

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
Civil No. 1:07cv184

BORGWARNER INC., and
BORGWARNER TURBO SYSTEMS, INC.

Plaintiffs,

v.

SECOND AMENDED COMPLAINT
FOR PATENT INFRINGEMENT

HONEYWELL INTERNATIONAL, INC.,

Defendant.

Pursuant to Rule 15(a) of the Rules of Civil Procedure and by written consent of the Defendant, the Plaintiffs file this Second Amended Complaint. By this Second Amended Complaint the Plaintiffs claim relief against the Defendant as set forth below and allege as follows:

THE PARTIES

1. Plaintiff BorgWarner is incorporated under the laws of Delaware, and has a regular and established place of business at 3850 Hamlin Road, Auburn Hills, Michigan, 48326. BorgWarner has been manufacturing high-performance automotive components for over 100 years. In that time, BorgWarner has been at the forefront of technological innovation in the automotive industry. The company's commitment to innovation is evidenced by its patent portfolio, consisting of approximately 3,800 active domestic and foreign patents and patent applications pending or under preparation.

2. Co-plaintiff BorgWarner Turbo Systems is incorporated under the laws of Delaware, and has a regular and established place of business at 1849 Brevard Rd, Arden, North Carolina, 28704. At its facility in Arden, North Carolina, BorgWarner Turbo

Systems manufactures high performance automotive turbochargers for large commercial truck engines.

3. Defendant Honeywell is incorporated under the laws of Delaware, with its principal place of business at 101 Columbia Road, Morris Township, New Jersey, 07962.

JURISDICTION AND VENUE

4. This is an action for patent infringement arising under the patent laws of the United States, Title 35, United States Code. This Court has jurisdiction over the causes of action stated herein pursuant to 35 U.S.C. § 101 *et seq.* and 28 U.S.C. §§ 1331 and 1338(a).

5. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b), (c) and 1400(b).

6. This Court has personal jurisdiction over Honeywell, and venue is proper in this District, because Honeywell maintains systematic and continuous contacts with this District and because Honeywell has committed substantial acts of infringement in this District relating to turbocharger products containing cast titanium compressor wheels that are covered by one or more claims of certain patents owned by BorgWarner and exclusively licensed to BorgWarner Turbo Systems. Honeywell's acts of infringement have caused specific damages in this jurisdiction including, at least, lost sales of patented BorgWarner titanium compressor wheels and patented BorgWarner turbochargers that are manufactured by BorgWarner Turbo Systems in this District.

BACKGROUND

7. Among other automotive components, BorgWarner and BorgWarner Turbo Systems are leading manufacturers and innovators of turbochargers. A turbocharger is an exhaust gas-driven compressor used to increase the power output of an internal-combustion engine by compressing air entering the engine, and thus increasing

the amount of air available for combustion. One of the key components within a turbocharger is a compressor wheel, which cooperates with a compressor housing to compress air and direct it into the engine's intake manifold.

8. BorgWarner and BorgWarner Turbo Systems have made considerable investment in improving turbocharger technologies and developed new designs and manufacturing techniques that have been recognized by the automotive industry. This investment by BorgWarner and BorgWarner Turbo Systems has resulted in a number of inventions related to turbocharger technologies covered by issued patents.

9. Among other patented improvements, BorgWarner and BorgWarner Turbo Systems have developed a novel design for a titanium compressor wheel for use in turbocharger applications. BorgWarner owns several patents directed to the design of this compressor wheel, the method for manufacturing the compressor wheel, and the method for manufacturing turbochargers containing the compressor wheel. These patents include: United States Patent No. 6,629,556 (hereinafter referred to as "the '556 patent"); United States Patent No. 6,663,347 (hereinafter referred to as "the '347 patent"); and United States Patent No. 6,904,949 (hereinafter referred to as "the '949 patent") (collectively, "the BorgWarner Compressor Wheel Patents"). BorgWarner Turbo Systems is exclusively licensed under the BorgWarner Compressor Wheel Patents and, pursuant to the terms of the license, has the right to assert the BorgWarner Compressor Wheel Patents in its own name.

