UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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MICRO MOTION, INC.
Petitioner
v.

INVENSYS SYSTEMS, INC.
Patent Owner

Patent No. 7,571,062
Issue Date: August 4, 2009
Title: DIGITAL FLOWMETER

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Inter Partes Review No. IPR2014-00393

PETITIONER'S RESPONSE TO PATENT OWNER'S OBSERVATIONS ON CROSS-EXAMINATION OF PETITIONER'S REPLY WITNESS

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Petitioner Micro Motion submits this response to Patent Owner's Motion for Observations ("Motion") filed on February 2, 2015 (Paper 36). In general, the Motion violates the directive in the Office Patent Trial Practice Guide (77 Fed. Reg. 48756) that the observations be concise and not re-argue issues. (*Id.* at 48768.) The response below will follow the order of paragraphs in the Patent Owner's observations.

(1) Page 2: The Patent Owner asserts that Dr. Sidman's deposition testimony is inconsistent with statements in paragraph 5 of Dr. Sidman's Supplemental Declaration (Ex. 1068). It is not. Dr. Sidman testified that the statement in Romano that production of a "drive signal that is in phase with the sum of the left and right velocity sensor waveforms" is not necessarily true with respect to all Coriolis flow meters. (Ex. 2027 at 24:10-25:4.) He said in his declaration that "the drive signal still must be synchronized to the oscillation of the tube …" (Ex. 1068, ¶ 5). Those statements are not inconsistent. The drive signal must be synchronized to the oscillation of the tube, but it need not in every case be in phase with the sum of the left and the right velocity sensor waveforms. It would be possible, for example, to drive the flow tube based only on the left or the right sensor signal. In addition, contrary to the second part of the observation, this statement also does not undermine the opinion that claim 1 of '062 patent is anticipated. Romano only teaches the use of the sum of both sensor signals to

generate the drive signal in Figures 2 and 4 (Ex. 1068, ¶ 5), and one of skill in the art would have understood the digital drive embodiment to work the same way. (*Id.*) In addition, even if only the right sensor signal were used, Romano teaches compensating for delay of that signal. (*Id.* ¶¶ 6-8.)

(2) Page 3, first observation: This observation is incorrect for the reasons stated above.

(3) Page 3, second observation: The Patent Owner claims that Dr. Sidman "admitted it would be possible that Romano's digital drive embodiment could" work in a particular way. That is incorrect. Dr. Sidman testified, in response to what he said was an incomplete hypothetical (Ex. 2027, 95:14-15), that he could "speculate" (*id.*, 95:21) that it would be "possible" (*id.*, 95:22-23) that "a Coriolis flowmeter could be built that would have a response to the situation I [the questioner] described, exactly in the way I described it." (*Id.*, 95:8-12.) Speculation about whether a hypothetical device could be built does not contradict anything Dr. Sidman said. In addition, contrary to the second part of the observation, Dr. Sidman's testimony also does not "make[] clear that Romano's digital drive embodiment could, once the resonant frequency is determined using a discrete Fourier transform (DFT), begin generating a drive signal precisely as described at 24:32-60 of Romano without making any phase adjustment to synchronize the drive signal to the oscillation of the flow tube." (Mot. at 4.) The

hypothetical question posed in connection with this testimony specifically asked Dr. Sidman to "assume the resonant frequency of the tube does not change during the period of time we're talking about." (Ex. 2027, 94:12-18.) Thus, this testimony says nothing about what would happen in the hypothetical device once the frequency began to change.

(4) Page 4, first observation: The testimony does not discuss adjustment of phase. However, the figure of Romano that illustrates the digital drive (Figure 3) expressly discusses adjusting the phase of the right sensor signal. (Ex. 1006, 22:10-32; Ex. 1068, ¶¶ 3-4.)

(5) Page 5, first observation: Contrary to Patent Owner's apparent argument, claim 1 of the '062 patent does not require combining the left and the right sensor signals to generate the drive signal. However, Dr. Sidman testified that, if one used the right sensor signal, which is expressly taught by Romano as an alternative, Romano teaches to compensate for a phase delay. (Ex. 1068, ¶¶ 6-8.)

(6) Page 5, second observation: This observation is irrelevant because, as stated previously, Romano expressly teaches using the right sensor signal as an alternative (Ex. 1068, ¶¶ 6-8; Ex. 1006, 29:17-21, 40:26-31), and also teaches that if the right sensor signal is used, a phase shift is applied. (Ex. 1068, ¶¶ 8, 3; Ex. 1006, 22:10-32.)

(7) Page 6 first observation: Dr. Vipperman's opinions have been rebutted by Dr. Sidman's two declarations. (Ex. 1002 and 1068.)

(8) Page 7: This observation is improper because it was outside the scope of Dr. Sidman's nine-paragraph supplemental declaration (one paragraph of which was his name, a second paragraph of which was a quote from the claim, and a third paragraph of which was the required statement under 18 U.S.C. § 1001). In any event, the timer 340 and the divide-by-five counter 315 indisputably control the timing of the switching of the multiplexer 302. (Ex. 1006, 22:33-23:37; Ex. 1077, 244:7-19.) In other words, those elements cause the delay that must be compensated for in Romano. The timer 340 is connected to the bus that connects the sensors to the driver and it serves as an input to the input circuit 310 which includes the multiplexer. (Ex. 1006, Fig. 3.) The divide-by-five counter 315 is also a part of the input circuit 310 and also serves to control the timing of the multiplexer 302. (*Id.*; Ex. 1077, 244:7-19.) These components are therefore "components connected between the sensor and the driver" under the broadest reasonable construction of that phrase.

Respectfully submitted,

Date: February 17, 2015

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