IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

SIPCO, LLC, and IP CO, LLC (d/b/a INTUS IQ),	)	
	)	
Plaintiffs,	)	
v.	)	
EMERSON ELECTRIC CO., EMERSON PROCESS MANAGEMENT LLLP, FISHER ROSEMOUNT SYSTEMS, INC., ROSEMOUNT INC., BP, p.l.c., BP AMERICA, INC., and BP AMERICA PRODUCTION COMPANY,	)	Civil Action No. 1:16-cv-02690-AT
	)	
Defendants.	)	

PLAINTIFFS' MEMORANDUM IN SUPPORT OF THEIR MOTION TO DISMISS AND STRIKE COUNTERCLAIMS AND AFFIRMATIVE DEFENSES OF INEQUITABLE CONDUCT

Plaintiffs, SIPCO, LLC ("SIPCO") and IP CO, LLC (d/b/a INTUS IQ) ("IP CO") (collectively, "SIPCO") respectfully move to dismiss and strike the counterclaims and affirmative defenses of inequitable conduct asserted by Defendants Emerson Electric Co., Emerson Process Management LLLP, and Fisher- Rosemount Systems, Inc. (collectively, "Emerson") pursuant to Fed. R. Civ. P. 12(b)(6), 12(f) and 9(b). The charge of inequitable conduct in almost every patent infringement case is an absolute plague on the courts and entire patent system, and Emerson's so-called inequitable conduct allegations are no different. Indeed, they

impugn the veracity and reputation of a prolific and pioneering inventor—T. David Petite[1]—and indict the professionalism and ethics of numerous patent prosecution attorneys and litigation counsel—officers of the court—representing SIPCO and IP CO throughout the years. The Federal Circuit's decisions in *Therasense, Inc. v. Becton, Dickinson & Co.*, 649 F.3d 1276, 1289 (Fed. Cir. 2011) (*en banc*) and *Exergen Corp. v. Wal-Mart Stores, Inc.*, 575 F.3d 1312, 1326-27 (Fed. Cir. 2009) stand as a bulwark against Emerson's verbose and scandalous allegations. Simply put, the twisted tales that Emerson's inequitable conduct allegations attempt to weave do not meet the strict pleading standards set forth *Exergen* and *Therasense*.

[1] In addition to his work developing wireless mesh technology, T. David Petite has dedicated his time to furthering inventorship and the development of new technologies. Petite, a registered member of the Fond Du Lac Chippewa tribe and the son of a former Chief of the Red Cliff Chippewa tribe in Wisconsin, is a founder of the Native American Intellectual Property Enterprise Council, which is an organization that provides patenting, copyright, and trademark assistance to help foster invention and innovation in the Native American community. Mr. Petite has volunteered his time with the United States Patent and Trademark Office ("PTO") working on projects directed toward developing Native American intellectual property and as a speaker at patent-examiner training; he has also volunteered for a number of organizations geared toward developing and protecting entrepreneurship and innovation. A native of Atlanta, Petite was recognized by the Georgia State Senate for his innovations in wireless technology, job creation, and an "incredible career" in engineering and invention. He also was invited to and attended President Barack Obama's signing of the America Invents Act and has been recognized as an influential inventor by the PTO—even having been added to the PTO's 2014 Inventor Collectible Card Series.

For these and other reasons set forth more fully below, SIPCO respectfully requests the Court to grant this motion.

I. PROCEDURAL BACKGROUND

SIPCO commenced this action in the Eastern District of Texas on October 16, 2015, alleging Emerson's infringement of U.S. Patent Nos. 7,697,492 ("the '492 patent"), 6,437,692 ("the '692 patent"), 6,914,893 ("the '893 patent"), 6,249,516 ("the '516 patent"), 7,468,661 ("the '661 patent"), 8,000,314 ("the '314 patent"), 8,233,471 ("the '471 patent"), 8,625,496 ("the '496 patent"), 8,754,780 ("the '780 patent") and 8,908,842 ("the '842 patent") (hereinafter, the "Texas Action"). (TX Dkt. No. 1).[2] Emerson filed an Answer to the Complaint on December 10, 2015 (TX Dkt. No. 11). SIPCO filed an Amended Complaint on December 30, 2015, alleging, *inter alia*, infringement of an additional patent, U.S. Patent No. 8,013,732 ("the '732 patent") and adding BP America, Inc., BP America Production Company and BP p.l.c. as defendants (collectively, the "BP Defendants"). (TX Dkt. No. 19.) Emerson