10. Honeywell infringes the BorgWarner Compressor Wheel Patents by importing, making, using, selling, and offering to sell devices created by methods covered by one or more claims of the Compressor Wheel Patents, by using such methods, and by inducing the use by others of such methods, and by importing, making, using, selling, offering to sell, and inducing the use by others of devices covered by one or more claims of the Compressor Wheel Patents.

11. Honeywell has had notice of the BorgWarner Compressor Wheel Patents. Honeywell's infringement of the claims of the BorgWarner Compressor Wheel Patents has been willful.

COUNT I
(Infringement of U.S. Patent No. 6,629,556)

12. Paragraphs 1 through 11 are incorporated herein by reference.

13. BorgWarner is now, and has been since its issuance, the assignee and sole owner of all right, title, and interest in United States Patent No. 6,629,556, entitled "Cast Titanium Compressor Wheel" ("the '556 patent"), which was duly and legally issued on October 7, 2003. A true and correct copy of the '556 patent is attached hereto as Exhibit A.

14. BorgWarner Turbo Systems is exclusively licensed by BorgWarner under the '556 patent and has the right to assert the '556 patent in its own name.

15. Honeywell has been and is now infringing, inducing infringement, and contributing to the infringement of the '556 patent in this District and elsewhere by importing, making, using, selling, and offering to sell devices created by methods covered by one or more claims of the '556 patent, by using such methods, and by inducing the use by others of such methods. Honeywell's infringing acts include, but are not limited to, its importing, making, using, selling, offering for sale and inducing the use by others of Honeywell's titanium compressor wheel products and its inducing the use by others of methods covered by one or more claims of the '556 patent to manufacture such products.

16. Honeywell's acts of infringement have injured and damaged BorgWarner and BorgWarner Turbo Systems in an amount to be proven at trial.

17. Honeywell has and has had actual knowledge of the '556 patent and Honeywell's infringement has been and continues to be willful.

18. Honeywell's infringement has caused irreparable injury to BorgWarner and BorgWarner Turbo Systems and will continue to cause irreparable injury unless Honeywell is enjoined from further infringement by this Court.

COUNT II
(Infringement of U.S. Patent No. 6,663,347)

19. Paragraphs 1 through 18 are incorporated herein by reference.

20. BorgWarner is now, and has been since its issuance, the assignee and sole owner of all right, title, and interest in United States Patent No. 6,663,347, entitled "Cast Titanium Compressor Wheel" ("the '347 patent"), which was duly and legally issued on December 16, 2003. A true and correct copy of the '347 patent is attached hereto as Exhibit B.

21. BorgWarner Turbo Systems is exclusively licensed by BorgWarner under the '347 patent and has the right to assert the '347 patent in its own name.

22. Honeywell has been and is now infringing, inducing infringement, and contributing to the infringement of the '347 patent in this District and elsewhere by importing, making, using, selling, offering to sell, and inducing the use by others of devices covered by one or more claims of the '347 patent. Honeywell's infringing acts include, but are not limited to, its importing, making, using, selling, offering for sale and inducing the use by others of Honeywell's titanium compressor wheel products.

23. Honeywell's acts of infringement have injured and damaged BorgWarner and BorgWarner Turbo Systems in an amount to be proven at trial.

24. Honeywell has and has had actual knowledge of the '347 patent and Honeywell's infringement has been and continues to be willful.

25. Honeywell's infringement has caused irreparable injury to BorgWarner and BorgWarner Turbo Systems and will continue to cause irreparable injury unless Honeywell is enjoined from further infringement by this Court.

