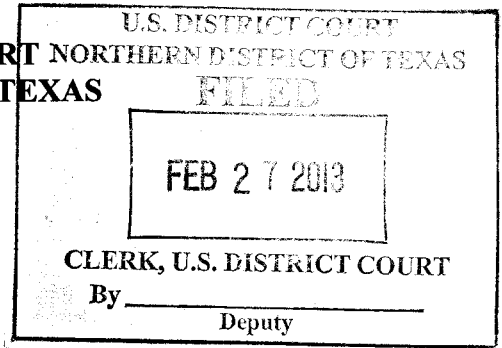


ORIGINAL

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION



\_\_\_\_\_  
Textron Innovations Inc.,  
  
Plaintiff,  
  
v.  
  
American Eurocopter, LLC and  
Eurocopter,  
  
\_\_\_\_\_  
Defendants.

Civil Action No. 4:09-cv-377-A

**Jury Trial Demanded**

**THIRD AMENDED COMPLAINT**

Pursuant to Fed. R. Civ. P. 15(a), Plaintiff Textron Innovations Inc. ("Textron Innovations"), for its third amended complaint against Defendants Eurocopter, a French corporation, and American Eurocopter, LLC<sup>1</sup> (collectively "Defendants"), by and through its undersigned attorneys, state and allege as follows:

**INTRODUCTION**

1. Textron Innovations brings this suit to remedy Eurocopter's and AEC's infringement of U.S. Patent No. 5,462,242, which relates to a helicopter landing gear assembly.

**PARTIES**

2. Plaintiff Textron Innovations is a corporation organized under the laws of the State of Delaware having a principal place of business at 40 Westminster Street, Providence, Rhode Island 02903.

<sup>1</sup> Effective, December 31, 1999, American Eurocopter, LLC merged into American Eurocopter Corporation ("AEC").

3. Textron Innovations, a wholly owned subsidiary of Textron Inc., manages and licenses Textron Inc.'s intellectual property, including intellectual property developed by Bell Helicopter Textron Inc. ("Bell Helicopter").

4. Bell Helicopter, a wholly owned subsidiary of Textron Inc., is an American helicopter and tiltrotor company. Bell Helicopter is a pioneer in helicopter aviation. It was founded on July 10, 1935 as Bell Aircraft Corporation, focusing on designing and building of fighter aircraft. In 1941, Bell began its first foray into helicopter research and development and soon developed the Bell 30, its first full-size helicopter. Soon thereafter Bell developed the Bell 47, the first helicopter rated by a civil aviation authority in the world, and the Bell 47 became a civilian and military success.

5. Textron purchased Bell Aerospace in 1960. The helicopter division was renamed as Bell Helicopter Company and in a few years, with the success of the UH-1 during the Vietnam War, it established itself as the largest division of Textron. In January 1976, Textron changed the name of the company to Bell Helicopter Textron. Bell Helicopter has since grown to become a pioneering industry leader in vertical-lift aircraft and has delivered more than 35,000 aircraft to customers around the world.

6. Bell Helicopter employs some 5,000 employees in this judicial district.

7. Upon information and belief, as of July 1, 2009, i.e., after Bell Helicopter filed the original complaint on June 29, 2009, Defendant AEC became a subsidiary owned 100% by EADS North America, a subsidiary of EADS (European Aeronautic, Defense and Space Company). AEC's principal place of business at 2701 Forum Drive, Grand Prairie, Texas 75052, within this district.

8. Upon information and belief, prior to July 2009, Eurocopter was a 60% majority-owner of AEC. *See* Eurocopter web page [http://www.eurocopter.com/site/en/ref/AELLC\\_343.html](http://www.eurocopter.com/site/en/ref/AELLC_343.html), printed on September 29, 2009.

9. AEC is the exclusive distributor of Eurocopter's products in the territory of the United States.

10. Eurocopter holds out to the public that AEC is subsidiary and asset of Eurocopter that is "managed by Eurocopter's Subsidiaries and Participations department." *See* Eurocopter web page [http://www.eurocopter.com/site/en/ref/Subsidiaries\\_51-78.html](http://www.eurocopter.com/site/en/ref/Subsidiaries_51-78.html), printed on September 29, 2009.

