

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

BAE SYSTEMS INFORMATION AND  
ELECTRONIC SYSTEMS INTEGRATION  
INC., a Delaware corporation,

Plaintiff,

v.

AEROFLEX INCORPORATED, a Delaware  
corporation, and AEROFLEX PLAINVIEW,  
INC., a Delaware corporation,

Defendants.

Civil Action No. \_\_\_\_\_

**JURY TRIAL DEMANDED**

**COMPLAINT FOR PATENT INFRINGEMENT, TRADE SECRET  
MISAPPROPRIATION, AND RELATED STATE LAW CLAIMS**

Plaintiff BAE Systems Information and Electronic Systems Integration Inc., a Delaware Corporation, by and through its counsel, brings this Complaint and alleges:

**PARTIES**

1. BAE Systems Information and Electronic Systems Integration Inc. (“BAE Systems”) is a Delaware corporation and the owner of the intellectual property rights at issue in this action. BAE Systems has its principal place of business at 65 Spit Brook Road, Nashua, New Hampshire 03061.

2. BAE Systems is part of a global company that develops and supports advanced defense, security and aerospace systems in the air, on land and at sea. Through lab, range and flight testing, BAE Systems is a proven innovator of infrared countermeasures systems for use on various military and commercial vehicles.

3. On information and belief, Aeroflex Incorporated is a Delaware corporation, with its headquarters at 35 South Service Road, Plainview, New York 11083. On information and

belief, until an entity name change around December 13, 1985, Aeroflex Incorporated was known as Aeroflex Laboratories Incorporated.

4. On information and belief, Aeroflex Plainview, Inc. is a Delaware corporation, with its headquarters at 35 South Service Road, Plainview, New York 11083. On information and belief, from about December 13, 1985, to March 4, 2004, Aeroflex Plainview, Inc. was known as Aeroflex Laboratories Incorporated.

5. Both defendants are referred to in the Complaint, collectively, as “AEROFLEX”. As part of its business, AEROFLEX makes motor and electronic control products used in a variety of applications.

#### **JURISDICTION AND VENUE**

6. The infringement claim arises under the patent laws of the United States, 35 U.S.C. § 1 *et seq.*, including 35 U.S.C. § 271. This Court has subject-matter jurisdiction over this controversy under 28 U.S.C. §§ 1331 and 1338.

7. This Court has supplemental jurisdiction over the claims arising under state law pursuant to 28 U.S.C. § 1367(a), because these claims are so related to the claims arising under federal law that they form part of the same case and/or controversy under Article III of the United States Constitution.

8. AEROFLEX is incorporated in this judicial district and has sufficient contacts within this district to subject itself to the jurisdiction of this Court. Personal jurisdiction and venue are therefore proper in this district pursuant to 28 U.S.C. §§ 1391 and 1400.

**INFRARED COUNTERMEASURES SYSTEMS FOR AIRCRAFT**

9. Certain military aircraft are equipped with an infrared countermeasures system that is used to prevent a target such as an infrared heat seeking missile from hitting the aircraft. Such systems typically work by locating energy from the target missile and by countering it with infrared energy that jams the missile's guidance system and drives it off course.

10. The ability of such systems to quickly acquire an image of the target, accurately track it by maintaining a line of sight to the target, and accurately aim a jamming beam of infrared energy at the target image over the course of an engagement is critical to the effectiveness of the system.

11. Particularly for fast jets and front-line aircraft, it is highly desirable to utilize an infrared countermeasures system that is lightweight, low-drag, and has a jam head with a high degree of aiming accuracy.

12. Since the 1990's, BAE Systems, along with its predecessors-in-interest, has invested substantial time, effort and money researching and developing a high performance direct infrared countermeasures system ("DIRCM System") for use on military aircraft and certain other military and commercial platforms that is unrivaled by its competitors in the aerospace and defense industry. Based on many years of research, BAE Systems has amassed a large body of knowledge about desirable system features and techniques, as well as techniques that do not work as well in aircraft environments. BAE Systems' current DIRCM system, a third generation system, is one of its latest products derived from this large body of knowledge.

