

and manufacturing facilities at 1601 N. Plano Road, Richardson, Texas USA 75081, 450 Leitz Road, Midland, Ontario, Canada and elsewhere (hereinafter "ELCAN"), is an unincorporated division of Raytheon Company of 141 Spring Street, Lexington, Massachusetts 02421 (hereinafter "Raytheon"). ELCAN is managed by the Raytheon business unit doing business as Network Centric Systems located and having its headquarters at 2501 W. University, McKinney, Texas 75071 (hereinafter "NCS");

4. ELCAN admits in a Declaration signed on August 1, 2003 by Robert Clayton, its Manager of Contract Administration, and filed in support of RCI's motion to transfer that "Raytheon has a facility in Richardson, Texas, that for internal management purposes is operationally part of ELCAN."

5. Whenever it is alleged that ELCAN has done an act, it shall mean Raytheon, the corporate entity.

6. A review of the Texas business records indicates that Raytheon is licensed to do and does business in Texas.

7. This court has jurisdiction over this action under 28 U.S.C. §1338(a) since the matter in controversy arises under an act of Congress relating to patents (35 U.S.C. §281);

8. This court has venue under 28 U.S.C. §1400(b) and §1391(c) and (d) since defendants Rockwell and ELCAN actually or constructively reside in this judicial district; that is, Rockwell is a corporation, ELCAN is an unincorporated division of Raytheon managed by NCS with its headquarters in this judicial district, both Rockwell and ELCAN do business in this judicial district, and both are subject to personal jurisdiction in this jurisdiction;

9. On August 31, 1984, Stafford M. Ellis, an employee of GEC Avionics Limited (the predecessor in interest to BAES) caused to be filed a patent application in the United Kingdom, which application was assigned serial number GB 8422033;

10. On August 9, 1985 a corresponding patent application was filed in the United States Patent and Trademark Office ("USPTO") and assigned serial number 763,965, claiming priority from the UK patent application serial no. GB 8422033;

11. United States Patent 4,611,877 entitled "Optical Projector For Head Up Displays" (hereinafter "the '877 patent") issued on September 16, 1986 to GEC Avionics Limited. *See* Exhibit "A";

12. GEC Avionics Limited underwent a series of name changes between September 1987 and November 1998. As a result of these and subsequent assignments, the current owner of the '877 patent is BAE Systems Electronics Limited;

13. On June 28, 2000, an inspection of a Dassault Falcon 900EX business jet at Luton Airport, England by a BAES engineer suggested that an installed Rockwell Head-Up Guidance System ("HGS") had many, if not all, of the elements claimed in one or more claims of the '877 patent;

14. On July 7, 2000, a letter was forwarded by BAES employee, European patent attorney Paul Rooney, Esq. to Mr. John Desmond, head of the HGS division at Rockwell, providing a copy of the '877 patent and indicating that its HGS products appear to be the same as those claimed in the '877 patent;

15. On July 25, 2000, an inspection of a Dassault 2000 business jet at the Farnborough Air Show in Farnborough, England, revealed an installed Rockwell HGS product which suggested the presence of all elements recited in one or more of the claims of the '877 patent;

16. Counsel for Rockwell, Kyle Epele, Esq., in a letter dated July 26, 2000 confirmed Rockwell's receipt of the July 7 Rooney letter;

17. Receiving no further response from Rockwell, counsel for BAES contacted Mr. Epele by telephone on October 11, 2000 and asked if and when a response would be received. Mr. Epele claimed Rockwell believed the '877 patent to be invalid in view of prior art and not infringed by the Rockwell HGS products. Significantly, Mr. Epele admitted that he had not reviewed the '877 patent's file history thereby establishing the unreliable nature of Rockwell's alleged beliefs;

18. During the October 11, 2000 phone call, it was agreed that Rockwell would (a) provide a sketch of the optical path inside of its HGS product to support its non-infringement assertion and (b) provide copies of prior art allegedly invalidating the '877 patent. This telephone agreement was memorialized in a letter dated October 11, 2000 to Mr. Epele by BAES counsel;

