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19 GYRODATA INCORPORATED

20 UNITED STATES DISTRICT COURT
21 CENTRAL DISTRICT OF CALIFORNIA
22 WESTERN DIVISION

23 GYRODATA INCORPORATED, a
24 Texas corporation,
25 Plaintiff,

26 vs.

27 ATLANTIC INERTIAL SYSTEMS
28 INC., a California and Delaware
corporation; BAE SYSTEMS, INC.,
a Delaware corporation; BAE
SYSTEMS CONTROLS, INC., a
Delaware corporation; BAE
SYSTEMS INFORMATION AND
ELECTRONIC SYSTEMS
INTEGRATION, INC., a Delaware
corporation; and DOES 1 - 10,
Defendants.

Case No. CV 08-7897-GHKFMOx
Assigned for All Purposes to:
Judge: Hon. George H. King
Ctrm: 650

**SECOND AMENDED COMPLAINT
FOR BREACH OF CONTRACT,
FRAUD, AND TORTIOUS
INTERFERENCE WITH
CONTRACT**

JURY TRIAL DEMANDED

First Amended Complaint filed:
February 27, 2009

1 Plaintiff Gyrodata Incorporated complains and for causes of action alleges as
2 follows:

3 **JURISDICTION AND VENUE**

4 1. This Court has jurisdiction over this controversy pursuant to 28 U.S.C.
5 § 1332 because the parties are completely diverse and the amount in controversy
6 exceeds the \$75,000 minimum jurisdictional requirement, exclusive of interest,
7 attorneys' fees and/or punitive damages.

8 2. This Court has personal jurisdiction over defendant Atlantic Inertial
9 Systems, Inc. (AIS) because AIS is incorporated and regularly transacts business in
10 California and in the Central District of California. This Court has personal jurisdiction
11 over defendant BAE Systems, Inc. ("BAE Systems") because BAE Systems maintains
12 at least one facility and regularly transacts business in California and in the Central
13 District of California. Further, the Court has specific jurisdiction over all Defendants
14 because Defendants BAE Systems and AIS contracted to manufacture and design
15 products in the Central District of California, and Defendants BAE Systems, BAE
16 Systems Controls, Inc., and BAE Systems Information and Electronic Systems
17 Integration, Inc. (the "BAE Defendants") made material misrepresentations at meetings
18 held in the Central District of California, or interfered with the manufacture and
19 development of those products in the Central District of California, making it reasonably
20 foreseeable that Gyrodata would hale them into court in this district.

21 3. Venue is appropriate in this Court under 28 U.S.C. § 1391(b) because the
22 contracts that are the subject of this lawsuit were to be performed within the Central
23 District of California, the misrepresentations giving rise to the fraud claims in this
24 lawsuit were made by a California resident regarding business conducted in California,
25 and many of the witnesses to the facts alleged herein are former or current employees
26 of BAE Systems, AIS, and/or their predecessors residing in or about Los Angeles
27 County, California.

1 On information and belief, BAE Systems Controls may be served through its registered
2 agent, CT Corporation System, at 818 West 7th Street, Los Angeles, California 90017.
3 On information and belief, BAE Systems Controls, through its managerial employees,
4 committed the fraud and/or interference with contract set forth in this complaint.

5 9. Defendant **BAE Systems Information & Electronic Systems**
6 **Integration, Inc.** ("BAE Systems I&ESI"), on information and belief, is a subsidiary or
7 operating unit of BAE Systems, and is a Delaware corporation with its principal place of
8 business located at 65 Spit Brook Road, Nashua, New Hampshire 03061. On
9 information and belief, BAE Systems I&ESI may be served through its registered agent,
10 CT Corporation System, 818 West Seventh Street, Los Angeles, California 90017. On
11 information and belief, BAE Systems I&ESI, through its managerial employees,
12 committed the fraud and/or interference with contract set forth in this complaint.

13 10. **Does 1-10** are those as yet unknown and unidentified corporate parents,
14 subsidiaries, and/or affiliates of BAE Inertial, BAE Systems, BAE Systems Controls,
15 BAE Systems I&ESI, or AIS; and/or individuals; who committed the breaches of
16 contract, fraud, and/or interference with contract set forth in this complaint. Gyrodata
17 has undertaken a pre-filing investigation to try to ascertain with as much precision as
18 possible those responsible for the conduct described here. As a result, Gyrodata does
19 not presently know if additional BAE entities exist that are responsible, and if they do
20 exist, what their true names, identities, and capacities are. Therefore, Gyrodata sues
21 these entities by the fictitious names Does 1-10. When the true names and capacities
22 or participation of the Doe Defendants are ascertained, Gyrodata will amend this
23 complaint to assert the true names, identities, and capacities. Gyrodata is informed
24 and believes that each of the Doe Defendants sued herein is responsible for the
25 wrongful acts alleged herein, and therefore is liable to Gyrodata in some manner for the
26 events and happenings alleged in this complaint.

