

Airbus Gets Bell Helicopter Sales Halted In IP Row

By **Rebecca McCray**

Law360, New York (January 28, 2015, 1:31 PM ET) -- A D.C. federal judge ordered Bell Helicopter Textron Inc. to stop making or selling helicopters with infringing landing gear on Thursday, granting a permanent injunction requested by patent owners Airbus Helicopters and finding the company may suffer future harm in the form of lost sales.

Judge Robert L. Wilkins ruled that although Bell voluntarily created and began using modified landing gear following a related patent infringement suit against it brought by Airbus' Canadian subsidiary, the company was not persuasive in its arguments that it would not begin using the infringing landing gear again in the suit at hand, which it brought against Airbus.

"Bell's actions with respect to that landing gear were made in response to the Canadian litigation, which may have limited deterrent power in the United States," said the opinion. "And indeed, Bell's initiation of the present suit suggests that Bell is interested in using the original gear in the future."

Judge Wilkins added that the court was not persuaded "that Bell's switch to the Modified Gear demonstrates a commitment to respect Airbus's intellectual property rights."

According to Airbus' counsel Carmine R. Zarlenga of Mayer Brown LLP, Airbus engineers developed the so-called Moustache landing gear in 1996 as part of a prototype for its new light helicopter EC120, after determining the new design couldn't use conventional helicopter landing gear without significant landing issues.

But in 2008, Bell allegedly paraded the Moustache landing gear design as its own innovation at a major air show and a separate helicopter industry association event, damaging Airbus' reputation in the industry, according to Airbus' motion for injunctive relief.

Zarlenga said Bell's choice to advertise the design as their own at an industry-wide event caused "consummate irreparable harm" to Airbus.

While Judge Wilkins found a "lack of causal nexus" between the loss of Airbus' sales and offers by Bell to sell its helicopter equipped with the infringing landing gear, he found that Bell's unauthorized testing of that gear in 2007 enabled it to market the gear early, which "directly contributed to a decline in Airbus's sales."

Bell sued Airbus predecessor Eurocopter in May 2010, after Eurocopter filed the infringement suit in Canada, alleging the company had made a “thinly veiled attempt” to disrupt an exhibition of the Bell 429 light helicopter at the 2009 Paris Air Show by bringing a seizure order to the show.

"Bell Helicopter takes great pride in its business integrity," said Bell representative Susan Gordon. "We have and will continue to respect the intellectual property rights of third parties. All Bell 429s have been and will continue to be delivered with the current production gear."

Counsel for Airbus declined a request for comment.

The patent-in-suit is U.S. Patent Number 5,860,621.

Airbus is represented by Carmine R. Zarlenga, Clinton H. Brannon, Brian A. Rosenthal, Brian W. Nolan, B. Clayton McCraw, Kyle E. Friesen and Trent L. Menning of Mayer Brown LLP.

Bell is represented by Jennifer A. Albert, Charles H. Sanders, Michael S. DeVincenzo and Timothy J. Rousseau of Goodwin Procter LLP.

The case is Bell Helicopter Textron Inc. v. Airbus Helicopters, case number 1:10-cv-00789, in the U.S. District Court for the District of Columbia.

— Additional reporting by Erica Teichert. Editing by Ben Guilfooy.

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