

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

<hr/>		x
	:	
FIREPASS IP HOLDINGS, INC. and FIREPASS CORPORATION,	:	
	:	
Plaintiffs,	:	SECOND AMENDED COMPLAINT FOR PATENT INFRINGEMENT AND DEMAND FOR JURY TRIAL
	:	
- against -	:	
	:	
THE BOEING COMPANY and HONEYWELL INTERNATIONAL INC.,	:	Civil Action No. 08-CV-1766 (FB) (RLM)
	:	
Defendants.	:	
<hr/>		x

Plaintiffs Firepass IP Holdings Inc. (“Firepass Holdings”) and Firepass Corporation (“Firepass”) (collectively referred to as “Plaintiffs”), by and through their undersigned counsel, Cohen & Gresser LLP, as and for their Complaint against Defendants The Boeing Company (“Boeing”) and Honeywell International Inc. (“Honeywell”), hereby allege, upon knowledge with respect to themselves and their own acts, and upon information and belief as to all other matters, as follows:

NATURE OF THE CASE

1. This is a civil action for infringement of one or more of United States Patent No. RE 40,065 (“the RE 40,065 patent”); United States Patent No. 6,418,752 (“the ‘752 patent”); United States Patent No. 6,314,754 (“the ‘754 patent”); and United States Patent No. 7,207,392 (“the ‘392 patent”) (collectively referred to herein as “the patents-in-suit”), brought pursuant to the United States patent laws, 35 U.S.C. § 271, *et seq.*

PARTIES

2. Firepass Holdings is a corporation organized and existing under the laws of the State of Delaware, with its address at P.O. Box 2021, New York, NY 10159, and is the owner and assignee of the '392 patent, the '754 patent, and the '752 patent.

3. Firepass is a corporation organized and existing under the laws of the State of Delaware, with its headquarters at 19 W. 21st Street, Suite 503, New York, NY 10010, and is the owner and assignee of the RE 40,065 patent.

4. Boeing is a corporation organized and existing under the laws of the State of Delaware, with its principal executive offices at 100 N. Riverside, Chicago, IL 60606.

5. Honeywell is a corporation organized and existing under the laws of the State of Delaware, with its principal executive offices at 101 Columbia Road, Morris Township, New Jersey 07962.

6. Honeywell manufactures, offers for sale and sells on-board fuel tank inerting systems and apparatus, which infringe the patents-in-suit directly, indirectly, contributorily, or by inducement. For example, Honeywell supplies an infringing on-board fuel tank inerting system for the Boeing 737 airplane.

7. Boeing offers to sell and/or sells, manufactures, and/or supplies aircraft, including but not limited to Boeing 737 and 787 airplanes, which incorporate and utilize on-board fuel tank inerting systems that infringe the patents in suit directly, indirectly, contributorily, or by inducement.

JURISDICTION AND VENUE

8. This Court has exclusive subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 and § 1338(a).

9. Venue is proper in this District under 28 U.S.C. §§ 1391 (b) and (c) and 1400(b).

10. This Court has personal jurisdiction over Honeywell. Upon information and belief, Honeywell regularly conducts business and solicits business in the State of New York and derives substantial revenue from goods used or services rendered in the State of New York and in this judicial district, and expects or should reasonably expect its infringement of the patents-in-suit to have consequences in the State of New York, and Honeywell's infringement of the patents-in-suit has caused injury to Plaintiffs in the State of York. Honeywell also derives substantial revenue from interstate or international commerce.

11. This Court has personal jurisdiction over Boeing because Boeing has conducted and does conduct business within the State of New York and in this judicial district, including contracting to supply aircraft which incorporate and use the infringing fuel tank inerting systems to this district, and has committed the tort of patent infringement in the State, and regularly derives substantial revenue from goods used in the State and within this judicial district, and expects or reasonably expects its acts to have consequences in the State and this judicial district, and derives substantial revenue from interstate and international commerce.

