

Instrumentalities” and as further defined below) of which the Plaintiff is aware, and is given without prejudice to RGB’s rights to obtain leave, as necessary, to supplement or amend its disclosure as additional facts are ascertained, analyses is made, research is completed and/or claims are construed, especially the review of Defendants’ confidential information including source code, documents, and deposition testimony. For example, the figures shown in the accompanying claim charts, including but not limited to those depicting the location of and identifying the presence of claim elements in the Accused Instrumentalities, are illustrative and may change after review of Defendants’ confidential information including source code and related information. Accordingly, Plaintiff explicitly reserves the right to amend and/or supplement the accompanying claim charts regarding direct and/or indirect infringement, as well as literal infringement and/or infringement under the doctrine of equivalents based upon evidence uncovered in this litigation.

These disclosures also are based at least in part upon RGB’s present understanding of the meaning and scope of the asserted claims of the patents-in-suit in the absence of claim construction proceedings for all the patents-in-suit or discovery in this matter. Any references in the accompanying claim charts to prior claim constructions refer to the *Markman* Order issued in *ROY-G-BIV Corp. v. FANUC Ltd. et al.*, Case No. 2:07-cv-00418-DF in which certain terms of the ‘236 and ‘058 patents were construed by the Court, and are provided merely for the convenience of the parties and are not to be construed as admissions or a waiver of other claim constructions that RGB may propose during the *Markman* phase of this case. RGB reserves the right to seek leave to supplement or amend

these disclosures if its understanding of the claim terms change, including if the Court construes them.

1. Pursuant to P.R. 3-1(a), Plaintiff asserts that the Defendants currently infringe and/or have infringed at least the following claims:

(a) Defendants ABB, Inc. and ABB, Ltd (collectively “ABB”) currently infringe and/or have infringed (either individually, jointly, or jointly in concert with their customers such as Meadwestvaco Texas, LP and Meadwestvaco Corporation (collectively, “Meadwestvaco”), or by inducing and/or contributing to infringement by customers such as Meadwestvaco): (i) **claims 1-5** of United States Patent No. 6,513,058 (“the ‘058 Patent”); (ii) **claims 1-10** of United States Patent No. 6,516,236 (“the ‘236 Patent); and (iii) **claims 16-30 and 46-59** of United States Patent No. 8,073,557 (“the ‘557 Patent”).

(b) Defendant Meadwestvaco currently infringes and/or has infringed (either individually, jointly, or jointly in concert with ABB): (i) claims 1-5 of the ‘058 Patent; (ii) claims 1-10 of the ‘236 Patent; and (iii) claims 16-30 and 46-59 of the ‘557 Patent.

2. Pursuant to P.R. 3-1(e): (1) the asserted claims of the ‘058 Patent, claims 1-9 of the ‘236 Patent, and the asserted claims of the ‘557 Patent are each entitled to the benefit of the **May 30, 1995** filing date of United States Application Serial No. 08/454,736, which issued as United States Patent No. 5,691,897; and (2) claim 10 of the ‘236 Patent is entitled to the benefit of the **May 30, 1996** filing date of United States Patent Application Serial No 08/656,421, which issued as United States Patent No. 5,867,385.

3. Pursuant to P.R. 3-1(f), Plaintiff’s XMC software, when used alone or in combination with third party hardware, such as third-party motion control devices,

computers, and other objects incorporates or reflects each of the asserted claims of the '058, '236 and '557 Patents.

4. Pursuant to P.R 3-1(b)-(d), the claim charts attached as Exhibits A-D identify which of the Accused Instrumentalities infringe each asserted claim, as well as where each limitation of the claim is literally found in the Accused Instrumentalities. To the extent that any of the limitations in claims 7-10 of the '236 patent are governed by 35 U.S.C. § 112(6), Plaintiff's expects that ABB's source code or other confidential information will be required to identify the structure (*i.e.*, software code) that performs the claimed function in the Accused Instrumentalities. Based upon its review and analysis of publicly available documents, Plaintiff asserts the claims are literally infringed. To the extent Defendants successfully argue that any of the limitations are not literally present in the Accused Instrumentalities, the charts identify illustrative support for where the equivalent feature is found under the doctrine of equivalents pursuant to the function-way-result and/or insubstantial differences tests.

5. As used herein and in the accompanying exhibits, the following terms have the following meanings:

(a) The term "Accused Instrumentalities" means Industrial System 800xA Systems, as defined further below.

(i) The term "Industrial System 800xA Systems" means systems incorporating an Industrial System 800xA Server, an Industrial System 800xA Application Program, a plurality of Industrial System 800xA Drivers, and (depending upon the claim at issue) Industrial System 800xA Hardware, as further defined below.

(A) The term “Industrial System 800xA” Server means the software marketed by ABB as the “Connectivity Server” and/or the “Real Time Database” and any software implementing the same or similar functionality to that disclosed for Industrial System 800xA Servers in Exhibits A-D;

(B) The term “Industrial System 800xA Application Program” means any application program that comprises hardware independent function calls exposed by any Industrial System 800xA Server, which on information and belief includes but is not necessarily limited to Industrial IT System 800xA Operations, System 800xA Smart Client, System 800xA Engineering Tools, Panel 800, Compact HMI 800, the Aspect Server, and all application programs based upon the Industrial System 800xA Systems including but not limited to those application programs offered in the various industries and submarkets listed on ABB’s website at the following links: <http://www.abb.com/product/seitp334/102b314866674ccdc12572bb0031ea42.aspx>.

(C) The term “Industrial System 800xA Drivers” means any drivers that expose functions corresponding to function calls made by any Industrial System 800xA Server, which on information and belief includes but is not necessarily limited to Industrial System 800xA OPC Servers or other architecturally equivalent interfaces that communicate with Industrial System 800xA Hardware, as further defined below; and

(D) The term “Industrial System 800xA Hardware” means any motion control device hardware corresponding to any Industrial System 800xA Driver, which on information and belief includes but is not necessarily limited to the

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