1 the "bottom hole assembly," a group of tools that rests just above the drill bit and gives
2 data feedback throughout the drilling process.

3 15. Beginning in the late 1980s and continuing through the 1990s, Condor
4 Pacific Industries of California, Inc. ("Condor Pacific") manufactured and repaired
5 "dynamically tuned" (also called "dry-tuned") gyroscopes for Gyrodata and many
6 others. Dry-tuned gyroscopes use a steadily-spinning mass with a free-moving axis
7 (gimbal) to provide information in two axes which can be used to determine True North.
8 Dry-tuned gyroscopes are designed to be unaffected by constraints once the spinning
9 mass reaches a specified speed.

10 16. Gyrodata accumulated years of experience working with Condor Pacific
11 on a specifically adapted dry-tuned gyroscope. Together, Gyrodata and Condor Pacific
12 had taken the standard "T-100" model gyroscope produced by Condor Pacific and
13 adapted it for use in Gyrodata's wellbore survey systems. Over the years, the "T-100"
14 gyroscope became the principal inertial sensor used in Gyrodata's fleet of survey
15 instruments, resulting in Gyrodata's purchase of several hundred T-100 gyroscopes
16 from Condor Pacific.

17 17. Then, on October 21, 2002, BAE Systems entered into a Stock purchase
18 and Sale Agreement to purchase Condor Pacific through BAE Systems Aerospace,
19 Inc., a wholly-owned subsidiary of BAE Systems. Effective January 1, 2003, Condor
20 Pacific became "BAE Systems Inertial Products, Inc." ("BAE Inertial"), a wholly-owned
21 indirect subsidiary of BAE Systems. The change from Condor Pacific to BAE Inertial
22 was only to be in ownership and name, however. BAE Inertial kept the same engineers
23 who worked for Condor Pacific and continued to operate from what had been Condor
24 Pacific's research and manufacturing facility in Westlake Village, California.

25 18. As can be surmised, dry-tuned gyroscope development is a highly
26 specialized field for which the combination of the proper working personnel on projects
27 is critical to hold down costs and to ensure that products are developed on time and
28 that they meet specifications. Therefore, it was crucial that Gyrodata be able to work

1 with the individuals who knew its business and technology needs best. To that end,
2 Gyrodata continued to order T-100s from BAE Inertial, who, in turn, agreed to supply
3 Gyrodata with ten (10) gyroscopes per month, priced between approximately \$10,500
4 and \$12,000 per unit.

5 19. Over the years as demands for high accuracy surveys increased, so did
6 the need to maintain technology's leading edge in the field of wellbore surveying. By
7 2003, Gyrodata sought to develop a smaller and more rugged gyroscope for use in its
8 GWD operations. As a result, Gyrodata negotiated to purchase from Defendant BAE
9 Systems a new version of the T-100 gyroscope that ultimately came to be called the T-
10 70 gyroscope because it was to be 70% of the size of a T-100 gyro. The negotiations
11 resulted in a May 2, 2003 contract between Gyrodata and BAE Systems (the "T-70
12 Contract").

13 20. Under the terms and conditions of the T-70 Contract, BAE Systems
14 promised to provide Gyrodata with gyroscopes that BAE Systems would manufacture
15 according to specifications agreed upon by the parties and incorporated into the T-70
16 Contract. In addition, Gyrodata promised to pay BAE Systems one million dollars
17 (\$1,000,000) for the development of three prototype T-70 gyroscopes, the payment of
18 which was to be made, and has been made according to the contractual schedule, in
19 two-hundred-thousand-dollar (\$200,000) increments consistent with certain agreed-
20 upon manufacturing milestones. In return, BAE Systems was to deliver three prototype
21 T-70 gyroscopes. Gyrodata understood that BAE Systems' work on the T-70 Contract
22 was to be performed by employees of BAE Systems' subsidiary, BAE Inertial.

23 21. The T-70 Contract also stipulated that BAE Systems was to provide, and
24 Gyrodata agreed to purchase, an additional one thousand (1,000) gyroscopes, priced
25 between nine thousand dollars (\$9,000) and nine thousand five hundred dollars
26 (\$9,500) each. Further, BAE Systems agreed that it would sell the T-70 gyroscopes
27 under "most favored nations"-like pricing provisions, under which Gyrodata would
28 benefit from any economies of scale encountered in production of the T-70.

1 22. Following the execution of the T-70 Contract, the "BAE California Team,"
2 which consisted of former Condor Pacific employees, began working on the
3 development and production of a prototype gyroscope, and Gyrodata made the first
4 four incremental payments required under the T-70 Contract. The parties agreed to
5 extend the delivery date of the T-70 gyroscopes from the originally planned date of May
6 2004 to at least the fall of 2005.

