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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: JOAN A. MADDEN Justice PART 11

MARY JANE STEWART,

-v-

HONEYWELL INTERNATIONAL, INC.,

INDEX NO. 116886/04

MOTION DATE

MOTION SEQ. NO. 005

MOTION CAL. NO.

The following papers, numbered 1 to ____ were read on this motion to/for ____

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	
Answering Affidavits — Exhibits	
Replying Affidavits	

Cross-Motion: ☐ Yes ☒ No

Upon the foregoing papers, it is ordered that this motion is determined in accordance with the annexed decision and order.

FILED
JAN 26 2009
COUNTY CLERK'S OFFICE
NEW YORK

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Dated: January 22, 2009

J.S.C.

Check one: ☐ FINAL DISPOSITION ☒ NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 11

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MARY JANE STEWART and DAVID STEWART,

Plaintiffs,

- against -

HONEYWELL INTERNATIONAL, INC., GENLYTE THOMAS GROUP, LLC, STEPHEN PARKER d/b/a FIELD SERVICE MECHANICAL CO., FIELD SERVICE MECHANICAL CO. and SRP MECHANICAL ASSOCIATES, INC.,

Defendants.

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Index No. 116886/04

JOAN A. MADDEN, J.:

In this action for damages based theories of products liability, defendant Honeywell International, Inc. (Honeywell) moves for an order, pursuant to CPLR 3212 (b), granting summary judgment dismissing the complaint as asserted against it.[1] For the reasons below, Honeywell's motion is denied.

On December 13, 2003, plaintiff Mary Jane Stewart (Stewart), an employee of third-party defendant Richter Metalcraft Corp. (Richter Metalcraft), was injured while using a punch press machine, denominated "Press 39" (Press). Plaintiffs allege that Stewart's hand was severely injured when the Press unexpectedly "double cycled." According to the "Prehospital Care Report," completed by the paramedic who arrived at the scene of the accident, Stewart "got her (R) hand caught in a tin milling machine which crushed the hand and amputated the (R) thumb

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[1]Defendant Genlyte Thomas Group, LLC and defendants Field Service Mechanical Co., a division of SRP Mechanical Associates, Inc. s/h/a Stephen Parker, d/b/a Field Service Mechanical Co., Field Service Mechanical Co., and SRP Mechanical Associates, Inc., also moved for summary judgment dismissing the complaint as against them (motion sequence nos. 003 and 004). Since neither motion was opposed, the court issued an order dated January 2, 2008, granting the motions and dismissing the complaint and all cross-claims against those defendants.

pointer, middle fingers to third knuckle." Specifically, Stewart alleges she was injured when she was reaching into the die area of the Press to remove a finished piece when the ram unexpectedly descended, that is, the Press double cycled, amputating her thumb and two digits. Plaintiffs allege that the Press was defectively designed and the manufacturer failed to adequately warn of the dangers of use and, to the extent relevant to the instant motion, commenced this action against Honeywell alleging that Honeywell is liable for her injuries as it acquired the successor company to Marshalltown Inc., the alleged manufacturer of the Press.

The first three causes of action are brought on behalf of only Stewart on theories of negligence, gross negligence and res ipsa loquitur (first cause of action), breach of express and implied warranties (second cause of action), and strict products liability (third cause of action). The fourth cause of action is brought on behalf of David Stewart, Stewart's spouse, for loss of consortium.[2]

In support of its motion for summary judgment, Honeywell argues that (1) Stewart's claims of breach of express and implied warranties are time-barred; (2) it is not liable for failure to warn; (3) it had no duty to install a point of operation guard; and (4) the accident was caused by (a) the substantial modifications that Richter Metalcraft made to the Press after manufacture, and (b) Stewart's own negligent conduct. Honeywell also challenges the reliability of plaintiffs' evidence as to the condition and design of the Press which was disassembled after the accident and as to the whether the Press was in fact manufactured by Marshalltown. Honeywell argues that summary judgment is warranted here because, in addition to the attenuated connection

[2]Additionally, Honeywell brought a third-party action against Stewart's employer, Richter Metalcraft seeking contribution and indemnification.

between Honeywell and Marshalltown Manufacturing Co., discovery has shown that third parties substantially modified the Press after its manufacture, and that this, combined with Stewart's own carelessness in operating the Press, were "significant factors" contributing to the accident.