13. BAE Systems, along with its predecessors-in-interest, have taken steps to protect this large body of knowledge by applying for patent protection for certain inventions. One such patent is United States Patent No. 5,742,384, which is entitled *Compact Scanning Infrared*

*Countermeasure Emitter*. The patent relates to a countermeasures system that utilizes a multi-axis gimbal assembly and a semiconductor laser for generating the countermeasure energy.

14. BAE Systems, along with its predecessors-in-interest, have also taken steps to protect other aspects of this large body of knowledge as trade secrets. For example, this large body of knowledge includes BAE Systems' research and development concerning the optimum design and architecture of a jam head that is lightweight and has low drag, that has a unique optical pathway for receiving and tracking the target image and for accurately transmitting the jamming infrared energy, and that utilizes a minimum number of adjustable components to minimize system cost without jeopardizing aiming accuracy. This large body of knowledge also includes BAE Systems' research and development of specially designed mechanisms to compensate for aiming errors due to equipment fabrication tolerances and due to mechanical vibrations and thermal gradients that are induced by in-flight operation. BAE Systems' design, fabrication, and implementation of an advanced DIRCM system, which includes the jam head features described above, combined with BAE Systems' developed roster of preferred vendors for obtaining certain high precision components, along with the system's theoretical and actual performance characteristics, and BAE Systems' business plans for such a system are referred to herein as "BAE Systems Trade Secrets."

15. BAE Systems, and its predecessors-in-interest, began compiling the BAE Systems Trade Secrets at least as early as 1996. With the exception of trade secrets that have been disclosed, for example, through public filings with the United States Patent and Trademark Office, all of the BAE Systems Trade Secrets have been kept confidential. The BAE Systems Trade Secrets are not generally known, are maintained in confidence by BAE Systems' employees, and are maintained in confidence by others who need to know them and who have

been entrusted with them according to express and implied agreements. BAE Systems has at all times taken reasonable steps to protect such confidential information from being stolen and misused.

16. Because there is keen competition amongst defense contractors for procurement contracts offered by various military agencies around the world for countermeasures systems suitable for aircraft, BAE Systems Trade Secrets would be of great value in the hands of BAE Systems' existing or potential competitors.

#### **THE 2002 SUBCONTRACT WITH AEROFLEX**

17. BAE Systems and its predecessors-in-interest, entrusted AEROFLEX with BAE Systems Trade Secrets, through agreements entered with AEROFLEX. In 1996, in connection with the development of a first generation advanced DIRCM System, AEROFLEX entered a subcontract with BAE Systems' predecessors-in-interest to fabricate a jam head that had certain specified characteristics and that was configured as a two-axis gimbal assembly for tracking, as well as aiming at, a target. In 1998, AEROFLEX entered a second subcontract with BAE Systems' predecessors-in-interest to fabricate a second generation gimbal assembly. Both jam heads embody BAE Systems Trade Secrets.

18. At no time did AEROFLEX obtain any intellectual property rights in the assemblies it fabricated. At no time did AEROFLEX obtain any right to sell or offer to sell an assembly identical to or substantially identical to the assemblies it had fabricated.

19. Largely because of its prior work with its predecessors-in-interest, on February 22, 2002, BAE Systems entered a subcontract, No. RS8889, with AEROFLEX to fabricate a gimbal assembly and an electrical interface assembly (collectively, "the GIA") that would be integrated with other components to form its current, third generation DIRCM System (the "2002

SUBCONTRACT”). The terms of the 2002 SUBCONTRACT are governed and interpreted by the laws of the State of New Hampshire, the State from which the subcontract issued.

