

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION**

TEX PAT, LLC,
Relator,

v.

**(1) UNITED TECHNOLOGIES
CORPORATION,
(2) UTC FIRE & SECURITY
CORPORATION,
(3) DETECTOR ELECTRONICS
CORPORATION,**
Defendants,

Civil Action No. 5:10-CV-186

JURY TRIAL DEMANDED

ORIGINAL COMPLAINT FOR FALSE PATENT MARKING

Relator Tex Pat, LLC (“Relator”) makes the following allegations against United Technologies Corporation, UTC Fire & Security Corporation, and Detector Electronics Corporation (collectively, “UTC” or “Defendant”):

NATURE OF THE ACTION

1. This is a *qui tam* action for false patent marking under 35 U.S.C. § 292.

PARTIES

2. Relator is a Texas limited liability company having a principal place of business at 2300 Richmond, Suite 345, Houston, Texas 77098-3265. Relator has appointed Philip D. Racusin, 2300 Richmond Avenue, Suite 345, Houston, TX 77098-3265, as its agent for service of process.

3. On information and belief, United Technologies Corporation is a Delaware corporation with its principal place of business at One Financial Plaza, Hartford, CT 06103. United Technologies Corporation has appointed The Corporation Trust

Company, Corporation Trust Center, 1209 Orange Street, Wilmington, DE 19801, as its agent for service of process.

4. On information and belief, UTC Fire & Security Corporation is a business unit of parent company United Technologies Corporation and is a Delaware corporation with its principal place of business at 9 Farm Spring Road, Farmington, CT 06034. UTC Fire & Security Corporation has appointed The Corporation Trust Company, Corporation Trust Center, 1209 Orange St., Wilmington, DE 19801, as its agent for service of process.

5. On information and belief, Detector Electronics Corporation is a part of UTC Fire & Security Corporation and is a Minnesota corporation with its principal place of business at 100 South 5th Street #1075, Minneapolis, MN 55402. Detector Electronics Corporation has appointed C T Corporation System Inc., as its agent for service of process.

JURISDICTION AND VENUE

6. This action arises under the patent laws of the United States, Title 35 of the United States Code. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

7. Defendant is subject to this Court's specific and general personal jurisdiction pursuant to due process and/or the Texas Long Arm Statute, due at least to its substantial business in this Forum, including: (i) at least a portion of the false marking, affixing, or advertising alleged herein; and/or (ii) regularly doing or soliciting business, engaging in other persistent courses of conduct, and/or deriving substantial revenue from goods and/or services provided to individuals in Texas and in this District.

8. Venue is proper in this district under 28 U.S.C. §§1391(b), 1391(c), and 1395(a). Defendant has and/or continues (and/or has and continues to cause others) to transact business in this District, and has and/or continues (and/or has and continues to cause others) to mark upon, affix to, and/or use in advertising, in this District, the product(s) subject to this Complaint, which Defendant has and/or continues (and/or has and continues to cause others) to make, use, offer for sale, or sell in, and/or import into, this District.

FACTS

9. UTC has and/or continues (and/or has and continues to cause others) to mark upon, affix to, and/or use in advertising patents, including, by way of example only, U.S. Patent No. 3,952,196 (“the ’196 Patent”), a true and correct copy of which is attached as Exhibit A, in connection with Defendant’s products and/or related product packaging and advertisements, including, by way of example only, the Eagle Quantum Premier[®] Fire Gas Detection/Releasing System, X3302 Protect•IR[®] Multispectrum IR Flame Detector, X2200 UV Flame Detector, and X5200 UVIR Flame Detector products, as illustrated in Exhibits B-E, respectively.

10. The ’196 Patent (Exhibit A), which is assigned to Detector Electronics Corporation and is titled “Radiation Detection Apparatus,” was filed in the United States on February 5, 1975 and issued on April 20, 1976.

11. The ’196 Patent expired, at the very latest, on February 5, 1995.

12. When the ’196 Patent expired, all future rights in that patent ceased to exist.

13. Subsequent to expiration of the ’196 Patent, UTC has and/or continues (and/or has and/or continues to cause others) to mark upon, affix to, and/or use in advertising the

'196 Patent in combination with its Eagle Quantum Premier[®] Fire and Gas Detection/Releasing System products. *See, e.g., Exhibit B* (containing, in part, product instructions, which were available on UTC's website at the time of filing of this Original Complaint,¹ bearing a copyright date of 2009, more specifically a printed on date of September 2009, and marking, affixing, and/or advertising the "patented" Eagle Quantum Premier[®] Fire and Gas Detection/Releasing System products in combination with the '196 Patent).

