

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION**

LIGHTING SCIENCE GROUP  
CORPORATION,

Civil Action No. 6:16-cv-00680-Orl-37GJK

Plaintiff,

v.

ENERGY EFFICIENT LIGHTING  
COMPANY LIMITED,

Defendant.

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**MEMORANDUM IN SUPPORT OF PLAINTIFF'S  
MOTION FOR FINAL DEFAULT JUDGMENT**

Plaintiff Lighting Science Group Corporation (“Lighting Science” or “Plaintiff”), by and through the undersigned counsel, submits this memorandum in support of its Motion for Final Default Judgment against Defendant Energy Efficient Lighting Company Limited (“EEL” or “Defendant”), and states as follows:

**I. Nature of the Action**

This is an action for patent infringement under 35 U.S.C. §271 *et seq.* Plaintiff is the owner of Patent No. 8,201,968 (the “’968 Patent”), Patent No. 8,672,518 (the “’518 Patent”), and Patent No. 8,967,844 (the “’844 Patent”). Defendant committed infringement of each of the aforementioned patents by making, using, selling or offering to sell in or importing into the United States its LED Recessed Retrofit Downlight RD-LED900-12-3000K product (the “**Infringing Product**”). The Infringing Product infringes claims encompassed in each of the ‘968 Patent, the ‘518 Patent, and the ‘844 Patent. Further, the Defendant’s exploitations of the Infringing Product

have induced and contributed to further infringement of the '968 Patent, the '518 Patent, and the '844 Patent committed by the Defendant's distributors, retailers, and licensees. The Defendant's infringement and unlawful sales activity was willful and intentional, and has caused countless, ongoing, and irreparable harm to the Plaintiff.

**II. Judgment By Default Should be Entered Against the Defendant Pursuant to Federal Rule of Civil Procedure 55(b)(2)**

Fed. R. Civ. P. 55(b)(1) states, in relevant part, that, "[i]f the Plaintiff's claim is for a sum certain or a sum that can be made certain by computation, the clerk ... must enter a judgment for that amount and costs against defendant who has been defaulted for not appearing and who is neither a minor nor an incompetent person." In all other cases, the party must apply to the court for a default judgment. As the matter currently before the Court is not a claim for a sum certain, Plaintiff is entitled to a judgment by default pursuant to Fed. R. Civ. P. 55(b)(2).

As set forth in the attached Declaration of Mark F. Warzecha, the Defendant was mailed a copy of the Complaint and a Request to Waive Service on April 26, 2016. (Decl. of Warzecha, ¶ 3). After the Amended Complaint was filed on June 20, 2016, a copy was timely served on the Defendant. (Decl. of Warzecha, ¶ 4). On June 23, 2016, counsel for the Defendant accepted service of the Amended Complaint, and returned the signed Waiver of Service of Summons which was filed on the same day. (DKT. 14) (Decl. of Warzecha, ¶ 5).

Defendant, despite accepting service of the Amended Complaint and waiving service of the summons, failed to file a responsive pleading as required under Fed. R. Civ. P. 12. (Decl. of Warzecha ¶ 6). Accordingly, on July 28, 2016, the Clerk entered a Default against Defendant pursuant to Fed. R. Civ. P. 55(a). (DKT. 16).

After receiving a Clerk's Default, the Court may enter a Default Judgment if "the well-pleaded allegations in the complaint, which are taken as true due to the default, actually state a substantive cause of action and that there is a substantive, sufficient basis in the pleadings for the particular relief sought," *Doe v. Tapia-Ortiz*, Case No: 2:14-cv-206-FtM-38MRM, 2016 WL 3414862 at \*2 (M.D. Fla. June 22, 2016); quoting *Tyco Fire & Sec., LLC v. Alcocer*, 218 Fed.Appx. 860, 863 (11th Cir. 2007); See also *Nishimatsu Constr. Co., Ltd. v. Houston Nat'l Bank*, 515 F.2d 1200, 1206 (5th Cir. 1975) ("The defendant, by his default, admits the plaintiff's well-pleaded allegations of fact, is concluded on those facts by the judgment, and is barred from contesting on appeal the facts thus established .... A default judgment is unassailable on the merits but only so far as it is supported by well-pleaded allegations, assumed to be true." (citations omitted)). The Complaint states a substantive cause of action, and pleads a sufficient basis for the relief sought, including willfulness and irreparable harm for increased damages and injunctive relief. Therefore, this Court may enter Final Default Judgment accordingly.

### III. Conclusion

Based on the foregoing, Plaintiff is entitled to a Final Default Judgment which finds that:

- a) Defendant is liable for infringement of Plaintiff's rights to Patent No. 8,201,968 (the "'968 Patent"), Patent No. 8,672,518 (the "'518 Patent"), and Patent No. 8,967,844 (the "'844 Patent");
- b) Plaintiff is entitled to entry of a permanent injunction prohibiting further infringement of each of the '968 Patent, the '518 Patent, and the '844 Patent by Defendant, its agents, employees, representatives, successors, and assigns, and those acting in privity or in concert with Defendant, including all those who receive notice of this injunction or alternatively a compulsory ongoing royalty owed to Plaintiff by Defendant;

- c) Plaintiff is entitled to an award of damages and pre-judgment and post-judgment interest on the damages awarded, in an amount to be determined, including an award of prejudgment interest, pursuant to 35 U.S.C. §284, from the date of each act of infringement of the '518 Patent, the '968 Patent and the '844 Patent by Defendant to the date judgment is entered, and a further award of post-judgment interest, pursuant to 28 U.S.C. §1961, continuing until such judgment is paid, at the maximum rate allowed by law; and
- d) any other and further relief that this Court or a jury may deem just and proper.

Dated: August 10, 2016.

/s/Mark F. Warzecha

Mark F. Warzecha

Florida Bar No. 95779

**WIDERMANN MALEK PL**

1990 W. New Haven Ave., Ste. 201

Melbourne, Florida 32904

Tel. (321) 255-2332

Fax (321) 255-2351

MFW@USLegalTeam.com

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on August 10, 2016, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF filing system. I further certify that the foregoing document will be served on the Defendant via U.S. Mail or e-mail at:

Energy Efficient Lighting Co. Ltd.

331 Amber Street, Suite B

Markham, ON, Canada L3R357

Francis.chan@ultrasave.com

/s/Mark F. Warzecha

Mark F. Warzecha