7 23. Late in 2005, however, Gyrodata learned from BAE Inertial employees in
8 California that the BAE Defendants and/or BAE Inertial planned both to terminate the
9 employment of the BAE California Team responsible for the design and manufacture of
10 the T-70 and to require the departing employees to sign non-compete contracts that
11 would preclude them from continuing work on the T-70 project. In addition, the BAE
12 Defendants and/or BAE Inertial planned to close down the Westlake Village, California
13 facility and move all production of the standard T-100 gyroscope to another BAE
14 Systems plant in Cheshire, Connecticut. The BAE Defendants and/or BAE Inertial
15 knew of these impending changes many months if not years before advising Gyrodata
16 and inducing Gyrodata to continue to order T-100 gyroscopes from BAE Inertial, and
17 may even have known of them before BAE Systems entered into the T-70 Contract for
18 development and production of the T-70 gyroscope. On information and belief, Greg
19 White, a managerial officer for one or more of the BAE Defendants, planned from the
20 time BAE Systems acquired Condor Pacific to close the Westlake facility and move
21 Condor Pacific's manufacturing to Cheshire, Connecticut.

22 24. The subsequent closure of the Westlake Village facility and termination of
23 all employees involved either in the production of the T-100 gyroscope or in the
24 development of the T-70 gyroscope have been disastrous for Gyrodata. The BAE
25 Defendants and/or BAE Inertial gave specific and repeated assurances that
26 (1) production of the T-100 gyroscope would not be delayed or impaired by the move to
27 Cheshire, Connecticut, and that the facilities there were appropriate and suited for
28 production of the T-100; (2) the Westlake Village facility would not be closed until the

1 production of T-100 units was online and functioning effectively in Connecticut; and
2 (3) although the bulk of the Westlake Village production facility would be closed, a
3 portion of it would remain open as a "research facility" and that projects similar to and
4 including the development of the T-70 gyroscope would continue there.

5 25. None of these statements were true at the time they were made. When
6 BAE Systems (directly or through one of the BAE Defendants) closed the Westlake
7 Village facility, the Cheshire facility was nowhere near full timely production. Deliveries
8 of the T-100 lagged, with many not being shipped at all. Further, BAE Systems
9 (directly or through one of the BAE Defendants) terminated the entire research team
10 dedicated to the T-70 research project and required the former employees to enter into
11 covenants not to compete as conditions of their severance. At no point did the
12 Westlake Village facility serve in form or substance as a pure research facility.

13 26. Upon information and belief, one or more of the decisions leading to the
14 closure of the Westlake Village offices of BAE Inertial and the destruction of its
15 engineering and design group may have been undertaken by persons who were either
16 officers or employees of BAE Systems, Inc., BAE Systems Controls, Inc., BAE Systems
17 Information and Electronic Systems Integration, Inc., or their respective subsidiaries,
18 operating groups, divisions, and lines of business. BAE Systems has consistently
19 refused to provide responsive documents relating to the identity of the decision makers
20 leading to closure of the Westlake Village facility and its engineering group and
21 documents produced in connection with the matter alternatively indicate that the
22 decision may have been undertaken by BAE Systems, Inc., BAE Systems Controls
23 Inc., BAE Systems Platform Solutions, a division of BAE Systems, Inc., BAE Systems
24 Electronics & Integrated Solutions, an operating group of BAE Systems, Inc., BAE
25 Systems North America, a former entity of BAE Systems, Inc., and/or BAE Systems
26 Information and Electronic Systems Integration, Inc.

27 27. After closing the Westlake Village facility, BAE Systems abandoned the
28 T-70 Contract, and to Gyrodata's knowledge, AIS, which appears to have assumed

1 BAE Systems' obligations under the T-70 Contract, is making no effort to continue the
2 research necessary to complete that contract. On information and belief, even if AIS
3 made the corporate decision to conduct the T-70 research, it lacks the necessary
4 personnel.

5 28. Meanwhile, delivery of the T-100 gyroscopes plummeted to a rate of two
6 to five gyroscopes per month—far less than the ten (10) per month required by the T-
7 100 purchase orders. Given the critical nature of the T-100 gyro to its business,
8 Gyrodata made several attempts to allow BAE Inertial to cure the failure resulting from
9 closing the Westlake Village facility, and requested permission from BAE Inertial to
10 repair and/or manufacture T-100s itself. BAE Inertial refused on both counts, telling
11 Gyrodata that (1) while was it not “economical” for BAE Inertial to repair the T-100s,
12 BAE Inertial would nonetheless like to submit a quotation to Gyrodata for the repair
13 work; (2) if BAE Inertial was “unable” or “elected not to” repair the T-100s, Gyrodata
14 would have to obtain a license from BAE Inertial to repair the T-100s itself; and
15 (3) Gyrodata would also have to obtain a license from BAE Inertial to manufacture T-
16 100s itself.

