

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	File No. EB-09-SE-096
)	
Honeywell International Inc.,)	Acct. No. 200932100064
Acting Through its Sensing and Control)	
Strategic Business Unit)	FRN No. 0018740217

ORDER

Adopted: June 11, 2009

Released: June 15, 2009

By the Chief, Spectrum Enforcement Division, Enforcement Bureau:

1. In this Order, we adopt the attached Consent Decree entered into between the Enforcement Bureau (“Bureau”) and Honeywell International Inc., acting through its Sensing and Control strategic business unit (“Honeywell Sensing and Control”). The Consent Decree terminates an investigation by the Bureau into whether Honeywell Sensing and Control violated Section 302(b) of the Communications Act of 1934, as amended (“Act”),¹ and Sections 2.803(a) and 15.223 of the Commission’s rules (“Rules”)² regarding the marketing and radio frequency emissions of the Honeywell Sensing and Control TMS-9000, a torque measurement device.

2. The Bureau and Honeywell Sensing and Control have negotiated the terms of a Consent Decree that resolves this matter. A copy of the Consent Decree is attached hereto and incorporated by reference.

3. After reviewing the terms of the Consent Decree and evaluating the facts before us, we find that the public interest would be served by adopting the Consent Decree and terminating the investigation.

4. In the absence of material new evidence relating to this matter, we conclude there are no substantial or material questions of fact as to whether Honeywell Sensing and Control possesses the basic qualifications, including those related to character, to hold or obtain any Commission license or authorization.

5. Accordingly, **IT IS ORDERED** that, pursuant to Section 4(i) of the Act,³ and Sections 0.111 and 0.311 of the Rules,⁴ the Consent Decree attached to this Order **IS ADOPTED**.

6. **IT IS FURTHER ORDERED** that the above-captioned investigation **IS TERMINATED**.

¹ 47 U.S.C. § 302a(b).

² 47 C.F.R.. §§ 2.803(a) and 15.223.

³ 47 U.S.C. § 154(i).

⁴ 47 C.F.R. §§ 0.111, 0.311

7. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by first class mail and certified mail, return receipt requested, to Anthony A. Kuznik, Vice President and General Counsel, Honeywell Sensing and Control, 1985 Douglas Drive North, MN10-192A, Golden Valley, MN 55422 and to Terry G. Mahn, Esq. and Robert J. Ungar, Esq., Fish & Richardson P.C., 1425 K Street, N.W., Washington, D.C. 20005.

FEDERAL COMMUNICATIONS COMMISSION

Kathryn S. Berthot
Chief, Spectrum Enforcement Division
Enforcement Bureau

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CONSENT DECREE

The Enforcement Bureau (“Bureau”) and Honeywell International Inc., acting through its Sensing and Control strategic business unit (“Honeywell Sensing and Control”), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Bureau’s investigation into whether Honeywell Sensing and Control violated Section 302(b) of the Communications Act of 1934, as amended (“Act”),¹ and Sections 2.803(a) and 15.223 of the Commission’s rules (“Rules”)² regarding the marketing and RF emissions of the Honeywell Sensing and Control TMS-9000, a torque measurement device.

I. DEFINITIONS

1. For the purposes of this Consent Decree, the following definitions shall apply:
 - (a) “Act” means the Communications Act of 1934, as amended 47 U.S.C. § 151 *et seq.*
 - (b) “Adopting Order” means an Order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.
 - (c) “Bureau” means the Enforcement Bureau of the Federal Communications Commission.
 - (d) “Commission” and “FCC” mean the Federal Communications Commission and all of its bureaus and offices.
 - (e) “Compliance Plan” means the program described in this Consent Decree at paragraph eight (8).
 - (f) “Effective Date” means the date on which the Bureau releases the Adopting Order.
 - (g) “Honeywell Sensing and Control” means Honeywell International Inc., acting through its Sensing and Control strategic business unit, and its parents, subsidiaries, affiliates, predecessors-in-interest and successors-in-interest.
 - (h) “Investigation” means the matter disclosed to the Bureau by Honeywell Sensing and Control on March 24, 2009, regarding a possible violation of Section 302(b) of the Act and Sections 2.803(a) and 15.223 of the Rules.