Honeywell further contends that it had no direct involvement with Stewart's accident. It asserts that plaintiffs named it as a defendant only because, for a four-year period of time more than 20 years ago, it owned a several steps-removed alleged corporate successor to Marshalltown Manufacturing Co., the alleged manufacturer of the Press, that its affiliation with the alleged successor ended in 1983, when it sold the business, and that entity had not made nor sold any Marshalltown presses between 1979 and 1983.

Plaintiffs do not oppose summary judgment dismissing the second cause of action for breach of express and implied warranties, and the second cause of action is dismissed. Plaintiffs oppose summary judgment as to the remaining causes of action arguing that issues of fact exist, based on their expert's affidavit, as to whether the Press was defectively designed for failure to include various safety devices and guarding mechanisms including positive anti-repeat devices and point of operation guarding, and that neither the modifications nor any actions of Stewart caused her injury. Plaintiffs further argue that the Press did not have adequate warnings regarding its use and operation. As to the identification of the Press, plaintiffs argue there are sufficient components to ascertain the identification and condition, as well as the design of the Press at the time of the accident. Plaintiffs further argue that Honeywell as a successor to Marshalltown is responsible for Stewart's injuries.

At the outset, the threshold issues of Honeywell's challenges to the identification and condition of the Press due to the modifications, and its argument regarding its attenuated

connection to the manufacturer, will be addressed.

On June 19, 2003, as part of pre-action discovery, an inspection was made of the Press at the accident site. While the report by Herbert Aronson, the engineer hired by Richter Metalcraft's insurance company, who was present at the inspection, identified the Press as having serial number "2752" and a tonnage of "110" tons, the report does not address the location of the serial number or tonnage on the Press, and Aronson was unable to recall where this information was located on the Press. Although Richard A. Gash, Esq., Richter Metalcraft's counsel at the time, was at the inspection and communicated the serial number and tonnage to counsel for co-defendant Genlyte Thomas Group, LLC, he did not have first-hand knowledge.

Honeywell asserts that other than these two sources, no one has been able to make any representation as to the Press's serial number or tonnage. As a result of the disassembly of the Press after the accident, Honeywell contends that it never had the opportunity to inspect the Press in its operable condition, or to inspect all of the relevant component parts. According to plaintiffs' expert, Igor L. Paul, based upon his inspection of the Press, albeit in its inoperable condition, including its dimensions, mechanical linkage controlling the clutch, and the clutch, brake and crankshaft components, he verified that the Press was a Marshalltown size 6 press as shown in Marshalltown drawings numbers 1165, 1424, and 1474, and detailed in the descriptive materials and "Instructions for the Operation of Marshalltown Punch Presses," which are annexed as an exhibit to the affidavit of plaintiff's expert. Moreover, plaintiff's attorney in a sur-reply affirmation attaches photographs of the components of the press including a plate identifying the machine as a "Marshall Punch Press ... Serial No. 2752 model number '6 A.'" Thus, sufficient evidence exists to find that Marshall manufactured the Press, and to ascertain its

serial number and model. Honeywell's other objections as to the disassembly of the Press affecting its ability to determine the condition of the Press as modified and the impact of the modifications are unfounded as evidenced by the detailed opinion of Honeywell's expert, Ralph L. Barnett, as described below.

Moreover, Honeywell cites no legal or factual support for its argument that its connection to the alleged manufacturer of the Press, Marshalltown, is too attenuated for the imposition of liability. Absent such support, it cannot be said as a matter of law that Honeywell, as Marshalltown's successor, is not liable for Stewart's injuries.

As discussed in detail below, the parties dispute the cause of the double-cycle of the Press and the cause bears directly on whether the Press was defectively designed and on the requirements involving a duty to warn. Honeywell's expert asserts that there were substantial modifications to the Press which was manufactured forty years before the accident, and that certain springs added by Richter Metalcraft caused the double-cycle that led to Stewart's injury. Plaintiffs' expert asserts that the double-cycle was due to the dangerous design of the clutch activation and disengagement mechanism and the lack, *inter alia*, of a positive anti-repeat mechanism.

The operation and components of the press as originally manufactured and as modified are central to the determination of the cause of the double-cycle. The experts agree that a punch press, such as the one in issue, generally consists of (1) the frame, or body of the press, (2) a ram that descends, (3) a control mechanism that tells the press when to lower the ram, (4) an electric motor that turns a flywheel, (5) a clutch that couples a flywheel to the crankshaft and physically moves the ram, and (6) a brake that stops or holds the crankshaft when the clutch is disengaged.