17 29. Gyrodata faced a Hobson's choice—either accept the trickle of T-100s it
18 could obtain from BAE Inertial or complain and potentially lose its lifeline supply of T-
19 100s altogether because BAE Inertial was the only company that manufactured these
20 gyroscopes to necessary specifications.

21 30. Gyrodata continued to try to get BAE Inertial to fulfill its obligations
22 throughout the fall of 2006 and spring of 2007, and BAE Inertial continued to respond
23 with just enough explanation to keep Gyrodata waiting on what Gyrodata later learned
24 were empty promises.

25 31. Gyrodata has given BAE Systems and AIS numerous opportunities to
26 fulfill their obligations under the T-70 and T-100 contracts. BAE Systems and AIS,
27 however, have offered only empty explanations for their continued failure to perform.
28

1 As of today, AIS remains in severe default on the production of T-100 gyroscopes and
2 BAE Systems and AIS remain in default of the development of the T-70 gyroscope.

3 32. AIS has not fulfilled the T-100 contracts, and it has become clear that
4 BAE Systems and AIS have no intention of fulfilling the T-70 Contract.

5 **COUNT ONE**

6 **Breach of the T-70 Development and Sale Contract**

7 **(Applicable to BAE Systems and AIS)**

8 33. Gyrodata incorporates by reference the allegations contained in
9 paragraphs 1 through 32 above.

10 34. Gyrodata had the ability to perform and has performed all conditions,
11 covenants, and promises required to be performed by it under the terms and conditions
12 of the T-70 Contract.

13 35. BAE Systems anticipatorily repudiated the T-70 Contract by terminating
14 the BAE California Team, which had responsibility for BAE Systems' performance
15 under that contract. By terminating the BAE California Team, BAE Systems precluded
16 itself (and its apparent successor to its obligations under the T-70 Contract, AIS) from
17 performing its obligations. Despite demand, AIS and BAE Systems have made no
18 adequate assurance of future performance and are making no effort whatsoever to
19 perform the T-70 Contract. Even if the termination of the BAE California Team alone
20 did not constitute an anticipatory repudiation, BAE Systems and AIS materially
21 breached the T-70 Contract by failing and refusing to perform it.

22 36. As a result of AIS and BAE Systems's breach of the T-70 Contract,
23 Gyrodata was compelled to retain counsel to enforce the T-70 Contract.

24 37. AIS and BAE Systems's breach of the T-70 Contract has caused
25 Gyrodata damages in an amount that exceeds the minimum jurisdictional limit of this
26 Court, including without limitation:
27
28

1 a. General and special damages for the direct and consequential
2 losses caused by the failure of BAE Systems and AIS to produce the T-70 gyroscope,
3 including without limitation:

4 i. General losses, including the money Gyrodata already has
5 paid to BAE Systems and AIS under the T-70 Contract;

6 ii. Further general losses, including the difference between the
7 price at which AIS and BAE Systems agreed to produce T-70 gyroscopes (\$9,000 to
8 \$9,500 per gyroscope) and the cost of procuring these from another supplier (estimated
9 at \$20,000 to \$25,000 per gyroscope), for each gyroscope AIS and BAE Systems was
10 obligated to produce, but did not produce, under the contract;

11 iii. Additional special damages consisting of the funds
12 Gyrodata will be required to pay another to develop the T-70 gyroscope in light of AIS
13 and BAE Systems's absolute failure to develop the T-70 gyroscope, a loss Gyrodata
14 estimates is at least \$2,500,000;

15 iv. Loss of net profit income resulting from the loss of GWD
16 jobs Gyrodata would have had if BAE Systems or AIS had delivered the T-70
17 gyroscope according to the extended time specifications in the T-70 Contract.
18 Gyrodata runs GWD jobs in a well established and extremely lucrative market within
19 wells having inclinations between zero and 20 degrees. Timely delivery of the
20 functioning T-70 would have permitted Gyrodata to run GWD jobs up to and including
21 90 degrees of inclination when no other competitor would have been able to do so. As
22 a result, its existing GWD business (and related profits), which had a well established
23 record of profitability, could easily have been increased three- to four-fold within the
24 pertinent period. Further, for wells drilled at 20 to 90 degrees of inclination, Gyrodata
25 would have been able to dominate the market and lawfully charge a significant
26 additional premium for such jobs;

27 v. In addition to lost profit for lost jobs, Gyrodata also lost
28 market share. Gyrodata has one principal competitor in the GWD business. Having an

1 "all inclinations" gyroscope would have permitted Gyrodata to convey to the market an
2 enormous advantage vis-à-vis its competitors and made it the GWD tool of choice. As
3 a result of the inability to implement a T-70 gyro-based system, Gyrodata lost a
4 substantial portion of market share gain, along with the attendant profit;

5 b. All compensable interest and costs of court; and

6 c. Attorneys' fees reasonably and necessarily arising from the
7 enforcement of rights under the T-70 Contract.

