

## **EXHIBIT B**

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

INVENSYS SYSTEMS, INC.

Plaintiff,

v.

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

Defendants.

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C.A. No.: 6:12-cv-00799-LED

**ORDER REGARDING E-DISCOVERY**

The Court ORDERS as follows:

1. This order supplements all other discovery rules and orders. It streamlines Electronically Stored Information (“ESI”) production to promote a “just, speedy, and inexpensive determination” of this action, as required by Federal Rule of Civil Procedure 1.
2. This order may be modified in the Court’s discretion or by agreement of the parties.
3. A party’s meaningful compliance with this Order and efforts to promote efficiency and reduce costs will be considered in cost-shifting determinations.
4. Absent a showing of good cause, general ESI production requests under Federal Rules of Civil Procedure 34 and 45, or compliance with a mandatory disclosure requirement of this Court, shall not include metadata. However, the parties agree to preserve metadata associated with relevant ESI to the extent reasonably possible without undue burden or undue cost and subject to any pre-existing technological limitations. The parties further agree that no metadata will be searched or produced without a specific claim of good cause associated with the metadata requested and also subject to the producing party’s claim of undue burden or undue cost. The parties shall meet and confer should this issue arise.
5. Absent agreement of the parties or further order of this court, the following parameters shall apply to ESI production:
  - A. **General Document Image Format.** Each electronic document shall be produced in single-page Tagged Image File Format (“TIFF”) format. TIFF files shall be single page and shall be named with a unique production number followed by the appropriate file extension. Load files shall be provided to indicate the location and unitization of the TIFF files. If a document is more than one page, the unitization of the document and any attachments and/or affixed notes shall be maintained as

they existed in the original document. If a document cannot be produced as a TIFF file, the Producing party shall promptly notify the Receiving party and the parties shall work in good faith to agree on an appropriate production format for the document/information in question. To the extent a document is produced in native format, it will be produced with a TIFF placeholder that contains the original file extension, the production number range for the document, and any confidentiality designation allowed under the Protective Order.

- B. **Text-Searchable Documents.** Each party has an obligation to make its production text searchable by producing OCR and/or extracted text files. Each party shall convert all hard copy documents into electronic documents for production purposes. The parties shall meet and confer to discuss documents that present imaging or formatting problems. To the extent exceptions to the foregoing are required, the parties will meet and confer to discuss alternative production requirements, concerns or formats. If a party's documents already exist in text-searchable format independent of this litigation, or are converted to text-searchable format for use in this litigation, including for use by the producing party's counsel, then such documents shall be produced in the same text-searchable format at no cost to the receiving party.
- C. **Footer.** Each document image shall contain a footer with a sequentially ascending production number.
- D. **Native Files.** A party that receives a document produced in a format specified above may make a reasonable request to receive the document in its native format, and upon receipt of such a request, the producing party shall produce the document in its native format. All parties receiving documents in native file format agree to exercise care when printing native file documents that have a confidentiality designation for use at a deposition or for any other purpose related to the litigation to ensure that the confidentiality designation remains on all re-prints including, for example, labeling the appropriate confidentiality designation by either placing a physical sticker on the printed document or otherwise affixing the confidentiality designation to the printed document.
- E. **No Backup Restoration Required.** Absent a showing of good cause, no party need restore any form of media upon which backup data is maintained in a party's normal or allowed processes, including but not limited to backup tapes, disks, SAN, and other forms of media, to comply with its discovery obligations in the present case. Any party may move the Court for an order compelling any other party to produce backup data upon a showing of good cause.
- F. **Voicemail and Mobile Devices.** Absent a showing of good cause, voicemails, PDAs and mobile phones are deemed not reasonably accessible and need not be collected and preserved.

6. General ESI production requests under Federal Rules of Civil Procedure 34 and 45, or compliance with a mandatory disclosure order of this court, shall not include e-mail or other forms of electronic correspondence (collectively “e-mail”). To obtain e-mail parties must propound specific e-mail production requests.
7. **PLAINTIFF’S PROPOSAL:** E-mail production requests shall be phased to occur timely after the parties have exchanged initial disclosures, a specific listing of likely e-mail custodians that contains a specific identification of the fifteen most significant listed e-mail custodians in view of the pleaded claims and defenses<sup>1</sup>, infringement contentions and accompanying documents pursuant to P.R. 3-1 and 3-2, invalidity contentions and accompanying documents pursuant to P.R. 3-3 and 3-4. The exchange of this information shall occur at the time required under the Federal Rules of Civil Procedure, Local Rules, or by order of the court. Each requesting party may also propound up to five written discovery requests/interrogatories and take one deposition of no more than 7 hours per producing party to identify the proper custodians, proper search terms, and proper time frame for e-mail production requests. Such discovery requests/interrogatories and deposition shall not count against any of the other discovery limits in the case. The court may allow additional discovery upon a showing of good cause.