In addition, the Press in issue included upper and lower dies, that is, the tooling that a press uses for cutting or forming material. One die was attached to the ram and one was affixed to the bed of the press where a piece of metal would have placed. As explained by Honeywell's expert, when the press was triggered it caused the ram with the affixed die to descend and the two dies to meet, which shaped the metal into the die form.

Honeywell's expert further explained that as originally constructed, a foot treadle mechanism activated the Press, which would cause the machine to "cycle." The foot treadle had a linkage to the center of a connecting arm of the press which was a horizontal bar on the side of the press. The other end of the connecting arm was affixed to the clutch rod, which extended vertically upward to the flywheel and clutch. The clutch rod engaged or disengaged the flywheel, the mechanical battery that stored the motor energy to cycle the press. When the foot treadle was depressed, the linkage would pull down the connecting arm which in turn would pull down the clutch rod, which would engage the flywheel, powering the Press and causing it to cycle. At some point after its manufacture, the foot treadle was removed, and was replaced by an electric, pneumatic (air-powered) hand control system. The Press operator would initiate a cycle by depressing two buttons rather than using the foot treadle.

Subsequent to this modification, sometime in the mid 1990's,[3] Richter Metalcraft purchased the Press and made additional modifications. As indicated above, the experts disagree as to the impact of such modifications. Carl Ulrich, an employee of Richter Metalcraft, testified that he installed springs, a threaded rod, and an "L" bracket within one year prior to the accident,

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[3] According to David Richter, the president of Richter Metalcraft, the Press was purchased from Thomas Industries (i.e., defendant Genlyte) sometime in the mid-1990's.

because the Press would not "trip" (i.e., cycle), and the modification enabled the Press to trip more easily.

According to Honeywell's expert, Ralph L. Barnett, chairman and chief scientist of Triodyne Inc., a mechanical engineering consulting firm specializing in the safety of engineering systems and mechanical devices, as originally manufactured, the Press had a number of safety concepts incorporated into its design, and a cycle would be initiated only when the connecting arm was pulled down by the foot-treadle system. However, the electric, pneumatic (air-powered) hand control system which replaced the mechanical foot treadle, had an air cylinder, located in the middle of the connecting arm, with built in extension springs designed to extend the air cylinder and push the connecting arm up after it is pulled down. Barnett asserts that the two springs added by Ulrich exerted a constant downward pulling force on the connecting arm and exerted approximately twice the leverage as the built-in extension springs in the air cylinder, and the added springs "created a very dangerous situation."[4] Barnett asserts that the cause of the double-cycle was that the two springs competed with the built in extension springs by pulling down the connecting arm that engages the clutch and allows the Press to cycle until the connecting arm is pushed back up to its neutral position thereby disengaging the clutch and preventing another cycle.

Plaintiffs' expert, Igor L. Paul, Sc.D., P.E., a registered professional engineer, and formerly a professor of mechanical engineering at Massachusetts Institute of Technology, disputes Barnett's theory and contends that the springs in the air cylinder were six to eight times

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[4]Barnett explains that the added springs had a mechanical advantage over the springs in the air cylinder as they were located at the end of the clutch rod and the air cylinder in the middle.

stronger than the two tension springs added by Ulrich, and the added springs did not cause the double-cycle. Paul opines that the double-cycle was caused by the failure of the clutch disengagement mechanism. According to Paul, the flywheel constantly turns and no cycle is initiated and the ram does not descend until the clutch is engaged via the clutch pin. This occurs "when the downward pull of the clutch rod actually pulls a 'latch' down out of a slot in a 'clutch pin' releasing the 'clutch pin' from its DISENGAGED position and allowing it to insert into one of the three holes of the constantly rotating flywheel thus making a rigid ENGAGED connection with the flywheel and causing the press to cycle. Once the 'clutch pin' has engaged with the flywheel, the press will Continue Cycling ... until the pulled down 'latch' is released by the 'clutch rod'.... and the 'latch' is pulled back up into its initial REST position against the clutch surface. The 'latch' has to be returned to this position to be able to DISENGAGE the 'clutch pin' the next time it passes the forward tip of the 'latch.' The wedge-shaped 'latch' then enters the partially exposed wedge-shaped slot of the 'clutch pin' as it passes over the stationary 'latch,' pulling it out (by a wedging action) of the flywheel and DISENGAGING the clutch from the flywheel." Paul concludes that the double-cycle was caused when the latch spring failed to disconnect the downward pull of the clutch rod and return the latch to the initial rest position before the press completed about seven-eighths of its cycle, thus, failing to disengage the clutch from the flywheel.