19. In a letter dated October 16, 2000, counsel for Rockwell again admitted that he had not yet received or reviewed a copy of the '877 file history;

20. By a registered letter dated October 19, 2000, counsel for BAES forwarded a copy of the '877 file history to Rockwell's counsel;

21. During a meeting, held in BAES' offices in Seattle, Washington, on April 2001, to discuss matters between BAES and Rockwell, Mr. Desmond drew a diagram of the optical path in the Rockwell HGS product which confirmed that the product included the two lenses and the

double bounce prism system as claimed in the '877 patent. Nevertheless, without identifying any patent claim limitation that was allegedly absent in the Rockwell HGS product, Mr. Desmond asserted that the '877 patent was not infringed by Rockwell;

22. Mr. Desmond also suggested that the '877 patent was invalid in view of the use of prisms in binoculars. However, he could not point to any prior art which disclosed the claimed invention;

23. At no time has Rockwell identified to BAES any prior art publication or document that Rockwell alleges invalidates any of the claims in the '877 patent.

24. On May 23, 2001, BAES, in a foreign application corresponding to the '877 patent, became aware of a prior art reference, UK Patent 1,533,859 issued to Ellis and Heller ("Ellis '859"). While less pertinent to the '877 patent than the prior art of record, this UK patent had not been submitted to the US PTO during prosecution of the '877 patent.

25. In an abundance of caution, on July 27, 2001 BAES filed a Request for Reexamination (the "Request") of the patentability of the '877 patent. In the Request, it was pointed out that the newly discovered Ellis '859 patent was believed to be less pertinent than US Patent 3,526,447 to Wynne (the "Wynne" patent) which was cited and considered by the PTO during the initial consideration of the '877.

26. Also in the Request, BAES offered newly written claims 6-13 more specifically defining the invention disclosed and covered in the '877 patent.

27. The USPTO granted the Request on October 3, 2001 holding that the Request raised a new question of patentability of the '877 patent.

28. After initially rejecting the broadest claim, the USPTO allowed all existing claims 1-5 and the newly written claims 6-13 as clearly patentable over the Ellis '859 patent and the prior art previously cited. The USPTO Examiner, in his reasons for allowance, stated that the prior art "failed to teach applicant's recited claim limitations 'mirror coating on the light reflective body'."

29. Realizing that one of the cited prior art references (US Patent 2,983,183 issued to Pickering) showed such a coating, BAES counsel contacted the Examiner by telephone on July 23, 2002 to clarify the reasons for allowance.

30. During that phone call, the USPTO Examiner indicated that it was the combination of the "mirror coating" and other elements of the claim that was the reason for allowance. As a result, the Examiner requested that the applicant file a request for correction of the reasons for allowance which applicant filed by fax the same day.

31. The Examiner forwarded an interview summary record of the July 23, 2002 interview confirming that the "reasons for allowance were not solely the fact that the claims recited a 'mirror coating' but also the fact that the mirror coating was recited in combination with other elements of the claim limitations."

32. On September 17, 2002, the USPTO issued Reexamination Certificate US 4,611,877 C1 (attached as Exhibit "B"), listed on its face as being owned by BAES and confirming the patentability not only of original claims 1-5 but newly submitted claims 6-13.

Count 1 – Rockwell's Willful Infringement of the '877 Patent

33. BAES incorporates the allegations of paragraphs 1-32 as if fully set forth in this paragraph.

34. The '877 patent is presumed valid under 35 U.S.C §282.

35. The '877 patent is in full force and effect.

36. The '877 patent includes without amendment all claims 1-5 as originally submitted in the application and claims 6-13 as considered and added in the Request.