20. The 2002 SUBCONTRACT contains a DATA RIGHTS provision that states,

Goods made in accordance with BAE SYSTEMS IEWS’ specifications and drawings shall not be furnished or quoted to any other person or concern. All specifications, drawings, tools, materials and other items furnished by BAE SYSTEMS IEWS or the cost of which is charged against this order or necessary for the design, development, fabrication, assembly or testing of items specified in this Subcontract shall be kept confidential and shall be and remain the property of BAE SYSTEMS IEWS and be returned to BAE SYSTEMS IEWS immediately upon request or at completion of this order.

21. The general provisions incorporated as part of the 2002 SUBCONTRACT also contain a provision called INFORMATION OF BAE SYSTEMS that states,

Information provided by BAE SYSTEMS to SELLER remains the property of BAE SYSTEMS. SELLER agrees to comply with the terms of any Proprietary Information Agreement with BAE SYSTEMS and to comply with all Proprietary Information markings and Restrictive Legends applied by BAE SYSTEMS to anything provided hereunder to SELLER. **SELLER agrees not to use any BAE SYSTEMS provided information for any purpose except to perform this Contract and agrees not to disclose such information to third parties without the prior written consent of BAE SYSTEMS.** (emphasis in original).

22. The general provisions incorporated as part of the 2002 SUBCONTRACT also contain a provision called INTELLECTUAL PROPERTY that states,

SELLER agrees that BAE SYSTEMS shall be the owner of all inventions, technology, designs, works of authorship, mask works, technical information, computer software, business information and other information conceived, developed or otherwise generated in the performance of this Contract by or on behalf of SELLER. SELLER hereby assigns and agrees to assign all right, title, and interest in the foregoing to BAE SYSTEMS, including without limitation all copyrights, patent rights and other intellectual property rights therein and further agrees to execute, at BAE SYSTEMS’ request and expense, all documentation necessary to perfect title therein in BAE SYSTEMS. SELLER agrees that it will maintain and disclose to BAE SYSTEMS written records of, and otherwise provide BAE SYSTEMS with full access to, the subject matter covered by this clause and that all such subject matter will be deemed information of BAE SYSTEMS and subject to the protection provision of the clause entitled “Information of BAE SYSTEMS.” SELLER agrees to assist BAE SYSTEMS, at

BAE SYSTEMS' request and expense, in every reasonable way, in obtaining, maintaining, and enforcing patent and other intellectual property protection on the subject matter covered by this clause.

23. These three provisions of the 2002 SUBCONTRACT—DATA RIGHTS, INFORMATION OF BAE SYSTEMS, and INTELLECTUAL PROPERTY—are in full force and effect.

24. In connection with the 2002 SUBCONTRACT, BAE Systems entrusted AEROFLEX with BAE Systems Trade Secrets.

25. AEROFLEX knew that such information disclosed to or otherwise shared with it by BAE Systems was confidential and proprietary information of BAE Systems to which it was bound contractually to maintain its secrecy and use only in connection with fulfilling its obligations under the 2002 SUBCONTRACT.

26. As part of its obligation under 2002 SUBCONTRACT, AEROFLEX delivered the GIA to BAE Systems. The GIA contains BAE Systems Trade Secrets.

27. As part of its obligations under the 2002 SUBCONTRACT, AEROFLEX also generated data, including electronic files containing drawings, specifications, and/or renderings of the overall design and architecture of the GIA and of specific components used in the GIA. On information and belief, as part of its obligations under the 2002 SUBCONTRACT, AEROFLEX also maintained for the sole benefit and exclusive use of BAE Systems an inventory of components relating to the GIA.

28. The GIA, all data generated by AEROFLEX pertaining to its obligations under the 2002 SUBCONTRACT, as well as all specifications, drawings, tools, and materials pertaining to the GIA and other components of the DIRCM System and other items and information acquired that were necessary for the design, development, fabrication, assembly or

testing of the deliverables specified in the 2002 SUBCONTRACT are the property of BAE Systems to which AEROFLEX was contractually obligated to keep confidential.

