

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

SIPCO, LLC,

Plaintiff,

v.

ABB INC.,

Defendant.

C.A. No. 19-1365-MN

**DEFENDANT'S REPLY BRIEF IN SUPPORT OF ITS  
MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM**

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## TABLE OF CONTENTS

ARGUMENT.....	1
I. Direct Infringement.....	1
A. SIPCO Inaccurately Characterizes ABB’s Argument .....	1
B. SIPCO Fails to State a Clear and Consistent Claim of Direct Infringement .....	1
C. <i>Disc Disease</i> is Distinguishable from the Current Case .....	3
II. Indirect Infringement .....	4
A. Counts I-V.....	4
B. Count VI.....	4
III. Doctrine of Equivalents .....	5
IV. Willfulness .....	6
CONCLUSION.....	6

TABLE OF AUTHORITIES

	Page(s)
<b>Cases</b>	
<i>ABB Turbo Sys. AG v. Turbousa, Inc.</i> , 774 F.3d 979 (Fed. Cir. 2014).....	6
<i>Ashcroft v. Iqbal</i> , 556 U.S. 662 (2009).....	1
<i>Bell Atlantic Corp. v. Twombly</i> , 550 U.S. 544 (2007).....	1, 2, 6
<i>Chapterhouse, LLC v. Shopify, Inc.</i> , 2018 WL 6981828 (E.D. Tex. Dec. 11, 2018).....	3
<i>Disc Disease Sols. Inc. v. VGH Sols., Inc.</i> 888 F.3d 1256 (Fed. Cir. 2018).....	3, 6
<i>Genedics, LLC v. Meta Co.</i> , 2018 WL 3991474 (D. Del. Aug. 21, 2018).....	3, 4
<i>Horatio Washington Depot Techs. LLC v. TOLMAR</i> 2018 WL 5669168 (D. Del. 2018).....	1, 3
<i>Nalco Co. v. Chem-Mod, LLC</i> , 883 F.3d 1337 (Fed. Cir. 2018).....	5, 6

In its brief opposing the motion to dismiss, SIPCO does not provide any further explanation or definition as to what an accused WirelessHART system is; does not provide an explanation for how each device identified in the complaint infringes every asserted patent; and does not even provide an explanation of what are and are not individual infringing devices. The reason for that failure is that the Complaint simply does not include any such definition. As such, SIPCO has failed to provide ABB fair notice of the allegations against it as required by *Twombly* and *Iqbal*. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007); *Ashcroft v. Iqbal*, 556 U.S. 662 (2009).

## ARGUMENT

### I. Direct Infringement

#### A. SIPCO Inaccurately Characterizes ABB's Argument

ABB noted the requirement that a plaintiff provide a defendant with an explanation of how each claim limitation of at least one claim is met. (D.I. 11, at pp. 2-3) SIPCO either misread or misinterpreted this argument to be asserting that a plaintiff is required to explain how each claim of a patent is infringed, devoting nearly two full pages to rebut an argument that ABB did not make. (D.I. 12, at pp. 3-5) A plaintiff must give notice to the defendant of how each limitation of at least one claim from each asserted patent is met, not just some limitations. *See Horatio Washington Depot Techs. LLC v. TOLMAR, Inc.*, 2018 WL 5669168, at \*11 (D. Del. 2018). SIPCO failed to do so, as discussed in ABB's opening brief.

#### B. SIPCO Fails to State a Clear and Consistent Claim of Direct Infringement

SIPCO's opposition provides no answers to the question at hand: what are the accused devices? For example, SIPCO does not provide any explanation of what an ABB WirelessHART system is that allegedly infringes the claims of the asserted patents. SIPCO merely repeats its strategy of pasting images from various ABB product manuals and marketing

materials that describe a variety of ABB products. This random compilation of materials fails to provide any explanation of what a WirelessHART system is or how the claims read on any ABB product or system. ABB is entitled to know what it is accused of doing, and broad assertions that certain “systems” infringe SIPCO’s patents without any explanation of what those systems are or how they infringe does not satisfy the burden SIPCO has under *Twombly* and *Iqbal*.

SIPCO argues that “[t]here is no reason to specify other non-essential components that may be part of” a WirelessHART system. (D.I. 12 at 10) If SIPCO has an idea of what the essential and non-essential components of a WirelessHART system are, it should identify them clearly and directly. Instead, SIPCO pastes multiple images of different components, both in the Complaint and exhibits, without any explanation, then includes claim charts with barely a passing reference to any system.

SIPCO insists that it has identified individual components that allegedly infringe its patents as well as provided an explanation as to how those individual components infringe. But SIPCO’s definitions of what individual components infringe are vague, inconsistent, and without any support or explanation for most of those components. The Complaint defines “Accused Instrumentalities” to include individual components, both those specifically defined in the complaint as well as “supporting components.” (D.I. 9, ¶ 19) Neither the Complaint nor any of the corresponding exhibits provide any explanation of what a “supporting component” is or how it could infringe any claim.

The exhibits provide an additional, inconsistent picture of what products are accused of infringement. In Exhibit B, for example, SIPCO states that “Accused Products” or “Devices” include the “following products, individually” and/or as part of a system. (*Id.*, at Ex. B (emphasis added)) The components listed in the exhibit, include, e.g., a “Control Room” or “AC

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