

DOJ To Pay \$75M In Honeywell Night Goggle Settlement

By **Michael Lipkin**

Law360, New York (February 06, 2014, 10:18 PM ET) -- The U.S. Department of Justice has agreed to pay \$75 million to settle claims it infringed a Honeywell International Inc. patent for night vision goggles, while Honeywell has agreed to grant the government non-exclusive rights for the goggles in the future, according to an order filed in the U.S. Court of Federal Claims on Thursday.

Judge Susan G. Braden approved the settlement, which comes more than a year after she awarded Honeywell **\$1.89 million in damages** for the government's use of technology described by a claim in the company's U.S. Patent Number 6,467,914, which covers night vision goggles compatible with a full-color display.

But that judgment only calculated damages for three display systems designated for the first phase of liability proceedings, and Honeywell claimed there were hundreds more models that potentially infringed the patent, according to court documents. Honeywell says the models covered in the judgment account for less than 1,000 units, but tens of thousands more could use the technology in hundreds of types of aircraft and dozens of other vehicles.

Thursday's stipulated order will settle claims over all displays that use the patented technology, which described passive night vision goggles that are compatible with a full-color display when both are used in an aircraft cockpit. Using the patented system, red warning lights inside a cockpit do not disrupt vision through the goggles, according to the Federal Circuit's 2010 ruling on the case.

The patent's inventors, who worked for a company later acquired by Honeywell, initially applied for patent protection in 1985, but in 1986, at the request of the Navy, the U.S. Patent and Trademark Office issued an Invention Secrecy Act order on the patent application, according to Judge Braden. The invention secrecy order was lifted in 2000, and the patent was issued in October 2002.

Honeywell sued the government later in 2002, alleging in federal claims court that the U.S. had used the invention covered under the '914 patent in military aircraft. The suit sought compensation under the Invention Secrecy Act for the government's alleged use of the technology prior to when the USPTO issued the patent, as well as for infringement after the patent had been issued.

Defense contractors Lockheed Martin Corp. and L-3 Communications Holdings Inc. intervened in the case as defendants.

Judge Braden's 2012 judgment found that the government had infringed the patent but that it was not liable under the Invention Secrecy Act for use while the patent was pending. The court found that Honeywell had not proven that the government did, in fact, use the invention during that period.

The patent-in-suit is U.S. Patent Number 6,467,914.

Representatives for the parties did not immediately respond late Thursday to requests for comment.

Honeywell is represented by Lawrence J. Gotts, Maximilian A. Grant, Mark Koehn and Elizabeth Miller Roesel of Latham & Watkins LLP.

Lockheed is represented by Thomas J. Madden and Paul A. Debolt of Venable LLP. L-3 is represented by Daryl L. Joseffer of King & Spalding LLP.

The case is Honeywell International Inc. et al. v. U.S. et al., case number 1:02-cv-01909, in the U.S. Court of Federal Claims.

--Additional reporting by Scott Flaherty. Editing by Philip Shea.

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