8 **COUNT TWO**

9 **Breach of the T-100 Production Contracts**

10 **(Applicable to AIS)**

11 38. Gyrodata incorporates by reference paragraphs 1 through 37 above.

12 39. Gyrodata had the ability to perform and has performed all conditions,
13 covenants, and promises required to be performed by it under the terms and conditions
14 of its contracts for production of the T-100 gyroscope.

15 40. AIS¹ committed itself to deliver T-100 gyroscopes under the written
16 purchase orders between the parties. During the largest and most dramatic expansion
17 in the worldwide energy industry, when wells were being drilled at unprecedented
18 levels, AIS failed to produce the T-100 gyroscopes it had committed itself to provide to
19 Gyrodata. As a result, in many cases, Gyrodata was unable to replace broken
20 gyroscopes and was also unable to expand its fleet, as needed, to meet increased
21 demand over the past several years. AIS is in active breach of several of the purchase
22 agreements for T-100 model gyroscopes, including the following:

23 a. Purchase Order 201520, dated May 18, 2004: AIS promised to
24 deliver fifty (50) T-100 gyroscopes at a rate of five (5) per month, and fifty (50) T-100
25 "heavy wheel" gyroscopes at a rate of five (5) per month (total of ten (10) gyroscopes

26 ¹ For convenience, the designation "AIS" is used with the understanding that although the T-100
27 contracts were made between Gyrodata and BAE Inertial, AIS is the successor in interest to BAE Inertial
28 for all breaches of the T-100 contracts occurring before August 2007, when J.F. Lehman & Co.
purchased BAE Inertial and renamed it AIS.

1 per month). AIS failed to deliver according to the terms of the P.O. in January, March,
2 August, September, and October 2005.

3 b. Purchase Order 61010, dated February 16, 2005: AIS promised to
4 deliver fifty (50) T-100 gyroscopes and fifty (50) T-100 "heavy wheel" gyroscopes at a
5 minimum rate of five (5) and a maximum rate of seven (7) of each type of gyroscope
6 (regular and heavy wheel) per month (total of ten (10) to fourteen (14) gyroscopes per
7 month). AIS failed to deliver according to the terms of the P.O. in September 2005,
8 December 2005, January 2006, February 2006, June 2006, and July 2006.

9 c. Purchase Order 61121, dated August 12, 2005: AIS promised to
10 deliver fifty (50) T-100 gyroscopes and fifty (50) T-100 "heavy wheel" gyroscopes at a
11 rate of approximately seven (7) of each type of gyroscope per month (total of fourteen
12 (14) per month). AIS failed to deliver according to the terms of the P.O. in June, July,
13 August, and December 2006 and January, February and March 2007.

14 d. Purchase Order 61420, dated June 27, 2006: AIS promised to
15 deliver fifty (50) T-100 gyroscopes and fifty (50) T-100 "heavy wheel" gyroscopes at a
16 rate of approximately seven (7) of each type of gyroscope per month (total of fourteen
17 (14) per month). AIS failed to deliver according to the terms of the P.O. in June, July,
18 August, and October 2007.

19 e. Purchase Order 61706, dated January 26, 2007: AIS promised to
20 deliver fifty (50) T-100 gyroscopes and fifty (50) T-100 "heavy wheel" gyroscopes at a
21 rate of seven (7) of each type of gyroscope per month (total of fourteen (14) per
22 month). AIS failed to deliver according to the terms of the P.O. in January and March
23 2008.

24 f. Purchase Order 61993, dated October 5, 2007: AIS promised to
25 deliver fifty (50) T-100 gyroscopes and fifty (50) T-100 "heavy wheel" gyroscopes at a
26 rate of seven (7) of each type of gyroscope per month (total of fourteen (14) per
27 month). AIS failed to deliver according to the terms of the P.O. in March, June, July,
28 August, September, and November 2008.

1 44. Defendants, through their managerial employees and officers, including
2 Carol Marinello ("Marinello"), made a series of representations to Gyrodata designed to
3 keep Gyrodata quiescent and to induce it to continue buying T-100 gyroscopes from
4 BAE Inertial without complaint. In particular, the BAE Defendants had determined,
5 perhaps even in advance of the existence of the T-70 Contract, but certainly before all
6 milestones of the T-70 Contract had been completed, to close the Westlake Village,
7 California facility and disband the BAE California Team assigned to implement BAE
8 Inertial's obligations under the T-70 Contract.

