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

AUTOMATION MIDDLEWARE SOLUTIONS, INC.	§ §	CASE NO. 2:15-cv-00898-RWS (LEAD CASE)
V.	§ §	
INVENSYS SYSTEMS, INC., ET AL.	§ §	JURY TRIAL DEMANDED

AUTOMATION MIDDLEWARE SOLUTIONS, INC.	§ §	CASE NO. 2:15-cv-01266-RWS
V.	§ §	JURY TRIAL DEMANDED
EMERSON PROCESS MANAGEMENT, ET AL.	§ § §	

AUTOMATION MIDDLEWARE SOLUTIONS, INC.	§ §	CASE NO. 2:15-cv-01269-RWS
V.	§ §	JURY TRIAL DEMANDED
ROCKWELL AUTOMATION, INC., ET AL.	§ §	

AUTOMATION MIDDLEWARE SOLUTIONS, INC.	§ §	CASE NO. 2:15-cv-01539-RWS
V.	§ §	JURY TRIAL DEMANDED
KOLLMORGEN CORPORATION, ET AL.	§ §	

AUTOMATION MIDDLEWARE SOLUTIONS, INC.	§ §	CASE NO. 2:15-cv-01771-RWS
V.	§ §	JURY TRIAL DEMANDED
YASKAWA AMERICA, INC., ET AL.	§ §	

AUTOMATION MIDDLEWARE SOLUTIONS, INC.	§ §	CASE NO. 2:15-cv-01982-RWS
V.	§ §	JURY TRIAL DEMANDED
MITSUBISHI ELECTRIC CORP., ET AL.	§ §	

DEFENDANTS' IDENTIFICATION OF PRELIMINARY PROPOSED CLAIM CONSTRUCTIONS AND EXTRINSIC EVIDENCE UNDER PATENT LOCAL RULE 4-2

Pursuant to Rule 4-2 of the Rules of Practice for Patent Cases before the Eastern District of Texas and the Court's Docket Control Order (Dkt. 96) and Joint (Proposed) Discovery Order (Dkt. 82), Defendants Invensys Systems, Inc. and Schneider Electric USA, Inc. (collectively "Invensys"), Emerson Process Management, LLLP, Fisher-Rosemount Systems, Inc., Rosemount, Inc., Emerson Industrial Automation USA Inc., Emerson Industrial Automation USA LLC and Emerson Process Management Power & Water Solutions, Inc. (collectively "Emerson"), Rockwell Automation, Inc. and Rockwell Automation Technologies, Inc. (collectively "Rockwell"), Kollmorgen Corporation and Danaher Corporation (collectively "Kollmorgen"), Yaskawa America, Inc. ("Yaskawa"), VIPA USA, Inc. ("VIPA"), Mitsubishi Electric Corp., Mitsubishi Electric U.S. Holdings, Inc. and Mitsubishi Electric Automation, Inc. (collectively "Mitsubishi") (altogether referred to as "Defendants") hereby identify certain preliminary proposed claim constructions and extrinsic evidence related to terms of United States Patent No. 6,513,058 ("the '058 Patent"), U.S. Patent No. 6,516,236 ("the '236 Patent"), U.S. Patent No. 6,941,543 ("the '543 Patent"), U.S. Patent No. 8,073,557 ("the '557 Patent"), and U.S. Patent No. 5,691,897 ("the '897 Patent").

The identified preliminary proposed claim constructions and extrinsic evidence are based on Defendants' analysis and investigation to date, as well as ongoing discovery. Defendants reserve the right to amend or supplement this list as the parties engage in further discovery, after Plaintiff provides meaningful Infringement Contentions, or after receiving Plaintiff's proposed claim terms for construction and its proposed constructions. Defendants' identification of any claim term for construction is not an admission that a claim containing that term meets the requirements of 35 U.S.C. § 112. Groupings of terms in the table below are solely for the purpose of readability, and are not an admission that terms grouped together should be construed identically, or that terms not grouped together should be construed differently. Defendants also reserve the right to propose constructions for combinations of the terms and phrases below and to propose constructions for shorter phrases contained in the phrases below.