[2] U.S. Patent No. 6,044,062 ("the '062 Patent"), although mentioned in Emerson's Eleventh Affirmative Defense and Count I of its Counterclaims, is not at issue in the Texas Action. The same is true with respect to U.S. Patent No. 7,103,511 ("the '511 Patent"): although it is identified in Emerson's Twelfth Affirmative Defense, it is not at issue in the Texas Action. SIPCO moves to dismiss any and all affirmative defenses and counterclaims associated with the '062 and '511 patents as set forth in Section III.C., *infra*.

filed an Answer to the Amended Complaint on January 20, 2016 (TX Dkt. No. 30), and BP America, Inc. and BP America Production Company filed answers on February 29, 2016.[3] (TX Dkt. Nos. 49 and 52.)

SIPCO filed a Second Amended Complaint on July 14, 2016, alleging BP's willful infringement. (TX Dkt. No. 105). That same day, Emerson filed an Amended Answer, Affirmative Defenses and Counterclaims, alleging, *inter alia*, the inequitable conduct affirmative defenses and counterclaims that are the subject of this motion. (TX Dkt. No. 106).

Emerson's inequitable conduct allegations are directed towards the IP CO patents (hereinafter referred to as the "Brownrigg Patents") and SIPCO patents (hereinafter referred to as the "Petite Patents") that are asserted in the Texas Action.[4] More particularly, Emerson's Eleventh Affirmative Defense, which purports to allege inequitable conduct in association with the Brownrigg Patents, is set forth in

[3] BP p.l.c. did not file an answer. It moved to dismiss the Amended Complaint. (TX Dkt. No. 87). Briefing on BP p.l.c.'s motion to dismiss is not complete.

[4] Further to note 1, *supra*, Emerson's affirmative defenses and/or counterclaims alleging inequitable conduct mention the '062 and '511 Patents, which are not asserted in the Texas Action. Instead, they are asserted in the Declaratory Judgment Action that Emerson filed in this Court on January 15, 2015, Civ. A. No. 1:15-cv-00319-AT (hereinafter referred to as the "Georgia Action") (GA Dkt. No. 1). For the reasons set forth in Section III.C., *infra*, all affirmative defenses and counterclaims related to the '062 and '511 Patents should be dismissed.

paragraphs 312 to 375 of Emerson's Amended Answer and Emerson's counterclaim is set forth in paragraphs 10 to 12 of Count I. (TX Dkt. No. 106). Emerson's Twelfth Affirmative Defense, which purports to allege inequitable conduct in connection with the Petite Patents, is set forth in paragraphs 377 to 424 of Emerson's Amended Answer and Emerson's counterclaim is set forth in paragraphs 13 and 14 of Count II. (*Id*.)

II. LEGAL STANDARDS

A. Motion to Dismiss

Under Fed. R. Civ. P. 12(b)(6), a pleading may be dismissed for failure to state a claim upon which relief may be granted if it fails to set forth "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic v. Twombly*, 550 U.S. 544, 570 (2007)). A claim is plausible on its face if it pleads facts sufficient to "allow[] the court to draw the reasonable inference that the [party] is liable for the misconduct alleged." *Id.*

In considering a motion to dismiss under Fed. R. Civ. P. 12(b)(6), a court construes the pleading in the non-movant's favor and accepts the well-pleaded factual allegations therein as true. *Williams v. Fulton County School District*, No. 1:14-CV-0296-AT, 2016 WL 3055898, at *3 (N.D. Ga. Mar. 31, 2016) (*citing Duke*

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