11. Upon information and belief, Defendant Eurocopter is a corporation constituted under French law, with its principal place of business at Marseille International Airport – Provence 13725 Marignane – Cedex, France.

12. Upon information and belief, Eurocopter is also a subsidiary owned 100% by EADS.

13. Upon information and belief, Eurocopter does and has done business in the United States and this district directly and through AEC, headquartered in Grand Prairie, Texas. Upon information and belief, AEC provides distribution of Eurocopter products and services, helicopter assembly and customization, fleet support, and is the Eurocopter Logistic Hub in America.

#### **NATURE OF THE ACTION**

14. This is an action for infringement of U.S. Patent No. 5,462,242.

15. There is an actual and justiciable controversy, as alleged herein.

**PATENT IN SUIT**

16. U.S. Patent No. 5,462,242 (the "'242 patent"), entitled "Helicopter Landing Gear Assembly," issued to Bell Helicopter on October 31, 1995, naming Bobby A. Collins, Glenn R. Grimes and Dharam J. Reddy as inventors.

17. Textron Innovations is the lawful assignee of the '242 patent and is authorized to take action against infringement, and to collect past and future damages for infringement of the '242 patent. Bell Helicopter is a licensee of the '242 patent.

**JURISDICTION AND VENUE**

18. These claims rise under the Patent laws of the United States, 35 U.S.C. § 100 *et seq.*

19. Subject matter jurisdiction is proper in this Court under 28 U.S.C. §§ 1331, 1338.

20. This Court has personal jurisdiction over Defendants because Eurocopter, directly and through AEC, and AEC itself have done and are doing business in this judicial district by, among other things, offering their products and services to customers, business affiliates, and government entities located in this judicial district. Upon information and belief, AEC manufactures and assembles several models of helicopters in the United States at its Grand Prairie, Texas plant. Upon information and belief, Eurocopter and AEC have also committed acts of infringement in this judicial district by using, offering to sell, selling, and/or importing into this judicial district their EC120 helicopter. *See Eurocopter, EC120*, <http://www.eurocoptersusa.com/products/EC120-product.asp>, printed on October 8, 2009. In addition, AEC has a principal place of business in this district. This Court also has personal jurisdiction over Eurocopter because Eurocopter's exclusive U.S. distributor, AEC, also resides in this judicial district.

21. Venue is proper in this district pursuant to 28 U.S.C. § 1391 and 1400(b) because Bell Helicopter and Defendants have regular and established places of business in this district. Defendants are subject to personal jurisdiction in this district because they are doing business within this district and are causing injury to Bell Helicopter and Textron Innovations in this judicial district; because a substantial part of the events giving rise to the claims occurred in this judicial district; because AEC resides in this judicial district; and because Defendants have committed acts of infringement in this judicial district.

### **BACKGROUND OF THE CONTROVERSY**

22. Bell Helicopter and Eurocopter are the two largest distributors of commercial helicopters in the world, and they directly compete for the same base of potential customers. The largest market for helicopters is the United States, where approximately 50% of all commercial helicopters are operated. Eurocopter services the U.S. market through its domestic affiliate, AEC. Both AEC and Bell Helicopter have their principal places of business in Tarrant County, Texas. The principal marketing offices of AEC and Bell Helicopter are located in Tarrant County, Texas and the competitive business relationship between the two companies is centered in Tarrant County, Texas.

23. Defendants are infringing the '242 patent. The '242 patent relates to a landing gear assembly, and certain of Defendants' helicopters, including without limitation their EC120 helicopter, infringe the '242 patent.