**THE PROPRIETARY INFORMATION AGREEMENTS**

29. BAE Systems took additional measures beyond the terms of the 2002 SUBCONTRACT to safeguard BAE Systems Trade Secrets.

30. In anticipation of entering a subcontract with AEROFLEX, on January 7, 2002, BAE Systems entered a Proprietary Information Agreement, No. CM-2002-45, with AEROFLEX relating to BAE Systems' work on the development of its third generation DIRCM System. The 2002 Proprietary Information Agreement contains provisions that state,

4. The receiving Party agrees that any Proprietary Information disclosed hereunder: (i) shall be used by the receiving Party solely for the Purpose of this Agreement, (ii) shall not be distributed, disclosed or disseminated to any third party (except as provided for in this Agreement), (iii) shall only be disclosed to the receiving Party's employees on a need to-know basis for the Purpose of this Agreement, and (iv) shall only be disclosed to third parties both with first, the consent of the disclosing Party and second, provided that (a) such third party has executed a nondisclosure agreement with the originating Party or (b) such third party executes a nondisclosure agreement with the receiving party containing terms consistent with the requirements herein prior to receiving such information and also containing a proviso making the originating Party a third party beneficiary to such agreement.

14. Upon the expiration or termination of this Agreement, the receiving Party shall cease all use of Proprietary Information received hereunder and shall return or destroy all such Proprietary Information, including all copies thereof, and if destroyed, furnish the disclosing Party with written certification of destruction. Notwithstanding the foregoing, the receiving Party may retain one (1) copy of the disclosing Party's Proprietary Information solely for archival and dispute resolution purposes.

31. The 2002 Proprietary Information Agreement expired on or about January 7, 2008. Its terms are governed and interpreted under the laws of the State of New Hampshire.

32. On January 3, 2007, in anticipation of the expiration of the 2002 Proprietary Information Agreement and in contemplation of further needed work on the third generation



DIRCM System, BAE Systems entered another Proprietary Information Agreement, No. EW# 2007-906, with AEROFLEX. The 2007 Proprietary Information Agreement contains the same restrictive provisions on disclosing and using proprietary information as are in the earlier agreement. *See* ¶ 30, above.

33. The terms of the 2007 Proprietary Information Agreement are currently in full force and effect.

34. After entering the 2007 Proprietary Information Agreement, BAE Systems provided to or otherwise shared with AEROFLEX lab, range and/or flight test data concerning the performance of the third generation DIRCM System, its observations about aiming accuracy and system stability and specific areas of needed improvement and refurbishment of the GIA. All such information is part of BAE Systems Trade Secrets.

**INFRINGEMENT AND UNAUTHORIZED USE AND  
DISCLOSURE OF BAE SYSTEMS TRADE SECRETS**

35. On information and belief, AEROFLEX has fabricated or facilitated the fabrication of one or more items that is identical or substantially identical to the GIA it exclusively fabricated for BAE Systems under the 2002 SUBCONTRACT. On information and belief, AEROFLEX intends to continue fabricating and/or facilitating the fabrication of such items for the benefit of its business.

36. On information and belief, AEROFLEX as part of its business has used and/or disclosed to unauthorized third parties data, including electronic files containing drawings, specifications, and/or renderings of the overall design and architecture of the GIA and of specific components used in the GIA, that were exclusively generated for BAE Systems under the 2002

SUBCONTRACT. On information and belief, AEROFLEX intends to continue using and disclosing such data for the benefit of its business.

37. On information and belief, AEROFLEX as part of its business has used and/or disclosed to unauthorized third parties specifications, drawings, tools, and/or materials pertaining to the GIA and/or other components of the DIRCM System, as well as other items and information acquired that were necessary for the design, development, fabrication, assembly or testing of the deliverables specified in the 2002 SUBCONTRACT. On information and belief, AEROFLEX intends to continue using and disclosing such information for the benefit of its business.