**DEFENDANTS’ PROPOSAL:** The parties shall meet and confer in good faith to identify the proper custodians, proper search terms, and proper time frame for e-mail production requests. To the extent that the meet and confer process is not productive, each requesting party may take one deposition of no more than 7 hours per producing party to identify the proper custodians, proper search terms, and proper time frame for e-mail production requests. Such a deposition shall not count against any of the other discovery limits in the case. The court may allow additional discovery upon a showing of good cause.

8. E-mail production requests shall identify the custodian, search terms, and time frame. The parties shall cooperate to identify the proper custodians, proper search terms, and proper time frame. Each requesting party shall limit its e-mail production requests to a total of eight custodians per producing party for all such requests. The parties may jointly agree to modify this limit without the court’s leave. The court shall consider contested requests for additional or fewer custodians per producing party, upon showing a distinct need based on the size, complexity, and issues of this specific case.
9. Each requesting party shall limit its e-mail production requests to a total of ten search terms per custodian per party. The parties may jointly agree to modify this limit without the court’s leave. The court shall consider contested requests for additional or fewer search terms per custodian, upon showing a distinct need based on the size, complexity, and issues of this specific case. The search terms shall be narrowly tailored to particular issues. Indiscriminate terms, such as the producing company’s name or its product name, are inappropriate unless combined with narrowing search criteria that sufficiently reduce the risk of overproduction. A conjunctive combination of multiple words or phrases (e.g., “computer” and “system”) narrows the search and shall count as a single search term. A

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<sup>1</sup> A “specific identification” requires a short description of why the custodian is believed to be significant.

disjunctive combination of multiple words or phrases (e.g., “computer” or “system”) broadens the search, and thus each word or phrase shall count as a separate search term unless they are variants of the same word. Use of narrowing search criteria (e.g., “and,” “but not,” “w/x”) is encouraged to limit the production and shall be considered when determining whether to shift costs for disproportionate discovery.

10. Pursuant to Federal Rule of Evidence 502(d), the inadvertent production of a privileged or work product protected ESI is not a waiver in the pending case or in any other federal or state proceeding.
11. The mere production of ESI in a litigation as part of a mass production shall not itself constitute a waiver for any purpose.
12. **PLAINTIFF’S PROPOSAL:** All discovery and document production requirements contained in this order shall be subject to the applicable laws of the country in which the information is located, without further order of this Court.

**DEFENDANTS’ PROPOSAL:** *This additional provision is unnecessary.*

13. Except as expressly stated, nothing in this order affects the parties’ discovery obligations under the Federal or Local Rules
14. **PLAINTIFF’S PROPOSAL:** *This additional provision is unnecessary. Alternatively, Plaintiff Proposes:* The parties agree to accept summary financial information as an initial production, but are entitled to all relevant financial information. Relevant financial information beyond the summaries shall be produced if requested. No showing of good cause is needed for discovery that a party was otherwise entitled to under the Federal Rules or any Order of this Court.

**DEFENDANTS’ PROPOSAL:** To the extent financial information is sought, only summary financial information will be produced absent a showing of good cause that production of underlying documentation or information is necessary. The parties shall meet and confer to discuss the parameters of the production of any underlying financial documentation or information should the issue arise.

15. **PLAINTIFF’S PROPOSAL:** *This additional provision is unnecessary. Alternatively, Plaintiff Proposes:* No showing of good cause is needed for discovery that a party was otherwise entitled to under the Federal Rules or any Order of this Court.

**DEFENDANTS’ PROPOSAL:** To the extent relevant documents are located on a centralized server or network, the producing party shall not be required to search for additional identical copies of such documents that may be located on the personal computer or otherwise in the possession of individual employees absent a showing of good cause that the production of such additional copies is necessary.

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