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

ROY-G-BIV Corporation, Plaintiff, v. Fanuc Ltd., Fanuc Robotics America, Inc., GE Fanuc Automation Americas, Inc., and GE Fanuc Intelligent Platforms, Inc., Defendants.	)	CASE NO. 2:07-cv-00418-DF **JURY TRIAL DEMANDED**

PLAINTIFF ROY-G-BIV CORP.'S SECOND SUPPLEMENTAL ANSWERS AND OBJECTIONS TO DEFENDANTS' FIRST SET OF INTERROGATORIES

Plaintiff ROY-G-BIV Corporation ("ROY-G-BIV") hereby provides its second supplementary responses to Defendants' First Set of Interrogatories.

OBJECTIONS

ROY-G-BIV incorporates by reference its objections set forth in its February 28, 2008, answers and objections to Defendants' interrogatories.

ANSWERS AND OBJECTIONS TO INTERROGATORIES

INTERROGATORY NO. 1:

For each Accused Product, describe the circumstances leading up to the allegation that Defendants allegedly infringe the patents-in-suit, including the date on which Plaintiff first became aware of the Defendants' Accused Products (and identify all documents relating to such awareness and all persons with knowledge of such awareness); the date on which Plaintiff first considered the Defendants' accused products to be an alleged infringement of the patents-in-suit (and identify all documents relating to such consideration and all persons with knowledge of such consideration); and all actions taken by or on behalf of Plaintiff to investigate or pursue its beliefs of alleged infringement (including documents reflecting or reporting any tests or analyses performed on Defendants' Accused Products prior to filing the complaint for purposes of determining whether those Accused Products allegedly infringe the patents-in-suit).

Specific Objections:

Plaintiff objects to this interrogatory as seeking information that is protected under the attorney-client privilege and/or work product doctrine. In particular, the details relating to when Plaintiff first "considered the Defendants' accused products to be an alleged infringement of the patents-in-suit" and the identification of "all actions taken by or on behalf of Plaintiff to investigate or pursue its beliefs of alleged infringement" calls for information protected under the attorney-client privilege and work-product doctrine. Plaintiff also objects to the interrogatory as vague and ambiguous. For example, it is unclear what the "circumstances leading up to the allegation that Defendants allegedly infringe the patents-in-suit" encompass. Plaintiff objects to this interrogatory as overly broad and unduly burdensome to the extent it requests the identification of "all" documents and persons.

Answer:

Subject to the foregoing General and Specific objections, Plaintiff is in the process of evaluating which products are accused of infringement. Further, even among accused software products, it is difficult at this time to determine whether older versions of the software are accused because the older versions may function differently than the current versions. Although the answer to this interrogatory focuses, in some instance, on the current versions of the software, Plaintiff also has attempted to answer with respect to prior versions of the software. Finally, Plaintiff's awareness of the existence of a particular product should not be construed as reflecting an awareness of the features, characteristics or capabilities of such a product.

One product accused of infringement is the FOCAS software, along with applications that incorporate and use FOCAS. Plaintiff does not know the exact date on which it first became aware of FOCAS. With respect to the current version of FOCAS1 for Ethernet, released in 2003, Plaintiff's best guess is that it knew of this software soon after its release date. The earliest

Plaintiff likely knew about any version of FOCAS1 likely was in October 2001, when it likely learned of FOCAS1 for HSSB. Plaintiff probably first learned of FOCAS1 for Ethernet around May 2002. With respect to FOCAS2, Plaintiff likely knew of it in early 2004 – possibly in January of 2004. With respect to Proficy HMI/SCADA – CIMPLICITY HMI for CNC, Plaintiff does not recall an exact date when it first became aware of the product. But Plaintiff believes that it became aware of the product within two years of the filing date of the complaint – probably in 2006.

Defendant has yet to identify which of its other software is used with FOCAS. But to the extent other versions of CIMPLICITY or software products therein are used, Plaintiff does not recall when it first became aware of the other CIMPLICITY software. It likely became aware of the current version of the software just prior to filing the complaint. Plaintiff may have known that GE Fanuc offered CIMPLICITY for HMI products in late 1999. It is possible that Plaintiff first became aware that GE Fanuc offered a product with the name CIMPLICITY in the 1996-1998, time period.

Plaintiff believes it first became aware of the existence of the PROFICY MACHINE EDITION software on or around June 25, 2004.