For any term identified in Defendants' or Plaintiff's identification of claim terms under Local Patent Rule 4-1(a) that does not appear in the chart below, Defendants presently contend that the term does not require construction. Defendants reserve the right to provide a construction for these and other terms should the need to do so become clear from the proposals of the Plaintiff, the discussions in the meet and confer process, or additional developments in the litigation (e.g. Plaintiff's service of Amended Infringement Contentions).

Claim Term For Construction	Preliminary Proposed Construction
a desired manner	a manner desired by a designer or user of the application program
a desired motion sequence	a motion sequence desired by a designer or user of the application program
a selected destination of control commands	a destination of control commands selected by a designer or user of the application program
a set of	two or more
application program	a software program that directly controls each motor using base incremental steps
associates	cross references
associated with	This term is indefinite under Section 112, paragraph 2
component code	Subject to construction as means-plus-function terms under Section 112, paragraph 6
component function	a hardware independent function that corresponds to an operation performed by a motion control device
control command generating module	Subject to construction as means-plus-function terms under Section 112, paragraph 6
control commands	commands in hardware language specific to a given motion control device, which instruct the motion control device to perform motion control operations

Claim Term For Construction	Preliminary Proposed Construction
core driver function	a driver function associated one-to-one with a primitive motion control operation
defining a [core/extended] set of [core/extended] driver functions defining a set of component functions defining a set of motion control operations	No construction necessary for term string. Certain terms within each string have proposed constructions provided elsewhere in this chart
developing a set of software drivers	No construction necessary for term string. Certain terms within each string have proposed constructions provided elsewhere in this chart
driver code	Subject to construction as means-plus-function terms under Section 112, paragraph 6
driver functions	hardware independent abstract functions that define the parameters necessary to carry out motion control operations and that are separate and distinct from the component functions
extended driver function	a driver function associated one-to-one with a non-primitive motion control operation
the plurality of incremental motion step(s)	The full term at left (as used in the '897 patent) is indefinite because it lacks an antecedent basis. "incremental motions steps" means: the smallest increment of movement of which each individual stepper motor in a motion control device is capable
motion control	controlled movement of an object along a desired path
motion control component / motion component	Subject to construction as means-plus-function terms under Section 112, paragraph 6
motion control device	a device comprising a controller and a mechanical system capable of moving an object in a controlled manner

Claim Term For Construction	Preliminary Proposed Construction
motion control operation(s) / motion operation	hardware independent operations that are used to perform motion control (such as GET POSITION, MOVE RELATIVE, or CONTOUR MOVE) and that are performed by a motion control device
motion steps	steps performed by a motion control device to move an object along a desired path
network	a communications and data exchange system created by connecting two or more computers
non-primitive operations / non-primitive motion operation	This term is indefinite under Section 112, paragraph 2
operating/operates on [] workstation(s) the application program runs on a first of the plurality of workstations at least one application program operating on a first workstation the control command generating module on the at least one workstation the control command generating module operates on a second of the plurality of workstations a control command generating module operating on a second workstation" the software system operates on a plurality of workstations	For reasons set forth in the motion to dismiss briefing (Dkt. 47, 31 and related filings and argument), the '058 patent (the only asserted patent including this claim term), is invalid because it purports to claim subject matter (intangible software) not within a statutory class, 35 U.S.C. § 101; *see also In re Nuijten*, 500 F.3d 1346 (Fed. Cir. 2007), and, according to AMS "workstations" are "not necessarily structural elements of the systems." Dkt. 114 at p. 5. To the extent "operating on a workstation" connotes a required action (as AMS suggested at oral argument, *e.g.*, Aug. 3 Transcript at pp.114-139), the '058 patent impermissibly claims mixed classes of subject matter (process and article of manufacture), rendering the claims indefinite. 35 U.S.C. § 112 ¶ 2. Alternatively, to the extent "workstation" is a structural limitation of the claims, (i.e., there must be a workstation, and the claimed software must be operating on it, before there can be infringement), then "workstation" should be construed as a "personal computer."
plurality	two or more
primitive operations / primitive motion operation	This term is indefinite under Section 112, paragraph 2

DOCKET ALARM

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts

Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research

With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips

Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS
Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS
Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS
Sync your system to PACER to automate legal marketing.