37. Upon information and belief, Rockwell, has been and is making, having made, using, offering for sale, and selling products comprising and/or incorporating at least one optical projector for use in a head up display, said products including but not limited to at least some of Rockwell's HGS systems marketed under the trademark HGS[®], and specifically including the HGS-2850, HGS-2860, HGS-2900, HGS-3000 and HGS-3300 products, under 35 U.S.C. §271(a), §271(b) and/or §271(c), infringe one or more of claims 1-13 of the '877 patent.

38. Upon information and belief, the infringing Rockwell HGS products have been fitted on, *inter alia*, aircraft currently identified at the Embraer 145, Lockheed C130J, Dassault Falcon 900EX, Dassault Falcon 2000, SAAB 2000 and DH series of aircraft.

39. Upon information and belief, Rockwell entered into and/or continued the business of manufacturing and selling said infringing products with full knowledge of the '877 patent.

40. The infringement of the '877 patent by Rockwell has been willful, wanton, egregious, and with disregard of BAES's rights in and to the '877 patent.

Count II – ELCAN's Willful Infringement of the '877 patent

41. BAES incorporates the allegations of paragraphs 1-40 as if fully set forth in this paragraph.

42. Upon information and belief, ELCAN has been and is making, having made, using, offering for sale, and selling prisms (hereinafter "said prisms") made specifically for use in a head up display, said prisms including in but not limited to those included in Rockwell's HGS

systems marketed under the trademark HGS[®], and specifically including the HGS-2850, -2860, -2900, -3000 and -3300 products (hereinafter the "HGS prism products"), under 35 U.S.C. §271(b) and/or §271(c), including inducing infringement and/or contributorily infringing one or more of claims 1-13 of the '877 patent.

43. Upon information and belief, ELCAN knew of the '877 patent prior to manufacture of the prisms;

44. Said prisms constitute a material part of the HGS prism products;

45. Upon information and belief, ELCAN, at the time of manufacture of said prisms, knew the same to constitute a material part of the HGS prism products;

46. The prisms are especially made or especially adapted for use in the HGS prism products;

47. Upon information and belief, ELCAN, at the time of manufacture of said prisms, knew the same to be especially made or especially adapted for use in the HGS prism products;

48. Said prisms are not a staple article of commerce or commodity of commerce suitable for substantial noninfringing use;

49. Upon information and belief, ELCAN, at the time of manufacture of said prisms, knew the same to not be a staple article of commerce or commodity of commerce suitable for substantial noninfringing use;

WHEREFORE, BAES demands:

a) an award of damages, including prejudgment interest from the inception of Rockwell's and ELCAN's direct infringement, inducement to infringe and/or contributory infringement

adequate to compensate BAES for the infringement of the patent rights complained of herein (including, but not limited to, its lost profits), together with interest and costs as affixed by the Court, pursuant to 35 U.S.C. §284;

b) that any damages awarded against defendants, Rockwell and ELCAN, pursuant to 35 U.S.C. §284 be trebled in view of their willful infringement of said '877 patent;

c) an award to BAES of reasonable attorney fees, pursuant to 35 U.S.C. §285, due to the exceptional nature of this case;

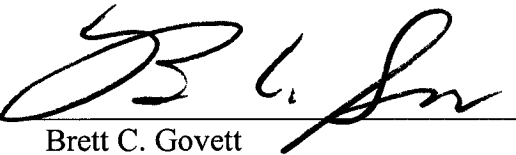
d) a permanent injunction against defendants, Rockwell and ELCAN, and their officers, subsidiaries, agents, employees and all other parties in active concert or participation with them against making, using, selling or offering for sale in the United States said prisms and said infringing products and any other products directly infringing or inducing infringement or contributorily infringing one or more claims of the '877 patent; and

e) such other and further relief as this Court deems just and proper.

JURY DEMAND

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure and the 7th Amendment to the Constitution of the United States, plaintiff demands a trial by jury of all issues triable as of right by jury in the above action.

Respectfully submitted,

By: 

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CERTIFICATE OF SERVICE

This document was served in compliance with Rule 5 of the Federal Rules of Civil Procedure on the 19~~th~~ day of August, 2003.



Brett C. Govett