THE PATENTS IN SUIT

12. United States Patent No. 6,334,315 ("the '315 patent"), entitled "Hypoxic fire prevention and fire suppression systems for computer cabinets and fire-hazardous industrial containers," was duly and legally issued by the United States Patent and

Trademark Office on January 1, 2002, after full and fair examination. The '315 patent was also duly and legally reissued by the United States Patent and Trademark Office on February 19, 2008, under the number RE 40,065. Copies of the RE 40,065 reissue patent and the '315 patent are annexed hereto as Exhibit A.

13. The '752 patent, entitled "Hypoxic fire prevention and fire suppression systems and breathable fire extinguishing compositions for human occupied environments," was duly and legally issued by the United States Patent and Trademark Office on July 16, 2002, after full and fair examination. A copy of the '752 patent is annexed hereto as Exhibit B.

14. The '754 patent, entitled "Hypoxic fire prevention and fire suppression systems for computer rooms and other human occupied facilities," was duly and legally issued by the United States Patent and Trademark Office on November 13, 2001, after full and fair examination. A copy of the '754 patent is annexed hereto as Exhibit C.

15. The '392 patent, entitled "Method of preventing fire in computer room and other enclosed facilities," was duly and legally issued by the United States Patent and Trademark Office on April 24, 2007, after full and fair examination. A copy of the '392 patent is annexed hereto as Exhibit D.

COUNT 1 – PATENT INFRINGEMENT BY HONEYWELL

16. The allegations of paragraphs 1 through 15 above are incorporated by reference as if fully set forth herein.

17. Honeywell, either directly or through its affiliates, subsidiaries and/or distributors, imports into the United States or manufactures and offers for sale, sells and supplies on-board fuel tank inerting systems and apparatus which infringe one or more

claims of the patents-in-suit, including such systems and apparatus designed for use in Boeing aircraft. For example, on July 29, 2008 Honeywell announced that it had delivered such systems and apparatus for use in Boeing's Next-Generation 737 aircraft.

18. Honeywell has infringed and is infringing, literally or under the doctrine of equivalents, one or more claims of the patents-in-suit by practicing, without authority, one or more of the following acts: (a) making, using, offering to sell, and selling in the United States the invention of one or more claims of the patents-in-suit; and (b) importing into the United States the invention of one or more claims of the patents-in-suit.

19. In addition, Honeywell has infringed and is infringing the patents-in-suit by (a) inducing infringement of one or more claims of the patents-in-suit; and (b) contributing to infringement of one or more claims of the patents-in-suit.

20. Honeywell's acts of infringement have been and continue to be willful, knowing and deliberate.

21. Honeywell was placed on express notice of the patents-in-suit in correspondence between Honeywell and Plaintiffs' patent attorney in 2006 and 2007 in connection with press reports that Honeywell would likely be supplying Boeing with components or systems specifically designed to produce hypoxic atmosphere in Boeing aircraft.

22. As a direct and proximate result of Honeywell's acts of infringement, Plaintiffs have been, are being, and will be damaged. Consequently, Plaintiffs are entitled to compensation for their damages from Honeywell pursuant to 35 U.S.C. § 284 in an amount that cannot presently be quantified, but will be ascertained at trial.

23. As a direct and proximate result of Honeywell's acts of infringement, Plaintiffs have been irreparably harmed and will continue to be harmed unless and until Defendant's infringing acts are enjoined and restrained by order of this Court.

COUNT II – PATENT INFRINGEMENT BY BOEING

24. The allegations of paragraphs 1 through 23 above are incorporated by reference as if fully set forth herein.

25. Boeing offers for sale, sells, manufactures or imports either directly, or through its affiliates, subsidiaries and/or distributors aircraft which incorporate and use infringing on-board fuel tank inerting systems.

26. In particular, since 2004 and until April 22, 2008, according to information provided on Boeing's website, Boeing has amassed at least 893 orders for the 787 Dreamliner aircraft, which incorporates infringing on-board fuel tank inerting systems. Each 787 Dreamliner aircraft is valued at 146 to 200 million dollars, making the total value of the orders received for this time period between 130.4 and 178.6 billion dollars.