9 45. Given the unique nature of the research group working on the Gyrodata
10 T-70 project, the decision to close the Westlake Village facility and to terminate its
11 employees was fatal to the project and, therefore, was material. Not until months or
12 years later, however, did BAE Systems announce the closure of the Westlake Village
13 facility. Further, in correspondence in 2004 and at meetings occurring during 2005 and
14 2006, Marinello repeatedly represented, among other things, that (1) the Westlake
15 Village facility would not be closed until production of the T-100 was up and running in
16 Cheshire; (2) the Cheshire facility was more than adequate to meet T-100 production
17 needs; (3) the Westlake Village facility and its employees would be retained as a
18 research group for the T-70 project, even when other aspects of the facility would be
19 closed for the consolidation; and (4) the personnel at the Cheshire facility were more
20 than adequately prepared to complete the T-70 Contract and any other work Gyrodata
21 desired.

22 46. For example, in a letter dated April 22, 2004, Marinello specifically
23 addressed Gyrodata's concerns regarding the relocation of the T-100 facility to
24 Cheshire, Connecticut with the following assurances:

25 I would like to address your concerns regarding the transition of the production
26 of the T100 gyro product line to our Cheshire facility. I want you to know this
27 transition was in the planning stage for over a year in order to streamline the
28 process before it began physically materializing. Our goal was to cover all

1 aspects of the transition so it would not affect our customers in any way. We
2 have spent a great deal of time and effort working with Cheshire personnel to
3 make sure the quality of our products, the service to our customers, and our
4 delivery commitments will continue to be at the high level that you have learned
5 you can expect from our company. You might be pleased to learn that other
6 product lines have already been transferred to Cheshire with no interruption to
7 meeting program commitments.

8 To answer you questions specifically,

- 9 1. Transitioning our production facility has already begun. The
10 planning specific to the T-100 line is being solidified. The overall
11 move started in February and should be finished by November
12 2004.
- 13 2. Your delivery schedule will not be affected in any way other than
14 [sic] a change in the address from which we ship.
- 15 3. We currently plan to set up parallel manufacturing lines with
16 Cheshire, monitoring their output closely. We will gradually
17 transfer responsibility as the many steps within the build and test
18 process are accomplished and verified at Cheshire. We plan to
19 validate all test data in the early stages of the transfer by
20 duplicating testing at both facilities until we have confidence that
21 we have correctly duplicated the process. We have weekly
22 meetings to ensure we are proceeding to plan.
- 23 4. We plan to build up an inventory of T100's at Westlake to cover for
24 any start up issues or delays even though we do not believe this
25 will be a problem.
- 26 5. The need to license your facility to repair the T100's is not being
27 considered at this time, however I thank you for your offer and will
28

1 certainly keep it in mind if future needs dictate a change in
2 direction.

3 6. Program management and engineering authority will remain in
4 Westlake Village, so you will be dealing with the same people as
5 you have in the past.

6 47. These representations were false at the time they were made. Contrary
7 to Marinello's representations, the T-100 delivery schedule suffered significantly, with
8 BAE Inertial falling behind on as many as 42 gyros under a given purchase order. On
9 information and belief, BAE Inertial never built a back-up inventory of T-100s in
10 Westlake Village, which meant Gyrodata suffered as a result of every start-up issue
11 that abounded at the Cheshire facility. Moreover, contrary to Marinello's
12 representation, program management and engineering authority did not remain in
13 Westlake because BAE Systems closed down the Westlake facility and terminated its
14 employees.

15 48. In addition, the BAE Defendants made misrepresentations regarding the
16 T-70 gyroscope. Gyrodata met with representatives of one or more of the BAE
17 Defendants on or about the following dates and at the following locations:

- 18 a. February 12, 2003, at BAE Systems Westlake Village facility;
- 19 b. October 10, 2003, at BAE Systems Westlake Village facility;
- 20 c. May 14, 2004, at BAE Systems Westlake Village facility;
- 21 d. August 23, 2005, at BAE Systems Westlake Village facility;
- 22 e. October 21 and 22, 2005, at Gyrodata in Houston;
- 23 f. February 23, 2006, at BAE Systems in Cheshire; Connecticut;
- 24 g. June 21, 2006, at BAE Systems in Cheshire, Connecticut;
- 25 h. May 23, 2007, at Gyrodata Westlake Village facility.

26 49. At the 2005 meetings, the BAE Defendants told Gyrodata's principals that
27 by early 2006, BAE Inertial would present Gyrodata with proof-of-concept models of T-

1 100s with "brazed" flexures² to show how brazed flexures would work for the T-70
2 prototypes.