COUNT III
(Infringement of U.S. Patent No. 6,904,949)

26. Paragraphs 1 through 25 are incorporated herein by reference.
27. BorgWarner is now, and has been since its issuance, the assignee and sole owner of all right, title, and interest in United States Patent No. 6,904,949, entitled “Method of Making Turbocharger Including Cast Titanium Compressor Wheel” (“the ‘949 patent”), which was duly and legally issued on June 14, 2005. A true and correct copy of the ‘949 patent is attached hereto as Exhibit C.
28. BorgWarner Turbo Systems is exclusively licensed by BorgWarner under the ‘949 patent and has the right to assert the ‘949 patent in its own name.
29. Honeywell has been and is now infringing, inducing infringement, and contributing to the infringement of the ‘949 patent in this District and elsewhere by importing, making, using, selling, and offering to sell devices created by methods covered by one or more claims of the ‘949 patent, by using such methods, and by inducing the use by others of such methods. Honeywell’s infringing acts include, but are not limited to, its importing, making, using, selling, offering for sale and inducing the use by others of Honeywell’s turbocharger products containing titanium compressor wheels and its inducing the use by others of methods covered by one or more claims of the ‘949 patent to manufacture such products.
30. Honeywell’s acts of infringement have injured and damaged BorgWarner and BorgWarner Turbo Systems in an amount to be proven at trial.
31. Honeywell has and has had actual knowledge of the ‘949 patent and Honeywell’s infringement has been and continues to be willful.
32. Honeywell’s infringement has caused irreparable injury to BorgWarner and BorgWarner Turbo Systems and will continue to cause irreparable injury unless Honeywell is enjoined from further infringement by this Court.

EXCEPTIONAL CASE

33. Honeywell's infringement of the BorgWarner Compressor Wheel Patents and the circumstances surrounding that infringement render this case exceptional under 35 U.S.C. § 285, and BorgWarner and BorgWarner Turbo Systems are therefore entitled to their reasonable attorneys fees and costs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs BorgWarner and BorgWarner Turbo Systems request the following relief:

1. A permanent injunction preventing Honeywell and its officers, directors, agents, servants, employees, attorneys, licensees, successors, assigns, and customers, and those in active concert or participation with Honeywell, from infringing any claim of the BorgWarner Compressor Wheel Patents, pursuant to 35 U.S.C. § 283;
2. Damages in an amount to be determined at trial;
3. Enhanced damages pursuant to 35 U.S.C. § 284;
4. Costs and reasonable attorney fees incurred in connection with this action pursuant to 35 U.S.C. § 285;
5. For a trial by jury; and,

6. For such other and further relief as the Court deems appropriate.

This the 5th day of June, 2008.

By: s/ Larry S. McDevitt
Larry S. McDevitt NC. Bar No. 5032
THE VAN WINKLE LAW FIRM
11 North Market Street
Asheville, NC 28801
Telephone: 828-258-2991
Facsimile: 828-255-0255
Email: lmcdevitt@vwlawfirm.com

OF COUNSEL:

FISH & RICHARDSON P.C.

David M. Barkan
500 Arguello Street, Suite 500
Redwood City, California 94063
Telephone: 650-839-5070
Facsimile: 650-839-5071
Email: Barkan@fr.com

Joshua A. Griswold
1717 Main Street
Suite 5000
Dallas, TX 75201
Telephone: 214-747-5070
Facsimile: 214-747-2091
Email: griswold@fr.com

Ralph A. Phillips
1425 K Street, N.W.
Suite 1100
Washington, DC 20005
Telephone: 202-783-5070
Facsimile: 202-783-2331
Email: RPhillips@fr.com

Attorneys for Plaintiffs
BORGWARNER INC. and
BORGWARNER TURBO SYSTEMS,
INC.

CERTIFICATE OF SERVICE

I certify that on June 5, 2008, I electronically filed the foregoing SECOND AMENDED COMPLAINT FOR PATENT INFRINGEMENT with the Clerk of the Court using the CM/ECF system which will send email notification of such filing to the following counsel:

Forrest A. Ferrell

forrest.ferrell@sigmonclark.net
amanda.honeycutt@sigmonclark.net,
angela.mayo@sigmonclark.net

Philip Chen

pchen@kirkland.com

Marc H. Cohen

mcohen@kirkland.com jbonilla@kirkland.com

Robert G. Krupka

bkrupka@kirkland.com

THIS the 5th day of June, 2008.

s/ Larry McDevitt
Larry McDevitt