

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

SIPCO, LLC, et al.,

Plaintiffs,

v.

EMERSON ELECTRIC CO., et al.,

Defendants.

Civil Action No. 6:15-cv-907

JOINT CLAIM CONSTRUCTION AND PREHEARING STATEMENT

Pursuant to PR 4-3 and the Court's Docket Control Order dated April 12, 2016, Plaintiffs and Emerson Electric Co., Emerson Process Management LLP, Fisher-Rosemount Systems, Inc., Rosemount Inc., BP, p.l.c., BP America, Inc., and BP America Production Company ("Defendants") hereby jointly submit this Joint Claim Construction and Prehearing Statement concerning U.S. Patent Nos. 6,249,516, 8,000,314, 8,233,471, 8,625,496, 6,437,692, 6,914,893, 7,468,661, 7,697,492, 8,013,732, 8,754,780, and 8,908,842. BP, p.l.c appears specially and only for the limited purpose of preserving its rights, notwithstanding and without waiving its rights to answer, obtain resolution of any Rule 12 motion, or otherwise plead in response to the Amended Complaint served on April 4, 2016.

P.R. 4-3(a)

Exhibit A, attached hereto, identifies the claim terms and proposed constructions that the parties have agreed upon for this proceeding. The parties will continue to meet and confer in an effort to narrow the issues in advance of *Markman* briefing.

P.R. 4-3(b)

With respect to the terms that are in dispute, the chart attached as Exhibit B identifies the 10 terms that the parties have agreed are the most important disputed terms, or the most important terms identified by Plaintiffs and Defendants that the parties were unable to agree upon, divided evenly between Plaintiffs and Defendants, and includes the identification of the parties' intrinsic and extrinsic support for those disputed claim terms, and which terms are considered by one or both parties to be case or claim dispositive. Each party reserves the right to rely on any intrinsic or extrinsic evidence identified by the other party.

Exhibit C, also attached hereto, identify the remaining claim terms for which the parties could not reach agreement. Exhibit C provides an identification of the intrinsic and extrinsic evidence upon which each party intends to rely to support its proposed constructions, and which terms are considered by one or both parties to be case or claim dispositive. Each party reserves the right to rely on any intrinsic or extrinsic evidence identified by the other party.

P.R. 4-3(c) and P.R. 4-3(d)

As to the Claim Construction Hearing, Plaintiffs propose a three-hour hearing, and anticipate calling their technical expert, Dr. Kevin Almeroth, as a witness at that hearing only if expert testimony is requested by the Court. A summary of Dr. Almeroth's expected testimony, including expected testimony regarding Defendants' indefiniteness challenges, is attached as Exhibit D hereto.

Defendants propose a seven-hour hearing, including an appropriate technology tutorial, and anticipate calling as a witness at that hearing one or more of their technical experts, Dr. Robert Akl or Stephen Heppe. A summary of Dr. Akl's and/or Heppe's expected evidence, including expected testimony regarding Defendants' indefiniteness challenges, is included in

Defendants' citations of extrinsic evidence. Defendants' object to Plaintiffs' Exhibit D to the extent inconsistent with Plaintiff's P.R. 4-2(b) submission. Dr. Akl's CV is attached as Exhibit E, and Dr. Heppe's CV is attached as Exhibit F.

P.R. 4-3 (e)

Defendants request that a pre-hearing conference be scheduled prior to the Claim Construction Hearing to address outstanding issues, including the complexity of the case given the large number of patents (11) and asserted claims (180). In particular, Defendants believe that the Court's assistance may be necessary to achieve a meaningful reduction in the number of claim terms in dispute. In the absence of a meaningful reduction of the issues in this case, Defendants may ask the Court to expand the briefing limitations set forth in the Docket Control Order to allow for construction of additional terms.

Further, Plaintiffs and Defendants would be willing to participate in a pre-hearing conference, if the Court deems one appropriate, to address issues such as whether the Court wishes to hear a live technology tutorial prior to the *Markman* hearing and whether the Court wishes to hear live expert testimony.

DATED: July 14, 2016

Respectfully submitted,

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CERTIFICATE OF SERVICE

This document was served on all counsel who are deemed to have consented to electronic service. Local Rule CV-5(a)(3)(A). Pursuant to Fed. R. Civ. P. 5(d) and Local Rule CV-5(d) and (e), all other counsel of record not deemed to have consented to electronic service were served with a true and correct copy of the foregoing by email on this the 14th day of July, 2016

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