

# EXHIBIT E

## Don Jackson

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**From:** Jim Hall <JHall@nutter.com>  
**Sent:** Friday, June 24, 2016 5:23 PM  
**To:** Jay Berquist  
**Cc:** Alan A. Wright; Tim Reppucci; Nancy L. W. Manning; Melissa Smith; Don Jackson; Paul Cronin; 'claire@wsfirm.com'  
**Subject:** RE: SIPCO / Emerson: Verification of Recent Email

Jay,

The burden of proving prejudice does not lie with SIPCO. Rather, the burden of proving lack of prejudice lies with Emerson, as does the burden of proving diligence. At any rate, "no experienced practitioner would argue that the sudden introduction of a new prior art reference is not prejudicial." *Allure Energy, Inc. v. Nest Labs, Inc.*, 84 F. Supp. 3d 538, 541-42 (E.D. Tex. 2015).

In addition, your response indicates a lack of diligence. For example, you seem to indicate that the relevance of two of the new references to the claims in Texas was not appreciated until after the deadline. However, in its motion to dismiss or transfer, Emerson argued that the claims in Texas are not meaningfully distinct from those in Georgia. If Emerson believed its argument to the Court was true, it should have appreciated the relevance of those references to the claims in Texas well prior to the deadline.

Accordingly, SIPCO objects to the supplemental invalidity contentions, and will oppose any motion for leave to serve same.

Regards,

**Jim Hall**  
Nutter McClennen & Fish LLP  
Direct / 617-439-2295

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**From:** Jay Berquist [mailto:jberquist@davidsonberquist.com]  
**Sent:** Wednesday, June 22, 2016 3:57 PM  
**To:** James Hall <JHall@nutter.com>  
**Cc:** Alan A. Wright <awright@davidsonberquist.com>; Tim Reppucci <TReppucci@nutter.com>; Nancy Manning <NManning@nutter.com>; Melissa Smith <melissa@gillamsmithlaw.com>; Don Jackson <djackson@davidsonberquist.com>; Paul Cronin <PCronin@nutter.com>; 'claire@wsfirm.com' <claire@wsfirm.com>  
**Subject:** RE: SIPCO / Emerson: Verification of Recent Email

Jim,

The manner of service used was new to me as well, but nothing suspicious or wrong. Given their size, the files were sent by a file share program. File share programs have been used in this case previously, this just happened to be a new file share program used by our local counsel.

Two of the references charted were previously disclosed in the Georgia litigation. The failure to provide charts for one of those references in this action, Mills RFC 981, was inadvertent. The existence of the Machenbaum (Volcano) reference was discovered after we had served the initial invalidity contentions, as was the relevance of the other two references to the patent claims at issue in Texas (Jednascz '644 and Humblet). In light of the tone of your letter, could you explain how the timing of these additional disclosures prejudices plaintiffs?

Thanks,

Jay

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**From:** James Hall [<mailto:JHall@nutter.com>]  
**Sent:** Tuesday, June 21, 2016 5:23 PM  
**To:** Jay Berquist  
**Cc:** Alan A. Wright; Tim Reppucci; Nancy Manning; Melissa Smith; Don Jackson; Paul Cronin; 'claire@wsfirm.com'  
**Subject:** RE: SIPCO / Emerson: Verification of Recent Email

Jay,

We were surprised by the way this was served on us without notice. As Paul indicated below, it raised suspicion.

Can you tell us the reason why you were unable to serve them properly by the Court-ordered deadline?

Thanks,

**James Hall**  
**Nutter**  
Direct / 617-439-2295

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**From:** Jay Berquist [<mailto:jberquist@davidsonberquist.com>]  
**Sent:** Tuesday, June 14, 2016 2:52 PM  
**To:** Paul Cronin <[PCronin@nutter.com](mailto:PCronin@nutter.com)>  
**Cc:** Alan A. Wright <[awright@davidsonberquist.com](mailto:awright@davidsonberquist.com)>; James Hall <[JHall@nutter.com](mailto:JHall@nutter.com)>; Tim Reppucci <[TReppucci@nutter.com](mailto:TReppucci@nutter.com)>; Nancy Manning <[NManning@nutter.com](mailto:NManning@nutter.com)>; Melissa Smith <[melissa@gillamsmithlaw.com](mailto:melissa@gillamsmithlaw.com)>; Don Jackson <[djackson@davidsonberquist.com](mailto:djackson@davidsonberquist.com)>  
**Subject:** RE: SIPCO / Emerson: Verification of Recent Email

Hi Paul,

That information did come from our local counsel. It contains a supplementation of the defendants' supplemental invalidity contentions in the Texas action. Please advise if plaintiffs object to these supplemental contentions. This supplement includes claim charts for 4 references not included in the invalidity contentions defendants served earlier, at least one of which was charted in the Georgia action.

Thanks,

Jay

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**From:** Paul Cronin [<mailto:PCronin@nutter.com>]  
**Sent:** Tuesday, June 14, 2016 12:28 PM  
**To:** Don Jackson  
**Cc:** Jay Berquist; Alan A. Wright; James Hall; Tim Reppucci; Nancy Manning  
**Subject:** SIPCO / Emerson: Verification of Recent Email

Hello Don.

I am writing about an email I received yesterday and I am trying to determine if it is legitimate or should be treated as suspicious and discarded. Did you (or anyone on your team) cause an email to be sent to me through an outfit known as Hightail with a link to 7 files containing "Supplemental Invalidity Contentions"? I did not receive anything from your

team relating to this email and our IT department is a bit suspicious of its origin. As a result we have not accessed the files. Please let us know if this is legitimate and originates from your team. Thank you in advance for your assistance.

-PJC



**Paul Cronin**

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