38. AEROFLEX knew that its sharing, disclosure, and use of all such information would cause substantial harm to BAE Systems.

39. As a direct consequence of its unlawful conduct, AEROFLEX has, on information and belief, enabled a prime competitor of BAE Systems to build an infrared countermeasures system that includes an unlawful copy of the GIA and to market such a system in competition with BAE Systems.

40. On December 21, 2007, BAE Systems corresponded with AEROFLEX raising concerns about its unlawful conduct and brought to its attention two patents relating to BAE Systems' countermeasures systems technology, including United States Patent No. 5,742,384.

41. On February 5, 2008, BAE Systems again corresponded with AEROFLEX to resolve its concerns and requested, absent an immediate, earnest meeting between the parties, the return of its proprietary information, stating in particular,

BAE Systems requests that Aeroflex: (a) immediately return to BAE Systems all hardcopy and electronic drawings, designs and models, along with dies and residual material procured under, developed by and/or furnished to Aeroflex under [various] Contracts . . . ; (b) immediately "cease & desist" its manufacture

and sale of the subject gimbal with BAE Systems' intellectual property/proprietary information; (c) and provide BAE Systems with an accounting of all offers for sale and sales of the subject gimbal which Aeroflex has made to date.

42. AEROFLEX has not returned the requested material to BAE Systems.

43. AEROFLEX has ignored BAE Systems' requests.

44. AEROFLEX's actions are willful, wanton, and in reckless disregard of its contractual obligations to BAE Systems.

**COUNT 1  
(Patent Infringement)**

45. BAE Systems repeats and realleges, as if fully set forth at this point herein, the allegations contained in all the preceding paragraphs.

46. United States Patent No. 5,742,384 (the "'384 Patent"), entitled *Compact Scanning Infrared Countermeasure Emitter*, was duly and legally issued by the United States Patent and Trademark Office on April 21, 1998. A copy of the '384 Patent is attached as Exhibit A.

47. By assignment, BAE Systems is the owner of all right, title and interest in, including the right to sue, enforce and recover damages for all infringement, past, present, and future, the '384 Patent.

48. AEROFLEX has been aware of the '384 Patent since at least December 22, 2007.

49. On information and belief, AEROFLEX has induced infringement of the '384 Patent under 35 U.S.C. § 271(b) and/or is liable as a contributory infringer of the '384 Patent under 35 U.S.C. § 271(c) by making, using, offering to sell and/or selling within the United States items that are identical to or substantially similar to the GIA and which have been furnished to at least one third party for incorporation into an infringing system.

50. On information and belief, AEROFLEX is continuing such infringing activities.

51. On information and belief, AEROFLEX will continue to infringe the '384 Patent unless enjoined by this Court.

52. On information and belief, AEROFLEX's infringement has been and continues to be willful.

**COUNT 2**  
**(Trade Secret Misappropriation)**

53. BAE Systems repeats and realleges, as if fully set forth at this point herein, the allegations contained in all the preceding paragraphs.

54. On information and belief, AEROFLEX, by its above-described conduct, has used and will continue to use in its business BAE Systems Trade Secrets.

55. AEROFLEX has acted with knowledge that the information it has used is confidential and proprietary information of BAE Systems and that it was not authorized to use BAE Systems Trade Secrets. AEROFLEX used improper means to acquire knowledge of the information, by, among other things, breaches of its contractual obligations to maintain the secrecy of such information and by unauthorized copying of files. AEROFLEX therefore has acted willfully and maliciously.

56. AEROFLEX's conduct constitutes a violation of the Uniform Trade Secrets Act, including the Act as adopted by the State of New Hampshire and codified in its Revised Statutes Annotated § 350-B *et seq.*

57. On information and belief, AEROFLEX's acts of misappropriation will continue, causing great and irreparable harm to BAE Systems, unless enjoined by this Court.