Some of the claims recite features directed at motion hardware and workstations. Plaintiff was generally aware of various GE FANUC and FANUC motion control hardware in the late 1990s. It also believes it knew of the alpha and beta servos around 1996. Plaintiff believes that it became aware of various other hardware and workstations in the 2001-2003 time frame. Plaintiff, however, does not know when it became aware of all of these products. It believes that it may have become aware of the series 15i, 16i, 18i, 21i, and 160i products around October 2001. Plaintiff believes it may have become aware of the Panel*i* in early 2002 –

possibly in January 2002. Plaintiff was aware that GE FANUC and FANUC offered various other controls at least as of early 2003 (possibly January 2003), such as the Series 150, 150i, 160, 180, 210, 180i, 210i, 0i, Power Mate i, 0, 15, 16, 18, and 21.

Plaintiff does not know the date on which it "first considered the Defendants' accused products to be an alleged infringement of the patents-in-suit." It likely considered there to be an infringement – as best it could without having access to confidential information such as source code – within a year-and-a-half of the filing of the complaint in September 2007. Plaintiff began investigating the possibility of infringement in the 2006 time frame. Plaintiff worked with its counsel in its investigation of the infringement. The details regarding this investigation are protected by the work product and attorney-client privilege doctrines.

INTERROGATORY NO. 3:

Separately for each asserted claim of the patents-in-suit, identify all alleged dates of conception, any subsequent diligence until reduction to practice, any dates of actual reduction to practice of the claimed invention, the date of first constructive reduction to practice of the claimed subject matter defined by the claim, all persons who were involved in connection with such conception, diligence, or reduction to practice, and the earliest effective filing date Plaintiff will assert for each such claim, stating in detail all factual bases supporting Plaintiff's identification of each such date, and identifying all persons, documents, and tangible things corroborating each such date.

Specific Objections:

Plaintiff objects to this interrogatory as overly broad and unduly burdensome to the extent it requests "all factual" bases.

Answer

Subject to the foregoing General and Specific Objections, the claims were conceived at least as early as April 1994. The claims were first reduced to practice after the filing of the '897 patent – probably around late-1996 or early-1997. The earliest effective filing date for asserted

claims of the patents-in-suit is May 30, 1995. The documents in support of this effective filing date are U.S. Patent No. 5,691,897, along with the original application for this patent. This original disclosure, filed on May 30, 1995, supports the claims of the patents-in-suit pursuant to 35 U.S.C. § 120, and is a constructive reduction to practice of the invention. The inventors diligently worked on their ideas, including after their conception date. They worked diligently at least through the reduction to practice dates, particularly considering that they were working on other projects and at starting up their business. Persons involved in the conception, diligence, and reduction to practice were Dave Brown and Jay Clark. Their prosecution counsel were involved in the constructive reduction to practice – *i.e.*, the May 30, 1995 filing date of the '897 patent. Persons with knowledge of the diligence include Richard Black, Robert Hughes, and Michael Schacht. Plaintiff continues to investigate other potential persons with knowledge.

Documents in support of these contentions (*e.g.*, corroborating the inventors' diligent work on the invention as well as on other technical and business projects), may include: RGB00001249 - 1257; RGB00004075 - 4086; RGB00004087 - 4092; RGB00004095; RGB00007322 - 7342; RGB00007467 - 7469; RGB00026444 - 26445; RGB00028786 - 28788; RGB00031400 - 31522; RGB00031739 - 31753; RGB00051260 - 51265; RGB00051279 - 51299; RGB00051311 - 51318; RGB00051319 - 51320; RGB00051321 - 51326; RGB00051329 - 51334; RGB00051460 - 51461; RGB00051462 - 51466; RGB00051467 - 51468; RGB00051469 - 51471; RGB00051472 - 51476; RGB00051477 - 51481; RGB00051482 - 51489; RGB00051490 - 51501; RGB00051502 - 51514; RGB00051515 - 51527; RGB00051528 - 51537; RGB00051549 - 51574; RGB00051602 - 51613; RGB00051614 - 51636; RGB00051652 - 51674; RGB00051787 - 51788; RGB00051802 - 51804; RGB00051806 - 51817; RGB00051833 - 51856; RGB00051857 - 51876; RGB00051877 - 51890; RGB00051891

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