

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

ARKEMA INC. and :
ARKEMA FRANCE, :
 : Civil Action No. _____
 :
 Plaintiffs, :
 :
 :
 v. : **COMPLAINT**
 :
 HONEYWELL INTERNATIONAL, INC., :
 :
 :
 Defendant. :

Plaintiffs Arkema Inc. and Arkema France (collectively “Arkema” or “Plaintiffs”), by and through their undersigned counsel, for their complaint against defendant Honeywell International, Inc. (“Honeywell” or “Defendant”), upon knowledge as to themselves and otherwise upon information and belief based upon their own and their attorneys’ investigation, allege as follows:

PRELIMINARY STATEMENT

1. Arkema files this action to address an urgent situation regarding a refrigerant for use in automobile air-conditioning systems that has less potential for global warming. A refrigerant is a chemical compound that is used by air-conditioning systems to transfer heat.
2. Ongoing concern for the environment prompted the issuance of a European governmental directive that will soon require automobile air-conditioning systems to use a refrigerant with a low global-warming potential, also known as GWP.
3. Specifically, European Union Directive 2006/40 (the “EU Directive”) requires the use of a refrigerant with a low global warming potential in all new motor-vehicle

platforms beginning in 2011, and in all new cars starting in 2017. The current refrigerant in use in automobile air-conditioning systems, a refrigerant called HFC-134a, does not meet the EU Directive.

4. A replacement refrigerant with a low global warming potential called HFO-1234yf, also known as R-1234yf, or simply 1234yf, has become the de facto standard refrigerant in Europe and the United States to meet the EU Directive.

5. Arkema has offered 1234yf for sale to automobile manufacturers in the U.S. Arkema seeks to increase its production, and to import, offer for sale, and sell 1234yf to automobile manufacturers and suppliers of replacement parts in the U.S., without the cloud of a potential claim by Honeywell for infringement of the Honeywell patents.

6. In response to such efforts in Europe, Honeywell filed a patent infringement suit in Germany against Arkema GmbH, and Arkema's parent holding company, Arkema S.A. This confirms that Honeywell will sue Arkema in the U.S. for infringement if Arkema imports into the United States, or seeks to offer for sale or sell in the United States, 1234yf to automobile manufacturers and suppliers of replacement parts.

7. Arkema seeks a declaratory judgment that the claims of United States Patent No. 7,279,451 (the "'451 patent") and United States Patent No. 7,534,366 (the "'366 patent") (collectively, "the Honeywell patents") are invalid. The '451 patent is attached as Exhibit 1 to this Complaint, and the '366 patent is attached as Exhibit 2. Arkema further seeks a declaratory judgment that its manufacture, use, sale, offer for sale, or importation of the refrigerant HFO-1234yf will not infringe, either directly or indirectly, any valid claim of either of the Honeywell patents.

8. The claims of the Honeywell patents relate to a “heat transfer composition” containing fluoroalkene-based refrigerants, including 1234yf. The claims of the Honeywell patents are invalid, for example, as anticipated and/or obvious in light of at least two prior art publications that expressly disclose the use of the same refrigerant claimed in the Honeywell patents in heat transfer compositions: a Japanese patent application published in 1992 by a Japanese air-conditioning system manufacturer and a Russian patent published in 1997.

9. Due to the deadlines in the EU Directive and other environmental regulations, automobile manufacturers in the U.S. are currently looking to enter multiyear supply contracts with chemical manufacturers, like Arkema, for the supply of 1234yf. If Arkema is not able to resolve the issues of validity and infringement of the Honeywell patents promptly, Arkema will not be able to supply 1234yf to automobile manufacturers and suppliers of replacement parts in the U.S. in time.

PARTIES

10. Arkema Inc. is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania with a principal place of business at 2000 Market Street, Philadelphia, Pennsylvania. Arkema Inc. is a diversified chemicals manufacturer of industrial chemicals and performance products. Arkema Inc. manufactures and sells automotive refrigerants, among other things.

11. Arkema France is a société anonyme organized and existing under the laws of France with a principal place of business at 420 rue d'Estienne d'Orves, 92705 Colombes, France. Arkema France is a diversified chemicals manufacturer of industrial chemicals and performance products. Arkema France also manufactures and sells automotive refrigerants,

among other things. Arkema France and Arkema Inc. are affiliates, indirectly owned by the same parent, Arkema S.A.

12. Honeywell is a corporation organized and existing under the laws of the state of Delaware with a principal place of business at 101 Columbia Road, Morristown, New Jersey 07962. Honeywell is a diversified technology and manufacturing company, engaged in providing commercial, government and military customers worldwide with aerospace products and services, control, sensing and security technologies, turbochargers, automotive products, specialty chemicals, electronic and advanced materials, and process technology for refining and petrochemicals, among others. Among its principal plants is a Special Materials plant in Pottsville, Pennsylvania, located in this judicial district.

JURISDICTION AND VENUE

13. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1338(a), and the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202.

14. This Court may declare the rights and other legal relations of the parties pursuant to 28 U.S.C. §§ 2201-2202 because this is a case of an actual and justiciable controversy within the Court's jurisdiction.

15. The Court has personal jurisdiction over Honeywell because it regularly conducts business in, and has regular and systematic contacts with, the Commonwealth of Pennsylvania, including this judicial district.

16. Venue is proper in this Court under 28 U.S.C. §§ 1391(b)(1), (c) and § 1400(b). Defendant Honeywell transacts and is registered to do business in and is found within this judicial district. Plaintiff Arkema Inc. resides in this judicial district.

AN ACTUAL AND JUSTICIABLE CONTROVERSY EXISTS

17. Honeywell's conduct demonstrates that it will seek to prevent Arkema from manufacturing, importing, offering for sale or selling 1234yf by alleging infringement of the claims of the '451 and '366 patents, as well as other patents held by Honeywell around the world. Honeywell's actions and course of conduct have caused a reasonable apprehension of suit on the part of Arkema.

18. Accordingly, a declaration concerning the invalidity and/or noninfringement of the claims of the Honeywell patents is necessary in light of the present controversy between the parties.

19. On November 13, 2009, Honeywell filed suit against Arkema's parent, Arkema S.A., and Arkema's German sister company, Arkema GmbH, in Germany on European Patent No. 1,716,216, which is a counterpart to the Honeywell patents that are the subject of the present complaint. In that suit, Honeywell alleged that Arkema S.A. and Arkema GmbH are liable for indirect infringement of Honeywell's European patent for the sale or offer for sale of 1234yf to automobile manufacturers and suppliers of replacement parts.

20. Arkema expects to be confronted with similar allegations from Honeywell in the United States over the related Honeywell patents in the U.S.

21. An English translation of Honeywell's allegations from the German patent infringement action confirms that there is an actual controversy between Honeywell and Arkema:

Furthermore, [Honeywell] learnt that [Arkema S.A. and Arkema GmbH] already offer [Honeywell's] HFO-1234yf for the use in automobile air conditioning systems in Germany. In the year 2009 [Honeywell] and other automobile suppliers received requests for the submission of offers from large automobile manufacturers, for making formal offers for the early delivery of HFO-1234yf to

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