

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Robert G. Krupka  
KIRKLAND & ELLIS  
777 South Figueroa Street  
Los Angeles, California 90017  
(213) 680-8400  
State Bar No. 196625

Attorneys for Plaintiffs  
Honeywell Inc., Honeywell International Inc.  
and Honeywell Intellectual Properties Inc.

Of Counsel:

Sarah Slover, *pro hac vice*  
Scott R. Samay, *pro hac vice*  
KIRKLAND & ELLIS  
153 East 53rd Street  
New York, New York 10022  
(212) 446-4800

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION**

---

HONEYWELL INC., HONEYWELL  
INTERNATIONAL INC. and  
HONEYWELL INTELLECTUAL PROPERTIES  
INC.

Plaintiffs,

v.

ABB AUTOMATION, INC. and  
ABB INC.

Defendants.

---

Civil Action

No. 5:01-cv-20646

COMPLAINT  
DEMAND FOR JURY TRIAL

**FIRST AMENDED COMPLAINT**

Plaintiff Honeywell Inc., now merged into Honeywell International Inc.  
("Honeywell International"), and Honeywell Intellectual Properties, Inc. ("HIPI") (together with  
Honeywell International, "Honeywell"), for its First Amended Complaint against defendant ABB  
Automation, Inc. now part of ABB Inc. ("ABB"), alleges as follows:

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**Nature of the Action**

1. This is a civil action for the willful infringement of United States Patent No. 4,678,915 (“the ’915 Patent”). This action is based upon the Patent Laws of the United States, 35 U.S.C. § 100 et seq.

2. Defendant ABB has consented, in writing, to Honeywell’s filing of this First Amended Complaint.

3. Honeywell files this First Amended Complaint to reflect (i) the assignment of the ‘915 Patent from Honeywell Inc. to HIPI; (ii) the merger of Honeywell Inc. into Honeywell International Inc. and (iii) the merger of ABB Automation, Inc. into ABB Inc.

4. Plaintiff Honeywell is a Delaware corporation having its principal place of business at 101 Columbia Road, P.O. Box 2245, Morristown, New Jersey 07962-2245, with a place of business at One Results Way, Cupertino, California 95014.

5. Plaintiff HIPI is an Arizona corporation with its principal place of business at 960 W. Elliott Road, Suite 101, Tempe, Arizona 85284.

6. Defendant ABB is an Ohio corporation having a place of business at 4234 Hacienda Drive, Pleasanton, California. Upon information and belief, defendant ABB Automation Inc. has merged into defendant ABB Inc.

**Jurisdiction and Venue**

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

8. This Court has personal jurisdiction over the defendant because the defendant is doing business in California.

9. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391 and 1400(b).

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**Intradistrict Assignment**

10. This action should be assigned to the San Jose Division because Honeywell manufactures and sells products under the '915 Patent, the property that is the subject of this action, at its facility located at One Results Way in Cupertino, California in Santa Clara County.

**The '915 Patent**

11. On July 7, 1987, the '915 Patent, entitled "System and Process for Measuring and Correcting the Values of a Parameter of a Sheet Material," was duly and legally issued to Measurex Corporation as assignee. Measurex Corporation was subsequently merged into Honeywell Inc. Effective March 1, 2000, the '915 Patent was assigned to an affiliate of Honeywell, Honeywell Intellectual Properties, Inc. That assignment was rescinded as of December 2000. The '915 Patent was reassigned to HIPI as of September 1, 2001. Honeywell Inc. was merged into Honeywell International Inc. as of June 30, 2002.

12. HIPI and Honeywell have the right to sue and to recover for infringement of the '915 Patent. A copy of the '915 Patent is attached hereto as Exhibit A.

13. The '915 Patent discloses and claims a process and system for measuring the values of a parameter of a sheet of material at various points. The process and system disclosed and claimed by the '915 Patent involves a first sensor head member and a second head member and a process comprising:

- (a) measuring a value of a parameter without correction for variability of the separation of the head members from one another to provide uncorrected, measured values;
- (b) determining the separation of the head members from one another by transmitting a signal through the sheet but not determining the separation of the head members from the sheet; and

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

(c) correcting the uncorrected measured values according to the separation of the head members from one another, but not according to the separation of the head members from the sheet.

**Acts Giving Rise to this Action**

14. Honeywell and ABB have been competitors in the market for equipment to measure sheet and web properties, particularly equipment designed to measure the properties of paper during manufacturing.

15. ABB makes, uses, and sells sheet measuring systems. Specifically, ABB has made, used and sold the AccuRay 1190 Smart Basis Weight Sensor and the AccuRay Smart Color Sensor (the “ABB Sheet Measuring Systems”). The ABB Sheet Measuring Systems measure paper thickness and related properties during manufacturing.

16. The ABB Sheet Measuring Systems meet each and every limitation of at least one claim of the '915 Patent, either literally or with only insubstantial differences. For example, the ABB Sheet Measuring Systems employ a process for measuring the values of a parameter of a sheet material that contains each and every limitation set forth in claim 1 of the '915 Patent. In addition, and also by way of example, the Sheet Measuring Devices comprise a system for measuring the values of a parameter of a sheet of material that contains each and every limitation set forth in claim 7 of the '915 Patent.

17. ABB continues to make, use and sell its Sheet Measuring Devices in violation of the '915 Patent.

18. Honeywell has been and will continue to be injured by ABB's infringement of the '915 Patent.

19. ABB's infringement has been, and continues to be, willful so as to warrant enhancement of the damages awarded as a result of its infringement.

1 **Prayer for Relief**

2 **WHEREFORE**, Honeywell prays for judgment as follows:

3 A. That ABB has willfully infringed the '915 Patent;

4 B. That ABB, its officers, agents, servants and employees, and those persons  
5 in active concert or participation with any of them, are preliminarily and permanently enjoined  
6 from using, offering for sale or selling the Sheet Measuring Devices, and any other product that  
7 infringes or induces or contributes to the infringement of the '915 Patent, prior to the expiration  
8 of the '915 Patent, including any extensions;

9 C. That Honeywell be awarded monetary relief adequate to compensate  
10 Honeywell for defendant ABB's acts of infringement of the '915 Patent within the United States  
11 prior to the expiration of the '915 Patent, including any extensions, and, due to the willful nature  
12 of ABB's infringement, that any such monetary relief be trebled and awarded to Honeywell with  
13 prejudgment interest;

14 D. That Honeywell be awarded the attorney fees, costs and expenses that it  
15 incurs prosecuting this action; and

16 E. That Honeywell be awarded such other and further relief as this Court  
17 deems just and proper.

18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**DEMAND FOR JURY TRIAL**

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiffs hereby demand a jury trial in this matter.

Dated: July 8, 2002

Respectfully submitted,

/s/  
\_\_\_\_\_  
Robert G. Krupka, P.C.  
KIRKLAND & ELLIS  
777 South Figueroa Street  
Los Angeles, California 90017  
(213) 680-8400  
State Bar. No. 196625

Sarah Slover  
Scott R. Samay  
KIRKLAND & ELLIS  
Citicorp Center  
153 East 53rd Street  
New York, New York 10022  
(212) 446-4800

ATTORNEYS FOR PLAINTIFFS  
Honeywell Inc., Honeywell International Inc. and  
Honeywell Intellectual Properties Inc.