IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS TYLER DIVISION

SIPCO LLC, and IP CO., LLC (d/b/a INTUS IQ)	\$ \$ \$
Plaintiffs,	§ §
v.	§ Civil Action No. 6:15-CV-907-JRG-KNM §
EMERSON ELECTRIC CO., FISHER-ROSEMOUNT SYSTEMS, INC., and ROSEMOUNT INC.,	§ § § §
Defendants.	§

MOTION OF EMERSON ELECTRIC CO., FISHER-ROSEMOUNT SYSTEMS, INC. AND ROSEMOUNT INC. TO STAY THIS ACTION PENDING DISMISSAL OR TRANSFER

Defendants Emerson Electric Co., Fisher-Rosemount Systems, Inc., and Rosemount Inc. (collectively "Emerson") respectfully request that this Court stay this action pending resolution of the Emerson's motion to dismiss or transfer.

A district court has general discretionary power to stay proceedings before it in the control of its docket and in the interests of justice. *McNight v. C.H. Blanchard*, 667 F.2d 477, 479 (5th Cir. 1982). The court must "weigh competing interests and maintain an even balance" between the party advocating a stay and the party opposing the stay. *Landis v. North American Co.*, 229 U.S. 248, 254-55 (1936). As between pending actions in federal district courts, "the general principle is to avoid duplicative litigation." *Evanston Insurance Co. v. Jimco, Inc.*, 844 F.2d 1185, 1190 (5th Cir. 1988) (*quoting Colorado River Water Conservation District v. United States*, 424 U.S. 800, 817 (1976). In deciding to stay proceedings pending resolution of a request to transfer, courts generally consider three factors: (1) potential prejudice to the non-movant; (2)



hardship and inequity to the movant if the action is not stayed; and (3) the judicial resources that would be saved by avoiding duplicative litigation. *Hernandez v. ASNI, Inc.*, 2015 WL 3932415 (D. Nev. 2015) (staying proceedings pending resolution of a request to transfer to a MDL).

In the instant action, Plaintiffs have initiated a second action in which they assert numerous patents from the same two patent families already at issue in the Northern District of Georgia, the first-filed action (Action No. 1:15-cv-00319-AT). Given the substantial overlap of issues presented in these two cases, Emerson has moved this Court to dismiss or transfer the allegations brought by Plaintiffs in this action. *See* Emerson's Motion to Dismiss or Stay, filed concurrently. This action should be stayed while that motion is pending. A stay at this early junction will conserve the resources of this Court and the parties and will not prejudice Plaintiffs. The Plaintiffs have it within their own power to shorten any delay by expediting their response to the motion to dismiss or stay. Further, Plaintiffs cannot be heard to complain any delay that might be occasioned by resolution of that motion as it was the Plaintiffs who created the problem by filing related infringement claims in two different forums.

For the foregoing reasons, Emerson respectfully requests that this Court stay this action pending resolution of the Emerson's motion to dismiss or transfer.



Dated: December 10, 2015 Respectfully submitted,

/s/_Melissa R. Smith
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Attorneys for Defendants Emerson Electric Co., Fisher-Rosemount Systems, Inc., and Rosemount Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 10th day of December, 2015, a true and correct copy of the foregoing document has been served via the Court's ECF system to all counsel of record.

/s/ Melissa R. Smith
Melissa R. Smith



CERTIFICATE OF CONFERENCE

Pursuant to L.R. CV-7(i), the undersigned hereby certifies that counsel for Defendants met and conferred on December 10, 2015 and have complied with L.R. CV-7(h). Plaintiff opposes the motion, conclusively leaving the parties at an impasse, and an open issue for the Court to resolve.

/s/ Melissa Smith
Melissa Smith

