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

EMERSON ELECTRIC CO., FISHER-ROSEMOUNT SYSTEMS, INC., and ROSEMOUNT INC., Plaintiffs, v. SIPCO LLC, and IP CO., LLC (d/b/a INTUS IQ) Defendants.	Civil Action No. 1:15-cv-00319-AT
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, Defendants.	Civil Action No. 1:16-cv-020690-AT

EMERSON/BP JOINT OPPOSITION TO MOTION TO TRANSFER

The Emerson and BP parties jointly oppose the motion filed by SIPCO/IPCO seeking to re-transfer the second-filed action back to the Eastern District of Texas,

pulling the first-filed action Emerson initiated here along with it. Contrary to SIPCO/IPCO's representations to this Court, this action has strong ties to the state of Georgia, and more particularly the Atlanta area. Moreover, neither the alleged witness convenience nor the Texas court's alleged prior knowledge of the patents favor transfer, and SIPCO/IPCO's motion simply comes too late. Accordingly, the requested transfer should be denied.

A. SIPCO/IPCO Have Strong Ties To The Northern District of Georgia

Both SIPCO and IPCO are Georgia corporations with offices in Atlanta. The connections between these actions and this District do not stop there. Indeed, neither company is known to have offices outside this District and no claim of such office in Texas, or elsewhere, has even been made.

Mr. David Petite, a named inventor on all of the patents asserted by SIPCO and SIPCO/IPCO's Chairman (formerly President and Chief Executive Officer), Mrs. Candida Petite, SIPCO/IPCO's Chief Operating Officer, and Mr. Joel Goldman, SIPCO/IPCO's former in-house counsel (and person with interest in the outcome of this litigation), all live and work in the Atlanta area.[1] The same is true

[1] The IPCO/SIPCO 7.1 Disclosure identifies Mr. and Mrs. Petite, GE Intellectual Property Licensing, Inc./GE, Tagivan II LLC and Mr. Goldman as persons or corporations with interest in the outcome of these litigations. [319 action - Doc. 8]. Although SIPCO/IPCO again depicts this case as one involving large international corporations against a small, local businessman, SIPCO/IPCO's corporate

of patent attorneys at the Atlanta office of the Troutman Sanders law firm who prosecuted many of the patents asserted in these actions and who, along with Mr. Goldman, are alleged to have acted inequitably in representing SIPCO/IPCO before the United States Patent and Trademark Office ("USPTO"). [Doc. 106 in the 690 transferred action]. Each of these individuals is expected to be a witness at trial, and yet, other than Mr. Petite, SIPCO/IPCO's motion makes no mention of *any* of these people. Further, SIPCO/IPCO fails to address the fact that Robert Colao, Ghaith Matalkah, Adam Crall, Ryan Schneider and Christopher Kent, all identified in their Rule 26(a)(1) Initial Disclosures as persons with relevant knowledge, also live and work in the Atlanta area.

The present motion presents the surreal situation in which two Atlanta-based corporations assert that an action filed by them and an action filed against them have "no connection" to Georgia and seek to transfer those actions out of their "home" court. [Memorandum in Support of Motion to Transfer, p. 2]. This is not the first time SIPCO and IPCO have asked this Court to transfer a case involving these same patents. SIPCO and IPCO have both individually asked this Court to transfer earlier actions involving these patents to the Eastern District of Texas. That request was

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disclosure statements make clear that they are being supported by both an entity that finances patent assertions, and General Electric, one of the largest corporations in the world.

rejected in both cases. *See* Exhs. B and C, attached to Toohey Declaration, Exhibit A. Indeed, in both, transfer was denied, in part, on the basis that SIPCO and IPCO are both Georgia corporations with a main office and employees in Atlanta. *See, e.g.* Exh. B, p. 6; *see also* Exh. C, *SIPCO, LLC v. Control4 Corp.*, 2012 WL 526074 (N.D. Georgia, Feb. 16, 2012) at *2. Those facts have not changed.

Given SIPCO/IPCO's status as Atlanta-based, Georgia corporations, controlling case authority required Emerson to file its Declaratory Judgment action either in this District or in a district in which SIPCO/IPCO had enforced the patent being challenged. *Avocent Huntsville Corp. v. Aten Int'l Co.,* 553 F.3d 1324, 334 (Fed. Cir. 2008). Prior to filing its Declaratory Judgment action here, Emerson was aware that SIPCO and IPCO had both asserted one or more of their patents in district courts throughout the country, including this District, the Northern District of California, the Eastern District of Pennsylvania and the Eastern District of Texas. Emerson, however, was under no obligation to evaluate which of SIPCO/IPCO's many patents had been asserted in each of those districts, or to decide between those districts, when it was clear that jurisdiction and venue against both SIPCO and IPCO was proper here as to all of SIPCO/IPCO's patents. Truth be told, Emerson preferred to file its declaratory judgment action in one of its own home courts, either

in St. Louis or Minneapolis, but filed in SIPCO/IPCO's home court because venue was plainly proper here.

B. Plaintiff's Choice of Forum Should Not Be Lightly Disturbed

Emerson filed its declaratory judgment action in this District on January 30, 2015. That action is undeniably the first-filed action and weight should be given to that forum selection. Where, as here, a second, substantially overlapping action is filed, the first-filed court typically will hear the matter and is empowered to enjoin the second-filed action. *Manual v. Convergys Corp.*, 430 F.3d 1132, 1135 (11th Cir. 2005); *Collegiate Licensing C. v. American Cas. Co. of Reading, Pa.*, 713 F.3d 71, 78 (11th Cir. 2013). It is well established that "the plaintiff's choice of forum should not be disturbed unless it is clearly outweighed by other considerations." *Van Howell v. Tanner*, 650 F.2d 619, 616 (5th Cir. 1981). The party (or parties) seeking transfer bear the burden of establishing that the Section 1404(a) factors weigh in favor of transfer. *Spanx, Inc. v. Time Three Clothiers, LLC*, No. 13-cv-710-WSD, 2013 WL 5636684 at *1 (N. D. Ga. Oct. 15, 2013). Absent a showing of a unique or unexpected burden, a company should not be successful in arguing that litigation in its home court is inconvenient. *Wesley-Jessen Corp. v. Pilkington Visioncare, Inc.*, 157 F.R.D. 215, 218 (D. Del. 1993), *but see, In re Link_A_Media Devices*

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