc. and RealWeld Systems, Inc.*