### **COUNT I**

#### **Infringement of U.S. Patent No. 5,462,242**

24. Plaintiff repeats and incorporates by reference each of the foregoing paragraphs of its third amended complaint.

25. Defendants have been infringing, and/or inducing infringement, and/or contributing to the infringement of the '242 patent by making, using offering for sale, and/or selling within the United States, and/or importing into the United States helicopters with infringing landing gear assemblies, including without limitation their EC120 helicopter. Defendants' infringing landing gear assembly is depicted in excerpts from the Eurocopter Illustrated Parts Catalog EC120B. Defendants' landing gear infringes because, *inter alia* and upon information and belief, it has a strap and crosstube with the following features: the strap has an inner surface adapted to engage an outer surface of a crosstube; the strap has an outer surface including a stop surface for mating with a bracket to minimize lateral movement of the bracket on the strap; the strap extends over the top of the crosstube and generally half way around the crosstube, terminating in two lower edges that extend axially with respect to the crosstube; the strap has a plurality of strap fastener holes located proximate to the neutral bending axis of the crosstube to minimize stress at the strap fastener holes, the strap is otherwise imperforate to minimize stress concentration; the crosstube has crosstube fastener holes registering with the strap fastener holes on the strap; the strap is fastened to the crosstube through the strap fastener holes and crosstube fastener holes; and the outer surface and an inner surface of the crosstube have built-in residual compressive stresses for improving fatigue strength and improving resistance to corrosion and mechanical damage.

26. Defendants infringement of the '242 patent has injured Plaintiff, and thus Plaintiff is entitled to recover damages adequate to compensate for Defendants' infringement, together with interest and costs.

27. Defendants have been willfully infringing the '242 patent, and thus Plaintiff is entitled to recover increased damages under 35 U.S.C. § 284. Defendants' willful infringement

makes this case exceptional, and thus Plaintiff is entitled to recover attorneys' fees under 35 U.S.C. § 285.

28. Defendants acknowledged during discovery that Eurocopter became aware of the '242 patent in May of 2006 when its IP department conducted a search for and analysis of various patents.

29. The patent search and analysis conducted by Eurocopter in May of 2006 was overseen by Francois Potdevin, a Eurocopter engineer who was the head of Eurocopter's Patent Group in the Engineering Department.

30. After Mr. Potdevin learned about the '242 patent, he asked a Eurocopter design engineer to analyze the content of the patent. The design engineer did not report back to Mr. Potdevin regarding his analysis of the '242 patent.

31. Defendants have represented during discovery that after learning about the '242 patent in May 2006, Eurocopter did not take any actions regarding the patent prior to the initiation of this lawsuit.

32. In sum, after learning of the '242 patent in May 2006, Defendants continued to engage in the acts of infringement described herein despite an objectively high likelihood that their actions constituted infringement of a valid patent.

33. Defendants' infringement of the '242 patent has caused irreparable injury to Plaintiff and will continue to cause irreparable injury unless Defendants are enjoined from further infringement.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Textron Innovations requests the following relief, and pray that the Court:

- A. Enter judgment for Plaintiff and against Defendants on the count asserted in this third amended complaint;
- B. Declare that Defendants have infringed U.S. Patent No. 5,462,242;
- C. Enjoin Defendants, and their officers, directors, agents, counsel, servants, and employees and all persons in active concert or participation with any of them, from infringing U.S. Patent No. 5,462,242;
- D. Award Plaintiff damages in an amount sufficient to compensate it for Defendants' infringement, together with prejudgment and post-judgment interest;
- E. Treble the damages awarded to Plaintiff for Defendants' infringement by reason of Defendants' willful infringement, pursuant to 35 U.S.C. § 284;
- F. Award Plaintiff its costs;
- G. Find this an exceptional case under 35 U.S.C. § 285 and award Plaintiff its attorneys' fees and expenses; and
- H. Grant Plaintiff such other and further relief as the Court deems just and proper.

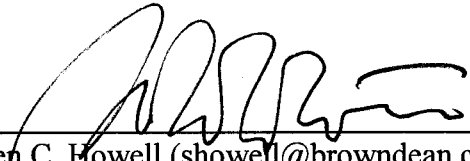
**JURY DEMAND**

Plaintiff demands a trial by jury as to all matters triable to a jury.



Dated: January 18, 2013

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

I hereby certify that on January 18, 2013, a true and correct copy of the foregoing document was served on the following counsel of record pursuant to the Federal Rules of Civil Procedure:

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