

**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

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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-02690-AT

**SIPCO, LLC AND IP CO, LLC’S REPLY  
IN SUPPORT OF THEIR MOTION TO TRANSFER VENUE**

Defendants, SIPCO LLC and IP CO, LLC (together “SIPCO”) hereby submit this reply in support of their Motion to Transfer Venue, which was filed (provisionally sealed) on August 2, 2016 (Ga. Dkt. 111),<sup>1</sup> and refiled (unsealed) on August 12, 2016 (Ga. Dkt. 118). For the reasons set forth below, SIPCO respectfully requests the Court to grant this motion.

**I ARGUMENT**

**A. Venue is “plainly proper” in the Eastern District of Texas.**

Emerson and BP admit on page 4 of their Opposition that the Eastern District of Texas is an appropriate venue for Emerson’s Declaratory Judgment Action. (Ga. Dkt. 115 at 4.) Accordingly, there is no dispute that the first prong of the 28 U.S.C. §1404(a) transfer analysis has been satisfied.<sup>2</sup> *See Pro Sports Inc. v.*

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<sup>1</sup> “Ga. Dkt.” refers to the case originally filed in this Court by Emerson, bearing Docket No. 1:15-cv-00319-AT. “Tex. Dkt.” refers to the case originally filed in the Eastern District of Texas by SIPCO, which was transferred to this Court on July 26, 2016 and now bears Docket No. 1:16-cv-02690-AT.

<sup>2</sup> This fact distinguishes this case from the *IP CO, LLC v Tropos Networks, Inc.*, Order that Emerson and BP mention on page 4 of their joint opposition. (Ga. Dkt. 115 at 4; Toohey Decl., Ex. B.) In the *Tropos* case, the Court determined that the “might have been brought” first prong of §1404(a) transfer analysis had not been met. (*See* Ga. Dkt. 115; Toohey Decl., Ex. B at 5.)

*West*, 639 F. Supp. 2d 475, 482 (D.N.J. 2009); *Viam Corp. v. Iowa Export-Import Trading Co.*, 84 F.3d 424, 430 (Fed Cir. 1996); *see also Avocent Huntsville Corp. v. Aten Int'l Co.*, 552 F.3d 1324, 1334 (Fed. Cir. 2008) (noting that “judicial or extra-judicial patent enforcement within the forum” will support jurisdiction there).

**B. Emerson and BP infringe the asserted patents in the Eastern District of Texas.**

Emerson has facilities in the Eastern District of Texas and sells the accused Smart Wireless products within that judicial district. Emerson does not dispute these facts. BP does not dispute that it operates more than 800 well heads in the Eastern District of Texas. BP admits, through its answer and supplemental answer to Interrogatory No. 5, that it has five (5) facilities in East Texas that utilize the accused Smart Wireless products. (*See Cronin Decl., Ex. A, Ans. to Int. No. 5; Ex. B, Supp. Ans. to Int. No. 5.*) SIPCO’s joint infringement claims arise, in part, out of BP’s deployment and use of the accused Smart Wireless products at BP’s five (5) East Texas facilities. No known facts indicate that the same is true within the State of Georgia.<sup>3</sup> Accordingly, the Eastern District of Texas clearly is a proper

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<sup>3</sup> These facts distinguish this case from the *SIPCO, LLC v Control4 Corp.* Order that Emerson and BP cite on page 4 of their opposition. (Ga. Dkt. 115 at 4; Toohey Decl., Ex. C.) In the *Control4* Order, the Texas court had already analyzed the

venue for all claims in both cases.

**C. BP's infringement in the Eastern District of Texas is substantial.**

BP's Supplemental Answer to Interrogatory No. 5 admits that it has 24 Smart Wireless devices in East Texas. (*See* Cronin Decl., Ex. B, Supp. Ans. to Int. No. 5.) That number of devices is on par with BP's initial deployment of 15 devices at the "Refinery of the Future" in Cherry Point, Washington. (*See* Cronin Decl., Ex. C, Smart Wireless Applications.) It is also on par with BP's later deployment of a total of 35 devices at its Cherry Point refinery. (*Id.*)

In an article discussing the benefits of deploying the Smart Wireless products on such a scale, Mark Howard, Commercial Technology Manager at BP, is quoted as saying:

"Wireless is an important enabler for refinery-of-the future technologies." (Cronin Decl., Ex. D, Wireless Now, at 3); and "It helps us deploy the sort of instrumentation, sensors and analytical devices that we need for condition monitoring to support predictive maintenance, tracking feedstock through the value chain and a host of other applications. Wireless is a very important vehicle for getting instrumentation into places where wired instrumentation would be too expensive or, frankly, not very practical." (*Id.* at 3-4.)

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§ 1404(a) transfer factors and transferred the case to this judicial district. (Ga. Dkt. 115; Toohey Decl., Ex. C at 2.) In this case, the Texas court determined which case is "first-filed." (Tex. Dkt. 98 at 8-9). This Court is addressing the § 1404(a) transfer factors for the first time.

Accordingly, any attempt by BP or Emerson to downplay BP's deployment of Smart Wireless devices in East Texas, or to suggest that the number of Smart Wireless devices deployed in East Texas is *de minimis*, is belied by the similar number of devices deployed at BP's "Refinery of the Future" in Cherry Point, Washington, where BP enjoys significant benefits from such deployment. (*See* Cronin Decl., Ex. C, Smart Wireless Applications.)<sup>4</sup>

**D. Emerson and BP's collateral attack on SIPCO's joint infringement allegations should be disregarded.**

Neither Emerson nor BP have moved to dismiss SIPCO's joint infringement allegations pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. Instead, Emerson and BP have answered the allegations, served non-infringement and invalidity contentions and participated in the *Markman* process.<sup>5</sup> Accordingly,

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<sup>4</sup> BP's document production to date consists of a total of three contracts. Furthermore, BP will not allow SIPCO's expert witness to inspect BP's facilities in East Texas or elsewhere (*See* Cronin Decl. Ex. E, Obj. and Resp. to SIPCO's Requests for Entry Upon Land) SIPCO expects further discovery to shed light on BP's representations to this Court about the extent of its use of the Smart Wireless products and the fact that it is not a mere customer of Emerson.

<sup>5</sup> SIPCO alleges joint infringement in Counts III, VI and IX of the Second Amended Complaint filed in the Texas case. (Tex. Dkt. 105.) Further details about SIPCO's joint infringement allegations are set forth in SIPCO's infringement claim charts served in the Texas case. *See* claim chart for U.S. Patent No. 7,697,492 at

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