¹ 47 U.S.C. § 302a(b).

² 47 C.F.R. §§ 2.803(a) and 15.223.

- (i) "Parties" means Honeywell Sensing and Control and the Bureau.
- (j) "Rules" means the Commission's regulations found in Title 47 of the Code of Federal Regulations.

II. BACKGROUND

2. Pursuant to Section 302(b) of the Act³ and Section 2.803(a) of the Rules⁴, radio frequency devices subject to certification may not be marketed unless authorized by the Commission in accordance with the applicable technical and administrative provisions of the Rules. Further, devices operating in the band between 1.705-10 MHz must comply with the field strength provisions of Section 15.223 of the Rules.⁵

3. On March 24, 2009, Honeywell Sensing and Control voluntarily disclosed to the Bureau that a number of its TMS-9000 industrial torque sensing transmitters had been marketed without the required Commission authorization and did not meet the Commission's field strength requirements.

III. TERMS OF AGREEMENT

4. **Adopting Order.** The Parties agree that the provisions of the Consent Decree shall be subject to final approval by the Bureau by incorporation of such provisions by reference in the Adopting Order without change, addition, modification, or deletion.

5. **Jurisdiction.** Honeywell Sensing and Control agrees that the Bureau has jurisdiction over it and the matters contained in this Consent Decree and has the authority to enter into and adopt this Consent Decree.

6. **Effective Date; Violations.** The Parties agree that this Consent Decree shall become effective on the date on which the Bureau releases the Adopting Order. Upon release, the Adopting Order and this Consent Decree shall have the same force and effect as any other Order of the Bureau. Any violation of the Adopting Order or of the terms of this Consent Decree shall constitute a separate violation of a Bureau Order, entitling the Bureau to exercise any rights and remedies attendant to the enforcement of a Commission Order.

7. **Termination of Investigation.** In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate its Investigation. In consideration for the termination of said Investigation, Honeywell Sensing and Control agrees to the terms, conditions, and procedures contained herein. The Bureau further agrees that in the absence of new material evidence, the Bureau will not use the facts developed in this Investigation through the Effective Date of the Consent Decree, or the existence of this Consent Decree, to institute, on its own motion, any new proceeding, formal or informal, or take any action on its own motion against Honeywell Sensing and Control concerning the matters that were the subject of the Investigation. The Bureau also agrees that it will not use the facts developed in this Investigation through the Effective Date of this Consent Decree, or the existence of this Consent Decree, to institute on its own motion any proceeding, formal or informal, or take any action on its own motion against Honeywell

³ 47 U.S.C. § 302a(b).

⁴ 47 C.F.R. § 2.803(a).

⁵ 47.C.F.R. § 15.223.

Sensing and Control with respect to Honeywell Sensing and Control's basic qualifications, including its character qualifications, to be a Commission licensee or to hold Commission licenses or authorizations.

8. **Compliance Plan.** For purposes of settling the matters set forth herein, Honeywell Sensing and Control agrees to maintain a Compliance Plan related to future compliance with the Act, the Commission's Rules, and the Commission's Orders. The Compliance Plan will include, at a minimum, the following components:

- (a) **Replacement of Old Devices.** In the event a TMS-9000 device is found to cause harmful interference to a licensed radio service, Honeywell Sensing and Control will work with the affected customer(s) to either reduce RF emissions of the device to within the FCC's limits or remove it from service.
- (b) **Distribution of Information.** Honeywell Sensing and Control will distribute to the Bureau a list of customers and purchasing locations for the presently installed TMS torque sensing transmitters as of the date of this Consent Decree within 30 days of the Effective Date.
- (c) **Compliance Officer.** Honeywell Sensing and Control will designate Steven Borthwick as its Agency Approvals Engineer who will serve as the Compliance Officer responsible for administering the compliance plan.
- (d) **Training.** Honeywell Sensing and Control will provide training and materials concerning Parts 2, 15 and 18 of the Rules and the requirements of the Consent Decree to all of its employees who are involved directly or indirectly in the design, engineering or sale of its torque sensing transmitter products.
- (e) **Compliance Report.** Honeywell Sensing and Control will file reports with the Commission 90 days after the Effective Date, 12 months after the Effective Date, and 24 months after the Effective Date. Each compliance report shall include a compliance certificate from an officer, as an agent of Honeywell Sensing and Control, stating that the officer has personal knowledge that Honeywell Sensing and Control has established operating procedures intended to ensure compliance with this Consent Decree, together with an accompanying statement explaining the basis for the officer's compliance certification. All compliance reports shall be submitted to the Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W. Washington, D.C. 20554. All compliance reports shall also be submitted electronically to Neil.McNeil@fcc.gov and Kathryn Berthot at Kathy.Berthot@fcc.gov.
- (f) **Termination Date.** Unless stated otherwise, the requirements of this Consent Decree will expire twenty-four (24) months after the Effective Date.

9. **Voluntary Contribution.** Honeywell Sensing and Control agrees that it will make a voluntary contribution to the United States Treasury in the amount of ten thousand dollars (\$10,000). The payment will be made within 30 days after the Effective Date of the Adopting Order. The payment must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the Account Number and FRN Number referenced in the caption to the Adopting Order. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 convention Plaza, St.

Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code). Honeywell Sensing and Control will also send electronic notification on the date said payment is made to Neil.McNeil@fcc.gov and Kathy.Berthot@fcc.gov.

10. **Waivers.** Honeywell Sensing and Control waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order, provided the Bureau issues an Adopting Order adopting the Consent Decree without change, addition, modification or deletion. Honeywell Sensing and Control shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Adopting Order, neither Honeywell Sensing and Control nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and Honeywell Sensing and Control shall waive any statutory right to a trial *de novo*. Honeywell Sensing and Control hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act, 5 U.S.C. § 504 and 47 C.F.R. § 1.1501 *et seq.*, relating to the matters addressed in this Consent Decree.

11. **Invalidity.** In the event that this Consent Decree in its entirety is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

12. **Subsequent Rule or Order.** The Parties agree that if any provision of the Consent Decree conflicts with any subsequent rule or Order adopted by the Commission (except an Order specifically intended to revise the terms of this Consent Decree to which Honeywell Sensing and Control does not expressly consent) that provision will be superseded by such Commission rule or Order.

13. **Successors and Assigns.** Honeywell Sensing and Control agrees that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees.

14. **Final Settlement.** The Parties agree that this Consent Decree is for settlement purposes only and that by agreeing to this Consent Decree, Honeywell Sensing and Control does not admit or deny noncompliance, violation or liability for violating the Act, Commission's Rules or Orders in connection with the matters that are the subject of this Consent Decree. The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties. The Parties further agree that this Consent Decree does not constitute either an adjudication on the merits or a factual or legal finding or determination regarding any compliance or noncompliance with the requirements of the Act or the Commission's rules and Orders.

15. **Modifications.** This Consent Decree cannot be modified without the advance written consent of both Parties.

16. **Paragraph Headings.** The headings of the Paragraphs in the Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

17. **Authorized Representative.** Each Party represents and warrants to the other that it has full power and authority to enter into this Consent Decree.

18. **Counterparts.** This Consent Decree may be signed in any number of counterparts (including by facsimile), each of which, when executed and delivered, shall be an original, and all of which counterparts together shall constitute one and the same fully executed instrument.

Kathryn S. Berthot
Chief, Spectrum Enforcement Division
Enforcement Bureau

Date

Anup Jain
Vice-President/General Manager
Test and Measurement, Honeywell Sensing and Control

Date