Paul further asserts that this type of marginal malfunction occurs erratically on full revolution presses which do not have anti-repeat or single cycle clutch control mechanisms which use the motion of the clutch to positively disconnect the clutch rod input from the clutch and to positively disengage the clutch. Paul opines that "because of the extreme and inherent

dangers of mechanical power presses using the type of clutches and controls supplied with the subject Marshalltown punch press, various safety devices and guarding methods had been developed, and were well-known and mandated by industry standards" at the time the press was manufactured. According to Paul, the Press, as originally manufactured, failed to comply with then-existing minimum industrial safety standards, and as a result, the point of operation created a dangerous condition to operators of the press. Specifically, Paul asserts that Marshalltown failed to use technologically and economically feasible safety devices including 1) a positive anti-repeat device that would have prevented the press from double cycling, and 2) a point of operation guarding to keep the operator's hands out of the danger area during press cycling, which devices were well known, in use and mandated by industry standards in 1922, 1937, 1948, and 1960 to the present.

Paul explains that the positive "anti-repeat" or single stroke mechanism would stop the ram in its "top stop" position and would positively keep it in that position until the initiation of the next cycle. In the Press as manufactured, it would "have disengaged the treadle force (the force transmitted from the foot treadle through the treadle connecting rod) after each clutch actuation to insure the clutch would release after each cycle." Paul states that an interlocked gate guard around the point of operation would not prevent operator access to the danger area but "would positively lock the ram in its top rest position after each press cycle (during manual operation)."

Honeywell's expert Barnett disagrees and asserts that that a manufacturer does not have a duty to install a point of operation guard as a press is not operable until the die is installed, and power presses are not manufactured with dies installed. Barnett states that since any die is

installed after manufacture, generally by the user or employer, depending upon the use and purpose of the Press, it is not the manufacturer's responsibility to install such guards in a multifunction press such as the one in issue. In support, Barnett quotes the forward to the 1988 ANSI B11.1 standard that "[t]he assignment of responsibility of the employer for proper point of operation safeguarding has existed since the first standard was approved in 1922."

As to an interlocking gate guard, Barnett asserts that such a guard is inefficient, and so significantly slows down the production process that companies seldom use them. Moreover, he surmises that an interlocking guard gate would be completely uneconomical because it would significantly increase the costs of stamping each individual part.[5]

Barnett also asserts that incorporated into the Press's clutch is a "dead stop" which is a solid piece of metal that physically blocks the ram from moving and was designed to go into place and prevent the ram from going through another cycle after the [original] foot treadle had been released ... is designed to prevent cycling, where for example, the brake gives out or there is a malfunction of the clutch." According to Barnett, although the Press was modified, the dead stop mechanism was inspected and in working order immediately following the accident. Barnett concludes that no component original to the Press as manufactured could have caused the double cycle.

As to the dead stop mechanism pointed to by Barnett, Paul contends that it is designed to address clutch and brake failure, and not for circumstances such as occurred here, where the

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[5] Honeywell also asserts that a point of operation guard was likely installed on the Press when it was in use at the Genlyte facility, the owner prior to Richter Metalcraft, and that the safety device was likely removed at some point prior to Stewart's accident. In so doing, it is seeking to have the court make inferences in its favor even though all reasonable inferences are to be drawn in favor of the non-movant (*Millerman v Georgia Pacific Corp.*, 214 AD2d 362 [2d Dept 1995]).

clutch does not disengage. Specifically, Paul asserts that the "dead stop" is part of the "latch holder" in the clutch linkage and "due to its configuration and location comes into play ONLY when the latch returns to its initial rest position and disengages the clutch in a timely fashion (i.e. BEFORE a double cycle occurs as described above [by Paul]. . . . Here, since the latch did not timely return and did NOT successfully disengage, Mr Barnett's 'dead stop' did not come into play."

The foregoing opinions of the experts bear directly on whether issues of fact exist as to the third cause of action premised on a theory of strict products liability. Honeywell argues that it is not liable for failure to guard the Press, that plaintiffs have failed to show that a safer feasible design alternative existed at the time of manufacture, that Stewart's own actions caused the accident, and to the extent the condition of the Press played any part in causing the accident, third parties substantially modified the Press.