**COUNT 3**  
**(Breach of Contract—2002 SUBCONTRACT)**

58. BAE Systems repeats and realleges, as if fully set forth at this point herein, the allegations contained in all the preceding paragraphs.

59. The 2002 SUBCONTRACT is a valid and enforceable contract supported by good and adequate consideration.

60. AEROFLEX, by its above-described conduct, has committed material breaches of the 2002 SUBCONTRACT, including breaches of the DATA RIGHTS, INFORMATION OF BAE SYSTEMS, and INTELLECTUAL PROPERTY provisions.

61. On information and belief, AEROFLEX will continue to commit material breaches of the 2002 SUBCONTRACT, causing great and irreparable harm to BAE Systems, unless enjoined by this Court.

62. BAE Systems has not been in material breach of the 2002 SUBCONTRACT at any time.

63. As a result of AEROFLEX's unlawful conduct, BAE Systems is entitled to injunctive relief, an award of damages, as well as other equitable and legal relief.

**COUNT 4**  
**(Breach of Contract—Proprietary Information Agreements)**

64. BAE Systems repeats and realleges, as if fully set forth at this point herein, the allegations contained in all the preceding paragraphs.

65. The 2002 and 2007 Proprietary Information Agreements are valid and enforceable contracts supported by good and adequate consideration.

66. AEROFLEX, by its above-described conduct, has committed material breaches of the Proprietary Information Agreements, including provisions 4 and 14 in those Agreements.

67. On information and belief, AEROFLEX will continue to commit material breaches of the 2002 and 2007 Proprietary Information Agreements, causing great and irreparable harm to BAE Systems, unless enjoined by this Court.

68. BAE SYSTEMS has not been in material breach of the 2002 and 2007 Proprietary Information Agreements at any time.

69. As a result of AEROFLEX's unlawful conduct, BAE Systems is entitled to injunctive relief, an award of damages, as well as other equitable and legal relief.

**COUNT 5  
(Conversion)**

70. BAE Systems repeats and realleges, as if fully set forth at this point herein, the allegations contained in all the preceding paragraphs.

71. BAE Systems owns the exclusive rights to possess and control the BAE Systems Trade Secrets relating to the GIA and other components in its advanced DIRCM countermeasures system.

72. On information and belief, AEROFLEX, by its above-described conduct, has converted for the benefit of its business BAE Systems Trade Secrets and other information and property, such as the excess inventory of components it accumulated in connection with the 2002 SUBCONTRACT and images and data of BAE Systems' advanced DIRCM system not otherwise protected as trade secrets by BAE Systems. AEROFLEX, by intentionally exercising dominion and control over such property, has deprived BAE Systems of its exclusive rights in such property.

73. As a result of the conversion, BAE Systems has been and will continue to suffer damages, and has and will continue to lose market recognition as the exclusive owner of such property, absent gaining exclusive control over it.

74. AEROFLEX's conversion of BAE Systems property is and will continue to be willful and malicious.

**COUNT 6  
(Unjust Enrichment)**

75. BAE Systems repeats and realleges, as if fully set forth at this point herein, the allegations contained in all the preceding paragraphs.

76. AEROFLEX, by its above-described conduct, has unlawfully profited and/or otherwise enriched itself at the expense of BAE Systems.

77. As a result of the unlawful conduct, BAE Systems is entitled to relief, including a disgorgement of all profits and income by AEROFLEX.

**RELIEF REQUESTED**

WHEREFORE, BAE Systems prays:

- A. With respect to Count 1:
- i. For judgment against AEROFLEX as to infringement of the '384 Patent;
  - ii. That this Court enjoin and restrain AEROFLEX, and its successors, assigns, officers, agents, servants, employees, attorneys, and persons in active concert or participation with them, including any affiliated entities, during the term of the '384 Patent from all acts of infringement of the '384 Patent;
  - iii. That this Court award BAE Systems its damages resulting from AEROFLEX's infringement;
  - iv. That this Court award BAE Systems increased damages as a result of AEROFLEX's willful misconduct;
  - v. That this Court declare this case an exceptional case pursuant to 35 U.S.C. § 285; and
  - vi. For an accounting for any infringing sales not presented at trial and an award by the Court of additional damages for any such infringing sales.

