

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

PROTECTIVE ORDER

THIS MATTER having come before the Court on the parties' joint motion for entry of a protective order, and the Court having determined that there is good cause under Federal Rule of Civil Procedure 26(c) for entry of a protective order to limit disclosure of trade secrets and confidential research, development, and commercial information as those terms are used in Federal Rule of Civil Procedure 26(c)(1)(G), and information that the party is under a legal duty to maintain in confidence,

THEREFORE, IT IS HEREBY ORDERED that:

- 1. Scope.** This Protective Order shall govern any information produced or disclosed in this action by any party or by any third party.
- 2. Proprietary Information.** "Proprietary Information" means any information, document, electronically stored information, or thing that contains or is a trade secret or other confidential research, development, or commercial information as those terms are used in

Federal Rule of Civil Procedure 26(c)(1)(G), and information that the party is under a legal duty to maintain in confidence, provided that such information, document, electronically stored information, or thing is designated as set forth herein. Any Proprietary Information may be designated as CONFIDENTIAL. Proprietary Information relating to highly sensitive financial information, including but not limited to, customer identification, marketing, sales, pricing information, profit margins and business plans or strategies, and highly sensitive technical information, including but not limited to, product design and development materials, source code, or other highly sensitive, trade secret technical information, may be designated as ATTORNEYS EYES ONLY.

Any party to this action and any third party may designate as CONFIDENTIAL or ATTORNEYS EYES ONLY all or part of the following material: (a) answers to interrogatories or requests for admission; (b) deposition testimony; (c) documents produced by it or made available for inspection; and (d) any other materials or information produced or disclosed during the course of this litigation. As used herein, "Designating Party" shall refer to any party or third party to this action that designates information that it or another party has produced or provided, and "Receiving Party" shall refer to any party or third party that receives such information.

3. Designation of Documentary Material. Documentary material may be designated as CONFIDENTIAL or ATTORNEYS EYES ONLY by stamping or otherwise marking each page with the appropriate confidentiality designation and with the identity of the classifying party unless it is indicated as part of the production number (*e.g.*, "Plaintiff P00001") contained on the document. Except with respect to documents produced by any party prior to the execution by the parties of this Stipulated Protective Order, the identification and designation of Proprietary Information shall be made at the time when the answer to the interrogatory or the answer to the

request for admission is served and when a copy of the document is provided to the requesting party.

Unless otherwise designated or agreed by the parties, all documents made available for inspection prior to copying and production shall be presumed to have been marked ATTORNEYS EYES ONLY. No documents of the party or third party producing documents shall be removed from the site of the inspection or copied until such producing party or third party has had an opportunity to review and designate such documents in the manner previously explained.

With regard to non-written material, such as recordings, magnetic media, photographs and things, the designation of any information as CONFIDENTIAL or ATTORNEYS EYES ONLY for purposes of this Protective Order shall be made by affixing a CONFIDENTIAL or ATTORNEYS EYES ONLY designation to the material, or a container for the material, in any suitable manner at the time of copying (if any).

4. Designation of Depositions. Deposition or other oral testimony given in this case may be designated as CONFIDENTIAL or ATTORNEYS EYES ONLY by any party or third party either (a) during the deposition or proceeding during which the testimony is given, or (b) by written notice to the court reporter and to all counsel of record, within five (5) days of receipt, either by mail or email, of the deposition transcript. Unless otherwise ordered by the Court, pending the expiration of this five (5) day period, all parties and persons shall treat the testimony as if it has been designated ATTORNEYS EYES ONLY. Unless otherwise ordered by the Court, the designating party shall have the right to have all persons, except the witness, his or her counsel, the court reporter, and such other persons authorized to receive the designating party's Proprietary Information pursuant to this Protective Order, excluded from a deposition or

proceeding, or any portion thereof, before the taking therein of testimony that has been so designated. The court reporter shall mark the cover of the original and all copies of the transcript or the portion of the transcript containing testimony designated as either CONFIDENTIAL or ATTORNEYS EYES ONLY with the appropriate legend.

5. Belated Designation. Notwithstanding the obligations to timely designate Proprietary Information under the foregoing paragraphs 3 and 4, nothing contained herein shall preclude a party or a third party from later changing that designation and notifying the other parties in writing of that change; provided, however, that it shall not be deemed a breach of this Order for any action to have been taken by a party or its counsel with respect to such information consistent with the original designation of such information prior to receipt of such notice. A party receiving such written notice shall make every reasonable effort to retrieve any such materials from persons not authorized to receive them pursuant to this Protective Order and to avoid any further unauthorized disclosure. Any party that changes the designation of any materials under this Order shall timely provide the other parties to this action with new copies of the materials with the new designation(s).

6. Non-use. All Proprietary Information shall be used only for purposes of this litigation.

7. Access to CONFIDENTIAL and ATTORNEYS EYES ONLY Materials.

Materials designated CONFIDENTIAL or ATTORNEYS EYES ONLY shall not be disclosed to any person except:

- a. the Court and its officers and staff;

- b. outside counsel of record in this action for each party (*i.e.*, counsel of record for a party who is not an employee of the party or its affiliates) and employees of such outside counsel;
- c. outside experts who are not regularly employed by a party and who have been expressly retained to assist a party's counsel in the prosecution or defense of the litigation, and the secretarial, technical and clerical staff of such experts, provided that such experts have been approved pursuant to paragraph 8 hereof;
- d. current or former employees of the disclosing party during the deposition of such employees or during examination of such employees at trial;
- e. any party or non-party who authored, received, or reviewed the material prior to its production in the litigation;
- f. three representatives of each party that are identified to opposing counsel, and necessary support staff of those individuals, provided that each such representative has first signed a written statement under oath in the form attached as Exhibit A hereto, and a copy of that statement has been provided to opposing counsel;
- g. court reporters and videographers, solely for the purpose of transcribing and/or recording testimony in the litigation;
- h. independent litigation support services personnel, including copying services, imaging and coding services, trial exhibit preparation services, solely for the purpose of assisting a party with the litigation;
- i. trial consultants, jury consultants, and mock jurors, focus group members and the like selected by trial consultants, jury consultants or by counsel in preparation for

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