To establish a prima facie case for strict products liability based on defective design, the "plaintiff must show that the product 'was not reasonably safe and that the defective design was a substantial factor in causing plaintiff's injury'" (*Anaya v Town Sports Intl., Inc.*, 44 AD3d 485, 486 [1st Dept 2007], quoting *Voss v Black & Decker Mfg. Co.*, 59 NY2d 102, 107 [1983]). According to Paul, the added springs and other modification had no bearing on the double cycling. Paul concludes that the Press was defectively designed from the outset because the full-revolution clutch actuating mechanism did not have a positive anti-repeat attachment that prevented double-cycling, and that this, combined with the lack of a proper point-of-operation guard, caused the injury. On the other hand, Barnett opines that the addition of the springs by Richter Metalcraft created a downward pressure which caused the double-cycle, and that a manufacturer is under no

duty to install a point of operation guard based on certain statements in a forward to ANSI standards.

The court cannot dispose of the conflicting views on the papers submitted. Based on the conflicting experts' affidavits, Honeywell has not established as a matter of law that the modifications were either the partial or sole cause of the accident. (*Ortiz v E. W. Bliss Co., Inc.*, 303 AD2d 203 [1st Dept. 2003]; *Hierro v E. W. Bliss Co., Inc.*, 145 AD2d731 [3rd Dept. 1988]; see also *Vincenty v Cincinnati Inc.*, 25 ADd3d 463 [1st Dept. 2006]). Therefore, the relationship between the alterations to the Press and the causation of the injury is a jury question (*Jiminez v Dreis & Krump Mfg. Co.*, 736 F2d 51, 54 [2nd Cir 1984]).

Nor is a different result reached based on Honeywell's allegations that Stewart was instructed to use tongs when operating the Press on two or three occasions prior to her accident, and that tongs adapted for use on that machine were available for her to use. As discussed below, to the extent that Stewart's own negligence may have contributed to the accident, such fact will not necessarily negate the potential liability of Honeywell if it is also found to have been at fault.

Similarly, Honeywell is not entitled to summary judgment based on its argument that it is not liable for failure to warn. It contends that any failure to warn was not the proximate cause of the accident, because Stewart was a "knowledgeable user" with specific knowledge of the risks of operating the Press.

A manufacturer that places a defective product on the market that causes injury may be liable for ensuing injuries. A product may be defective when, among other things, it is not accompanied by adequate warnings for use of the product. A manufacturer has a duty to warn (1) against latent dangers resulting from foreseeable uses of its product of which it knew or should

have known, and (2) of the danger of unintended uses of a product provided these uses are reasonably foreseeable (*Liriano v Hobart Corp.*, 92 NY2d 232, 237 [1998]; *Robinson v Reed-Prentice Div. of Package Mach. Co.*, 49 NY2d 471, 478-79 [1980]). Failure to warn liability is intensely fact-specific, including such issues as feasibility and difficulty of issuing warnings in the circumstances (*Liriano v Hobart Corp.*, 92 NY2d at 243). Such is the case here.

In support of the claim that Stewart was a knowledgeable user, thereby precluding a failure to warn claim, Honeywell asserts that since Stewart worked for Richter Metalcraft for more than 35 years, at least 25 of which she spent operating various punch presses, she was thoroughly familiar with these types of machines. Moreover, Stewart was aware of several instances in which two other operators were injured when the press they were operating double-cycled.

Honeywell also cites Stewart's deposition testimony that she was aware of a label on the Press that read: "Closing ram and die will result in loss of fingers or limbs if placed in machine. Never place your hands or any part of your body in this machine. Do not remove or cover this sign." Stewart testified that she understood what the warning meant: i.e., "[n]ever place your hand, body under the – by the machine, under thing" and "[t]hat you can lose your hand, your fingers from – by putting them under the die." In addition, Stewart testified that she had been injured once prior to the accident at issue. She explained that she "was putting steel in one of the first operation jobs and you have water on it and I [was] trying to tie the rag to keep it smooth and I went to tie it and I slipped." She said she hurt her index finger on her right hand and required four stitches.

