

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TEXAS  
TYLER DIVISION**

INVENSYS SYSTEMS, INC.,

Plaintiff,

vs.

EMERSON ELECTRIC CO. and  
MICRO MOTION INC., USA,

Defendants,

and

MICRO MOTION INC., USA,

Counterclaim-Plaintiff,

vs.

INVENSYS SYSTEMS, INC.,

Counterclaim-Defendant.

Case No. 12-CV-00799-LED

**DECLARATION OF JEFFREY N. COSTAKOS**

I, Jeffrey N. Costakos, declare as follows:

1. I am a partner in the law firm of Foley & Lardner LLP and am a member of the team representing Emerson and Micro Motion in the above captioned matter.

2. As it relates to the above captioned matter, my colleagues and I began our investigation of whether Micro Motion itself had developed any anticipatory prior art as early as November 30, 2012. On that date, I met with a number of Micro Motion employees, including Micro Motion engineers Craig McAnally and Rick Maginnis, to go over the history of Micro Motion's development of Coriolis flow meters that employed digital signal processing ("DSP").

We did not learn at that meeting of any prior art Micro Motion flowmeters that used DSP to generate a drive signal.

3. Following that meeting, I and other members of the team continued to investigate potential prior art. For example, one prior art Micro Motion patent issued in 1990 to Paul Romano. That patent, U.S. Pat. No. 4,934,196, disclosed the use of digital signal processing both to determine the mass flow rate and to generate the signals to drive the flow tube oscillation. We sought evidence of the reduction to practice of the inventions described in the Romano patent, but, due to the passage of time between that work (in the late 1980s and early 1990s) and the filing of the complaint in 2012, very little evidence remained in existence.

4. On April 22, 2014, I met with Mr. Maginnis in connection with a Rule 30(b)(6) deposition noticed by Invensys. While preparing Mr. Maginnis, I learned that others at Micro Motion, prior to Mr. Maginnis's employment, may have worked on flowmeter controllers that used digital signal processing to generate a drive signal. Mr. Maginnis did some further investigation and found a schematic from 1996 that corroborated this information. In the weeks that followed, I and others on the team continued to investigate this earlier work.

5. On May 22, 2014, my colleagues and I scheduled and I participated in an interview of Mr. Howard Derby, a former consultant for Micro Motion who was responsible for designing the circuit and writing the code relating to a digital prototype Coriolis flow meter ("Digital Prototype") that was created prior to 1997.

6. Between May 7, 2014 and May 22, 2014, in connection with those interviews, the Foley team received approximately 500 pages of additional documents from Micro Motion and Mr. Derby corroborating the conception and reduction to practice of the Digital Prototype. I instructed another member of the Foley team to produce all of those documents to opposing

counsel. All of those documents were produced on opposing counsel on May 20, 2014 and May 23, 2014.

7. I instructed another member of the Foley team to supplement Defendants' Rule 26(a) disclosures to specifically identify Mr. Pankratz and Mr. Derby as having knowledge of this subject. The supplemental initial disclosures were served upon opposing counsel on May 20, 2014.

8. At the time plaintiff's counsel received this information—May 20 and May 23—it had not yet taken a single deposition of Micro Motion on *any* technical issues. The first such deposition—the 30(b)(6) deposition of Mr. Maginnis—was not and is not scheduled to occur until June 12 or 13. That deposition was originally scheduled for May 22 or 23, but was postponed at plaintiff's request prior to Micro Motion's disclosure of the Digital Prototype. Invensys did not seek any individual depositions until May 30, 2014.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: June 5, 2014

Milwaukee, Wisconsin



Jeffrey N. Costakos