3 50. At these meetings and in separate telephone calls, Marinello also told
4 Gyrodata that although BAE Systems was opening the Cheshire facility, the Westlake
5 Village facility would remain open as a "research" facility for the T-70 and other
6 projects, and the transition to Cheshire would be seamless. Marinello assured
7 Gyrodata that only "lower end" units were going to Cheshire, while "higher end" units
8 (such as the T-70) would stay in California where BAE Inertial employees would
9 continue with research and development.

10 51. These representations were false at the time they were made. Gyrodata
11 paid for the two proof-of-concept brazed flexure T-100s that Marinello and the BAE
12 Defendants promised, but BAE Inertial never delivered (and on information and belief
13 may never have developed) these gyroscopes. Not until late 2007, after BAE Inertial
14 became AIS, did AIS come to Gyrodata with a proof-of-concept T-100, but it had a
15 different kind of flexure altogether, not a brazed flexure. With respect to Marinello's
16 representations regarding the Westlake Village facility, those also were false. By the
17 end of November 2005, BAE Systems announced the layoff of the final group of people
18 associated with the T-70 and T-100 projects.

19 52. BAE Systems acknowledged its failures in presentations it gave to
20 Gyrodata's principals throughout 2006 and 2007. At every meeting, however, the BAE
21 Defendants told Gyrodata that the BAE Defendants were remedying the problems in T-
22 100 production and T-70 development. Specifically, Marinello told Gyrodata that:

23 a. BAE Systems and/or BAE Inertial would manufacture T-100
24 gyroscopes at a rate of a minimum of ten (10) units per month and a maximum of
25 fourteen (14) units per month by January 2006.

26 ² A "flexure" is a hinge-like component that connects and permits relative motion between the
27 gyroscope's rotor and rotor spin shaft. A "brazed" flexure is joined to the gyroscopes' components by
28 "brazing," a process in which an alloy is heated to melting temperature and distributed between two or
more close-fitting parts by capillary action.

1 57. Valid contracts existed between Gyrodata and AIS for Gyrodata to
2 purchase T-100 gyroscopes. The BAE Defendants knew of these contracts.
3 Notwithstanding their knowledge of these valid and enforceable contracts, the BAE
4 Defendants intentionally induced AIS to breach these contracts, tortiously interfering in
5 the contractual relationship between Gyrodata and AIS. As a result of the BAE
6 Defendants' intentional interference, AIS breached the T-100 contracts with Gyrodata.

7 58. Gyrodata was compelled to retain counsel to seek redress for the BAE
8 Defendants' interference with the T-100 contracts. The BAE Defendants' tortious
9 interference with the T-100 contracts between Gyrodata and AIS resulted in monetary
10 damages to Gyrodata, including without limitation all losses described in paragraph 42
11 and its subparts.

12 **COUNT FIVE**

13 **Tortious Interference with the T-70 Contract**

14 **(Applicable to the BAE Defendants)**

15 59. Gyrodata incorporates by reference the allegations of paragraphs 1
16 through 58, above, and pleads the following in the alternative.

17 60. A valid contract existed between Gyrodata and BAE Inertial, now known
18 as AIS, for production and delivery of the T-70 gyroscope. The BAE Defendants knew
19 of this contract. Notwithstanding their knowledge of this valid and enforceable contract,
20 the BAE Defendants intentionally induced BAE Inertial n.k.a. AIS to breach the
21 contract, tortiously interfering with the T-70 Contract. As a result of the BAE
22 Defendants' intentional interference, AIS breached the T-70 Contract with Gyrodata.

23 61. Gyrodata was compelled to retain counsel to seek redress for the BAE
24 Defendants' interference with the T-70 Contract. BAE Systems's tortious interference
25 with the T-70 Contract between Gyrodata and AIS resulted in monetary damages to
26 Gyrodata, including without limitation all losses described in paragraph 37 and its
27 subparts.

1 PRAYER FOR RELIEF

2 For the above reasons, Plaintiff Gyrodata prays for judgment against Defendants
3 AIS, BAE Systems, BAE Systems Controls, BAE Systems I&ESI, and Does 1-10 and
4 for the relief set forth below, and for such other relief the Court deems proper:

5 1. Gyrodata requests the following relief from AIS and BAE Systems with
6 regard to **Count I for Breach of the T-70 Contract**:

7 a. Specific performance of the T-70 Contract—namely the delivery of
8 three prototype gyroscopes of the configuration and meeting the specifications set forth
9 in the T-70 Contract, and the subsequent production of 1,000 units of the developed
10 prototype at a price of between \$9,000 and \$9,500 per unit delivered;

11 b. Alternatively and collectively, general and special damages for the
12 direct and consequential losses caused by the failure of BAE Systems and AIS to
13 produce the T-70 gyroscope, including without limitation:

14 i. General losses, including the money Gyrodata already has
15 paid to BAE Systems and AIS under the T-70 Contract;

16 ii. Further general losses, including the difference between the
17 price at which AIS and BAE Systems agreed to produce T-70 gyroscopes (\$9,000 to
18 \$9,500 per gyroscope) and the cost of procuring these from another supplier (estimated
19 at \$20,000 to \$25,000 per gyroscope), for each gyroscope AIS and BAE Systems was
20 obligated to produce, but did not produce, under the contract;

21 iii. Additional special damages of at least \$2,500,000,
22 consisting of the funds Gyrodata will be required to pay another to develop the T-70
23 gyroscope in light of AIS and BAE Systems's absolute failure to develop the T-70
24 gyroscope;

25 iv. Loss of net profit income resulting from the loss of GWD
26 jobs Gyrodata would have had if BAE Systems or AIS had delivered the T-70
27 gyroscope according to the extended time specifications in the T-70 Contract;

1 v. Loss of net profit resulting from Gyrodata's loss of market
2 share due to BAE Systems/AIS not having delivered the functioning T-70 gyroscope
3 timely;

4 c. All compensable interest and costs of court; and

5 d. Attorneys' fees reasonably and necessarily arising from the
6 enforcement of rights under the T-70 Contract, to the extent such fees are authorized
7 by law.

8 2. Gyrodata requests the following relief from AIS with regard to **Count II for**
9 **Breach of the T-100 Contracts:**

10 a. General and special damages for the direct and consequential
11 losses caused by the failure of AIS to provide T-100 gyroscopes, or to provide T-100
12 gyroscopes on a timely basis, including without limitation:

13 i. The cost Gyrodata has incurred in having to repair broken
14 T-100 gyroscopes rather than replace them with new T-100 gyroscopes from AIS, due
15 to AIS's failure to deliver T-100 gyroscopes, including the cost of setting up a repair
16 facility with the appropriate equipment, personnel, and space to accomplish repairs to
17 specifications;

18 ii. Lost net profit income resulting from jobs Gyrodata lost as a
19 result of AIS not timely delivering T-100s at a rate of 10 to 14 per month;

20 b. All compensable interest and costs of court; and

21 c. Attorneys' fees reasonably and necessarily related to the
22 enforcement of the agreements to provide T-100 gyroscopes, to the extent such fees
23 are authorized by law.

24 3. Gyrodata requests the following relief from BAE Systems, BAE Systems
25 Controls, BAE Systems I&ESI, and Does 1-10, with regard to **Count III for Fraud:**

26 a. General and special damages for the direct and consequential
27 losses caused by BAE Systems's, BAE Systems Controls's and Does 1-10's
28

1 misrepresentations, including without limitation all losses described in paragraphs 37
2 and 42 and their subparts;

3 b. Punitive damages in an amount awarded by the jury and sufficient
4 to deter similar conduct by BAE Systems, BAE Systems Controls, and Does 1-10 in the
5 future; and

6 c. All compensable interest and costs of court.

7 4. Gyrodata requests the following relief in the alternative from BAE
8 Systems, BAE Systems Controls, BAE Systems I&ESI, and Does 1-10 with regard to

9 **Count IV for Tortious Interference with the T-100 Contracts:**

10 a. All relief requested with regard to Count II for breach of the T-100
11 contracts;

12 b. Punitive damages in an amount awarded by the jury and sufficient
13 to deter similar conduct by BAE Systems, BAE Systems Controls, BAE Systems I&ESI,
14 and Does 1-10 in the future;

15 c. All compensable interest and costs of court; and

16 d. Attorneys' fees, to the extent such fees are authorized by law.

17 5. Gyrodata requests the following relief in the alternative from BAE
18 Systems, BAE Systems Controls, BAE Systems I&ESI, and Does 1-10 with regard to

19 **Count V for Tortious Interference with the T-70 Contract:**

20 a. All relief requested with regard to Count I for breach of the T-70
21 Contract;

22 b. Punitive damages in an amount awarded by the jury and sufficient
23 to deter similar conduct by BAE Systems, BAE Systems Controls, BAE Systems I&ESI,
24 and Does 1-10 in the future;


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- c. All compensable interest and costs of court; and
- d. Attorneys' fees to the extent such fees are authorized by law.

Dated: October 13, 2009.

THE LAW OFFICES OF TOM FULKERSON

Thomas M. Fulkerson
Tammy J. Terry

By: 
Thomas M. Fulkerson

ATTORNEYS FOR PLAINTIFF,
GYRODATA INCORPORATED

JURY DEMAND

Plaintiff demanded a trial by jury of all issues so triable in its original complaint filed December 1, 2008.

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