This evidence does not necessarily absolve Honeywell, as it simply presents an issue of comparative negligence, which "is a jury question in all but the clearest cases" (*MacDowall v*

Koehring Basic Constr. Equip., 49 NY2d 824, 827 [1980]). According to plaintiffs' expert, although warnings cannot substitute for safe design, effective warnings placed on the equipment in conformance with accepted standards for accident prevention signs (such as the ANSI B35 Series of Standards for Accident Prevention Signs) would have alerted the operators of the Press about these hazards, and about hazard avoidance actions to be taken. Paul opines that effective warnings could have alerted the user that the Press had no positive non-repeat mechanism, and was subject to unexpected double cycling, and that it should never be used without physical and effective point of operation barrier guarding.

Moreover, the legal significance of Stewart's familiarity with the particular warning label is inconclusive without a factual finding as to what exactly occurred to cause the accident at issue. While Stewart alleges she was injured when she was reaching into the die area to remove a finished piece from the Press when the ram unexpectedly descended amputating her thumb and first digits of her right hand, as delineated in the affidavits of Barnett and Paul, the precise reasons for this unexpected event raise material factual issues bearing on all of the defenses raised.

Furthermore, unlike the situation presented in *Lonigro v TDC Elecs.* (215 AD2d 534 [2d Dept 1995], cited by Honeywell, the danger inherent in the Press (double-cycling) was not "obvious" (*id.* at 536). Here, the danger present - that the Press would unintentionally or accidentally double cycle and injure the hands of the operator of the machine -- was not obvious as a matter of law (*Jiminez v Dreis & Krump Mfg. Co.*, 736 F2d at 55). Although Stewart testified that she was aware of instances in which two other operators were injured when the presses that they were operating double-cycled, she did not testify as to the cause of those two instances. Moreover, while Stewart was previously injured at work, that accident involved the use of a

"curler" and not a Press, such as the one at issue in this action. Hence, Stewart's knowledge of the hazard is a question for the jury (*Liriano v Hobart Corp.*, 92 NY2d at 241). In close cases, it is easy to disagree as to whether a particular risk is obvious; because of the factual nature of the inquiry, whether a danger is open and obvious is usually a jury question (*id.* at 242).

Honeywell further argues that it cannot be liable for failure to warn due to modifications after manufacture, which Honeywell argues was the proximate cause of the accident. As discussed above, an issue of fact exists as to whether such modification proximately caused the accident. Moreover, the existence of a substantial modification defense does not, in every instance, preclude a failure to warn claim (*Liriano v Hobart Corp.*, 92 NY2d at 239). "Where, as here, a qualified expert opines that a particular product is defective or dangerous, describes why it is dangerous, explains how it can be made safer, and concludes that it is feasible to do so, it is usually for the jury to make the required risk-utility analysis" (*Milazzo v Premium Tech. Servs. Corp.*, 7 AD3d 586, 588 [2d Dept 2004]).

Accordingly, it is

ORDERED that the motion by Honeywell International, Inc. for summary judgment dismissing the complaint as against it, is granted only to the extent of dismissing the second cause of action, and in all other respects the motion is denied; and it is further

ORDERED that the remaining parties are directed to appear for a pre-trial conference on March 5, 2009 at 3:00 p.m., Part 11, Room 351, 60 Centre Street.

Dated: January 22, 2009

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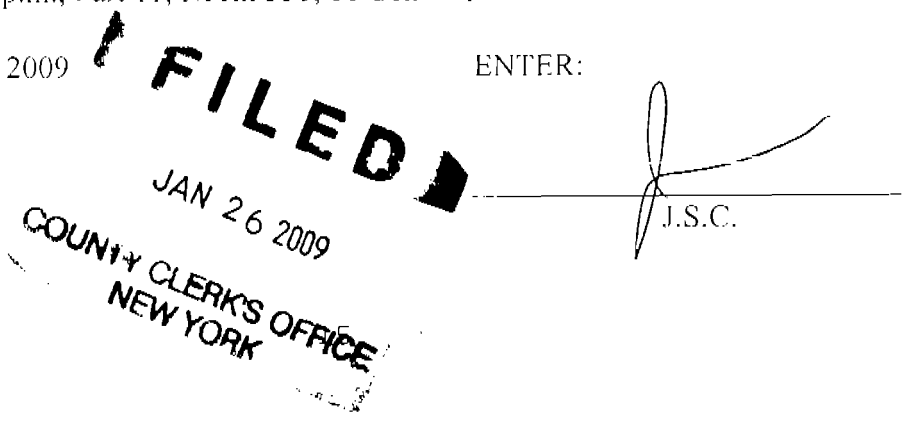

J.S.C.