27. In addition, according to information provided on Boeing's website, from January through August 12, 2008 Boeing had amassed at least 449 orders for its Next-Generation 737 aircraft, which incorporates and uses or will incorporate and use an infringing on-board fuel tank inerting system supplied by Honeywell, at a price per aircraft ranging from 50 to 85 million dollars, making total orders for the Next-Generation 737 aircraft for this time period between 22.5 billion and 38.1 billion dollars.

28. Boeing's aircraft incorporating on-board fuel tank inerting systems use devices, systems, methods and/or compositions that are covered by one or more claims of

the patents-in-suit (*e.g.*, claims 5, 12-14 of the RE 40,065 patent; claim 1 of the '752 patent; claims 1-2 of the '754 patent; and claims 14-16 of the '392 patent).

29. Boeing has infringed and is infringing, literally or under the doctrine of equivalents, one or more claims of the patents-in-suit by practicing, without authority, one or more of the following acts: (a) making, using, offering to sell, and selling in the United States the invention of one or more claims of the patents-in-suit; and (b) importing into the United States the invention of one or more claims of the patents-in-suit.

30. In addition, Boeing has infringed and is infringing the patents-in-suit by (a) inducing infringement of one or more claims of the patents-in-suit; and (b) contributing to infringement of one or more claims of the patents-in-suit.

31. Boeing's acts of infringement have been and continue to be willful, knowing and deliberate.

32. Boeing has been aware of Plaintiffs' inventions and technology since at least July of 2001, when information about Plaintiffs' inventions and technology was disclosed to Boeing.

33. Information about Plaintiffs' inventions and technology was again disclosed to Boeing at a Federal Aviation Administration ("FAA") conference in Atlantic City in October of 2001.

34. International Aero Inc. in Seattle conducted a set of tests according to FAA protocols using Plaintiffs' inventions and technology at a facility known as the Fire Lab in or around 2003. Boeing visited the Fire Lab on several occasions to see the testing and the results.

35. Boeing was further placed on express notice of the patents-in-suit and by correspondence sent to Boeing in 2005 and 2007.

36. As a direct and proximate result of Defendants' acts of infringement, Plaintiffs have been, are being, and will be damaged. Consequently, Plaintiffs are entitled to compensation for their damages from Defendant pursuant to 35 U.S.C. § 284 in an amount that cannot presently be quantified, but will be ascertained at trial.

37. As a direct and proximate result of Defendant's acts of infringement, Plaintiffs have been irreparably harmed and will continue to be harmed unless and until Defendant's infringing acts are enjoined and restrained by order of this Court.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demand the following relief:

- (i) A judgment declaring that the Defendants have infringed the patents-in-suit as alleged herein;
- (ii) A judgment declaring that the Defendants have willfully infringed the patents-in-suit as alleged herein;
- (iii) A judgment and order awarding Plaintiffs damages under 35 U.S.C. § 284, including treble damages for willful infringement as provided by 35 U.S.C. § 284, and supplemental damages for any continuing post-verdict infringement up until entry of the final judgment with an accounting as needed;
- (iv) A judgment and order awarding Plaintiffs pre-judgment and post-judgment interest on the damages awarded;

- (v) A judgment and order declaring this to be an exceptional case and awarding Plaintiffs the costs of this action (including all disbursements) and attorneys' fees as provided by 35 U.S.C. § 285;
- (vi) A judgment and order that the Defendants, their agents, employees, representatives, successors and assigns, and those acting in privity or in concert therewith, be permanently enjoined from further infringement of the patents-in-suit; and
- (vii) Such other and further relief as the Court deems just and equitable.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial as to all triable issues.

Dated: New York, New York
August 25, 2008

COHEN & GRESSER LLP

By: s/Karen H. Bromberg
Karen H. Bromberg (KB-2153)
kbromberg@cohengresser.com
Alexandra Wald (AW-0225)
awald@cohengresser.com
Catriona M. Collins (CC-9740)
ccollins@cohengresser.com

100 Park Avenue, 23rd Floor
New York, NY 10017
(212) 957-7600

*Attorneys for Plaintiffs
Firepass Corporation
Firepass IP Holdings, Inc.*