B. With respect to Counts 2 through 6:

- i. For judgment against AEROFLEX for its misappropriation of BAE Systems Trade Secrets;
- ii. For judgment against AEROFLEX for breach of the 2002 SUBCONTRACT;
- iii. For judgment against AEROFLEX for breach of the 2002 and 2007 Proprietary Information Agreements;
- iv. For judgment against AEROFLEX for its acts of conversion;
- v. For judgment against AEROFLEX for its acts constituting unjust enrichment;
- vi. That this Court enjoin and restrain AEROFLEX, and its successors, assigns, officers, agents, servants, employees, attorneys, and persons in active concert or participation with them including any affiliated entities from further misappropriations of BAE Systems Trade Secrets;
- vii. That this Court order that AEROFLEX advise all third parties to whom it may have furnished or otherwise disclosed BAE Systems Trade Secrets that BAE Systems is the original and exclusive owner of such information and that such information may not be used by any third parties;
- viii. That this Court order that AEROFLEX specifically identify all the individuals, groups, government agencies and companies to whom AEROFLEX has furnished or otherwise disclosed BAE Systems Trade Secrets;
- ix. That this Court enjoin and restrain AEROFLEX, and its successors, assigns, officers, agents, servants, employees, attorneys, and persons in active concert or participation with them including any affiliated entities from making, using, selling, or otherwise distributing an assembly that is identical or substantially identical to the GIA, and from using in its business any data generated by AEROFLEX pertaining to its obligations under the 2002 SUBCONTRACT, and any specifications, drawings, tools, and materials pertaining to the GIA and other components of the DIRCM System and other items and information acquired that were necessary for the design, development, fabrication, assembly or testing of the deliverables specified in the 2002 SUBCONTRACT;
- x. That this Court further enjoin and restrain AEROFLEX, and its successors, assigns, officers, agents, servants, employees, attorneys, and persons in active concert or participation with them including any affiliated entities from using any other proprietary information of BAE Systems furnished to AEROFLEX under the 2002 and 2007 Proprietary Information Agreements;



- xi. That this Court order that AEROFLEX return to BAE Systems all data, including electronic files containing drawings, specifications, and/or renderings of the overall design and architecture of the GIA and of specific components used in the GIA, the remaining inventory of components relating to the GIA, all other specifications, drawings, tools, and materials pertaining to the GIA and other components of the DIRCM System and other items and information acquired that were necessary for the design, development, fabrication, assembly or testing of the deliverables specified in the 2002 SUBCONTRACT that are the property of BAE Systems and all other proprietary information of BAE Systems furnished to AEROFLEX under either the 2002 or 2007 Proprietary Information Agreements;
- xii. That this Court award damages for AEROFLEX's misappropriation of BAE Systems Trade Secrets;
- xiii. That this Court award damages for AEROFLEX's breaches of the contracts;
- xiv. That this Court award damages for the value of the property converted by AEROFLEX;
- xv. That this Court order a disgorgement of AEROFLEX's unjust enrichment;
- xvi. That this Court award exemplary damages for AEROFLEX's willful and malicious conduct; and
- xvii. For an accounting for any unlawful conduct arising from Counts 2-6 not presented at trial and an award by the Court of additional damages corresponding to such conduct.

C. With respect to all Counts:

- i. That this Court award BAE Systems its costs, interest, and attorneys' fees; and
- ii. That this Court award such other relief as is just.

**JURY DEMAND**

BAE Systems demands trial by jury.

Dated: October 14, 2009

Respectfully submitted,

FISH & RICHARDSON P.C.

By: 

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