

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.

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. 6:15-cv-907

**E-DISCOVERY ORDER**

The Court ORDERS as follows:

1. This order supplements all other discovery rules and orders. It streamlines Electronically Stored Information (“ESI”) production to promote a “just, speedy, and inexpensive determination” of this action, as required by Federal Rule of Civil Procedure 1.
2. This order may be modified in the court’s discretion or by agreement of the parties. The parties shall jointly submit any proposed modifications within 30 days after the Federal Rule of Civil Procedure 16 conference. If the parties cannot resolve their disagreements regarding these modifications, the parties shall submit their competing proposals and a summary of their dispute.
3. A party’s meaningful compliance with this Order and efforts to promote efficiency and reduce costs will be considered in cost-shifting determinations.
4. The parties have discussed the format for the production of ESI, the method of production, and the inclusion or exclusion and use of metadata, and have agreed as follows:

- a. The parties will produce metadata where available; and,
  - b. The parties shall use Generic Concordance and Summation formatted load files (Concordance: DAT file for metadata and OPT or LFP wherein available and necessary; Summation: DII file).
5. Absent agreement of the parties or further order of this court, the following parameters shall apply to ESI production:
- A. **General Document Image Format.** Each electronic document shall be produced in single-page Tagged Image File Format (“TIFF”) format. TIFF files shall be single page and shall be named with a unique production number followed by the appropriate file extension. Load files, in Concordance or Summation format as described in paragraph 4, shall be provided to indicate the location and unitization of the TIFF files. If a document is more than one page, the unitization of the document and any attachments and/or affixed notes shall be maintained as they existed in the original document.
  - B. **Text-Searchable Documents.** The parties shall produce ESI with document-level OCR text using beginning Bates Number naming convention.
  - C. **Footer.** Each document image shall contain a footer with a sequentially ascending production number. The parties shall use a Bates Number naming convention.
  - D. **Native Files.** The parties agree that the production of financial/sales data will be in Excel spreadsheet files in native format, with the files named with the Bates Number range for the corresponding TIFF version of the document (if any). For all other documents, a party that receives a document produced in a format specified above may make a reasonable request to receive the document in its

native format, and upon receipt of such a request, the producing party shall produce the document in its native format.

- E. **No Backup Restoration Required.** Absent a showing of good cause, no party need restore any form of media upon which backup data is maintained in a party's normal or allowed processes, including but not limited to backup tapes, disks, SAN, and other forms of media, to comply with its discovery obligations in the present case.
  - F. **Voicemail and Mobile Devices.** Absent a showing of good cause, voice-mails, PDAs and mobile phones are deemed not reasonably accessible and need not be collected and preserved.
  - G. **Encryption.** The parties may encrypt confidential and/or sensitive information provided that the software needed to fully decrypt the information is provided or available to the receiving party, and the decryption key is provided at the same time that the encrypted information is produced. Example encryption software applications include VeraCrypt and AxCrypt.
6. The parties agree that the collection of ESI will be conducted based on targeted searches of relevant directories, folders, and storage locations. The parties will not be required to image entire server or computer drives, or to conduct key word searches on entire servers or computer drives.
7. General ESI production requests under Federal Rules of Civil Procedure 34 and 45, or compliance with a mandatory disclosure order of this court, shall not include e-mail or other forms of electronic correspondence (collectively "e-mail"). To obtain e-mail, parties must propound specific e-mail production requests.

8. E-mail production requests shall identify the custodian, search terms, and time frame, and shall be made in writing as part of a request for production pursuant to Rule 34. The parties shall cooperate to identify the proper custodians, proper search terms, and proper time frame. Each side, as that term is defined in paragraph 5 of the Discovery Order, shall limit its e-mail production requests to a total of five (5) custodians per producing party for all such requests. The parties may jointly agree to modify this limit without the court's leave. The court shall consider contested requests for additional or fewer custodians per producing side, upon showing a distinct need based on the size, complexity, and issues of this specific case. The party requesting the additional email discovery bears the burden of proving that such discovery is needed.
9. Each requesting party shall limit its e-mail production requests to a total of ten search terms per custodian per party. The parties may jointly agree to modify this limit without the court's leave. The court shall consider contested requests for additional or fewer search terms per custodian, upon showing a distinct need based on the size, complexity, and issues of this specific case. The search terms shall be narrowly tailored to particular issues. Indiscriminate terms, such as the producing company's name or its product name, are inappropriate unless combined with narrowing search criteria that sufficiently reduce the risk of overproduction. A conjunctive combination of multiple words or phrases (e.g., "computer" and "system") narrows the search and shall count as a single search term. A disjunctive combination of multiple words or phrases (e.g., "computer" or "system") broadens the search, and thus each word or phrase shall count as a separate search term unless they are variants of the same word. Use of narrowing search criteria (e.g., "and,"

“but not,” “w/x”) is encouraged to limit the production and shall be considered when determining whether to shift costs for disproportionate discovery.

10. Pursuant to Federal Rule of Evidence 502(d), the inadvertent production of a privileged or work product protected ESI is not a waiver in the pending case or in any other federal or state proceeding.
11. The mere production of ESI in a litigation as part of a mass production shall not itself constitute a waiver for any purpose.
12. Except as expressly stated, nothing in this order affects the parties’ discovery obligations under the Federal or Local Rules.

So ORDERED and SIGNED this 15th day of March, 2016.

  
\_\_\_\_\_  
K. NICOLE MITCHELL  
UNITED STATES MAGISTRATE JUDGE