14. Subsequent to expiration of the '196 Patent, UTC has and/or continues (and/or has and/or continues to cause others) to mark upon, affix to, and/or use in advertising the '196 Patent in combination with its X3302 Protect•IR[®] Multispectrum IR Flame Detector products. *See, e.g., Exhibit C* (containing, in part, product instructions, which were available on UTC's website at the time of filing of this Original Complaint,² bearing a copyright date of 2009, more specifically a printed on date of April 2009, and marking, affixing, and/or advertising the "patented" X3302 Protect•IR[®] Multispectrum IR Flame Detector products in combination with the '196 Patent).

15. Subsequent to expiration of the '196 Patent, UTC has and/or continues (and/or has and/or continues to cause others) to mark upon, affix to, and/or use in advertising the '196 Patent in combination with its X2200 UV Flame Detector products. *See, e.g., Exhibit D* (containing product literature, which was available on UTC's website at the time of filing of this Original Complaint,³ bearing a copyright date of 2007, more specifically a printed on date of April 2007, and marking, affixing, and/or advertising the "patented" X2200 UV Flame Detector products in combination with the '196 Patent).

¹ UTC website, www.detronics.com/utcfs/ws-462/Assets/95-8533-7.1_EQP.pdf (last visited Oct. 30, 2010).

² UTC website, www.det-tronics.com/utcfs/ws-462/Assets/95-8576-3.2_X3302.pdf (last visited Oct. 30, 2010).

³ UTC website, www.det-tronics.com/utcfs/ws-462/Assets/90-1157-2.2_X2200.pdf (last visited Oct. 30, 2010).

16. Subsequent to expiration of the '196 Patent, UTC has and/or continues (and/or has and/or continues to cause others) to mark upon, affix to, and/or use in advertising the '196 Patent in combination with its X5200 UVIR Flame Detector products. *See, e.g., Exhibit E* (containing product literature, which was available on UTC's website at the time of filing of this Original Complaint,⁴ bearing a copyright date of 2007, more specifically a printed on date of April 2007, and marking, affixing, and/or advertising the "patented" X5200 UVIR Flame Detector products in combination with the '196 Patent).

17. UTC is a large, sophisticated company. *See, e.g., Exhibit F* at p. 1 (containing, in part, UTC's 2009 Annual Report, which indicates that UTC's stock is traded on the New York Stock Exchange); *see also id.* at p. 3 ("UTC provides high technology products and services to the building systems and aerospace industries worldwide.").

18. UTC has, and routinely retains, sophisticated legal counsel. *See, e.g., Exhibit F* at p. 18 (noting UTC's general counsel).

19. UTC has decades of experience applying for, obtaining, licensing, and/or litigating patents. *See, e.g., Exhibit F* at p. 35 (indicating that UTC's patents and trademarks were valued at \$369 million in 2009.).

20. UTC knows, and at the very least reasonably should know, that the above patent does not cover any of the above UTC products, or any products whatsoever. *See, e.g., Exhibit F* at p. 31 (confirming UTC's awareness of "[e]stimated useful lives of patents").

21. As a result of its false marking, UTC has injured the U.S. Government, including its sovereign interest, and Defendant's existent and potential competitors, as well as the general public, including Relator, which is incurring the time and expense of enforcement. *Exhibit F* at p. 9 (noting importance of patent portfolio to UTC's business).

⁴ UTC website, www.det-tronics.com/utcfs/ws-462/Assets/90-1156-2.2_X5200.pdf (last visited Oct. 30, 2010).

CLAIM

22. Relator incorporates paragraphs 1–21 as if fully set forth herein. UTC has violated 35 U.S.C. § 292 by falsely marking, affixing, and/or advertising its products, including the Eagle Quantum Premier[®] Fire Gas Detection/Releasing System, X3302 Protect•IR[®] Multispectrum IR Flame Detector, X2200 UV Flame Detector, and X5200 UVIR Flame Detector Products products, with intent to deceive the public.

PRAYER FOR RELIEF

WHEREFORE, Relator respectfully requests that this Court enter:

- (a). A judgment in favor of Relator that Defendant has falsely marked items in violation of 35 U.S.C. § 292;
- (b). A monetary award pursuant to 35 U.S.C. § 292 in the form of a civil fine of \$500 per falsely marked article, or an alternative amount, as set by the Court, one-half of any such award to be paid to the United States;
- (c). An accounting for any falsely marked articles not presented at trial and a monetary award set by the Court for such falsely marked articles;
- (d). An award of pre-judgment and post-judgment interests on any monetary award;
- (e). An injunction prohibiting Defendant, and its officers, directors, agents, servants, employees, attorneys, licensees, successors, and assigns, and those in active concert or participation with any of them, from violating 35 U.S.C. §292; and
- (f). Any and all other relief, at law or equity, to which Relator may show itself to be entitled.

DEMAND FOR JURY TRIAL

Relator, under Rule 38 of the Federal Rules of Civil Procedure, requests a trial by jury of any issues so triable by right.

Dated: October 31, 2010

Respectfully submitted,

By: /s/ Hao Ni

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