

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

SIPCO, LLC, and IP CO, LLC
(d/b/a INTUS IQ),

Plaintiffs,

v.

Civil Action No. 6:15-cv-907

EMERSON ELECTRIC CO., EMERSON
PROCESS MANAGEMENT LLLP, FISHER-
ROSEMOUNT SYSTEMS, INC.,
ROSEMOUNT INC., BP, p.l.c., BP
AMERICA, INC., and BP AMERICA
PRODUCTION COMPANY,

Defendants.

**PLAINTIFFS' MEMORANDUM IN OPPOSITION TO EMERSON DEFENDANTS'
MOTION TO STAY THIS ACTION PENDING DISMISSAL OR TRANSFER**

Plaintiffs SIPCO, LLC and IP Co, LLC (d/b/a INTUS IQ) (collectively "Plaintiffs" or "SIPCO") submit this Memorandum in Opposition to the Motion to Stay This Action Pending Dismissal or Transfer ("Motion to Stay") filed by Emerson Electric Co., Fisher-Rosemount Systems, Inc., and Rosemount Inc. (collectively, "Defendants" or "Emerson"). For the reasons set forth below, and those set forth in Plaintiffs' Memorandum in Opposition to Emerson Defendants' Motion to Dismiss or Transfer This Action ("Opposition Brief") (Doc. No. 24), this Court should deny Emerson's Motion to Stay.

I. INTRODUCTION

Emerson seeks a stay for the sole purpose of further obstructing SIPCO's right to seek redress for Emerson's infringement of its patents. Emerson preemptively brought declaratory judgment claims on eight of SIPCO's patents in the Northern District of Georgia in an attempt to usurp SIPCO's right to choose a forum in which to pursue its infringement claims. *See*

Opposition Brief at 2. It then withdrew its complaint, and later re-filed—abandoning its claims on all but two of SIPCO’s patents, neither of which are at issue in this case. *See id.* Yet, when SIPCO brought suit on the patents Emerson withdrew and additional patents in this district, Emerson decided that it wanted to stop the suit by improperly claiming that the issues in both cases were practically identical—despite the different patents and patent claims in both cases. *See id.* at 2-3, 6-10. Granting this stay would serve no purpose other than to allow Emerson to further delay speedy resolution of SIPCO’s infringement claims on the patents at issue in this case because, as explained in detail below, a stay will prejudice SIPCO and will likely cause more inefficiencies than Emerson has already inserted into this case.

II. LEGAL STANDARD AND ARGUMENT

It is well within this Court’s authority to deny a stay pending resolution of a motion to transfer on first-to-file and 28 U.S.C. § 1404(a) grounds. *See Datamize, Inc. v. Fidelity Brokerage Services, LLC*, No. 2:03-cv-321-DF, 2004 WL 1683171, at *12 (E.D. Tex. Apr. 22, 2004) (summarily denying a similar request for a stay pending resolution of a motion to transfer on first-to-file and 28 U.S.C. § 1404(a) grounds); Hr’g Tr.,¹ *Datamize*, at 33:15-20 (dated Mar. 11, 2004), ECF No. 87. Indeed, “the power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with the economy of time and effort for itself, for counsel, and for its litigants.” *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936). Management of the Court’s docket requires “the exercise of judgment, which must weigh competing interests and maintain an even balance.” *Id.* at 254-55. A stay should be supported by “genuine necessity,” and “[g]enerally, the moving party bears a heavy burden to show why a stay should be granted absent statutory authorization, and a court should tailor its

¹ Attached hereto as Exhibit A.

stay so as not to prejudice other litigants unduly.” *Coastal (Bermuda) Ltd. v. E.W. Saybolt & Co., Inc.*, 761 F.2d 198, 203 n.6 (5th Cir. 1985).²

There is no “genuine necessity” for a stay pending resolution of Emerson’s motion because moving forward will not put the parties at risk of duplicating litigation efforts. Indeed, if the Court promptly resolves the Motion to Dismiss, there is no basis to order a stay. *See Lone Star Steakhouse & Saloon, Inc. v. Adams*, 169 F. Supp. 2d 1197, 1203 (D. Kan. 2001) (denying motion to stay discovery pending resolution of motion to dismiss or transfer while noting that defendant’s “motion assumes a delay in the court’s decision on the motion to dismiss”). Further, granting the stay would delay the inevitable discovery and claim construction that will take place for the patents at issue.

SIPCO is asserting a significant number of patents—ten at the time Emerson’s motion was filed—that are not at issue in the Georgia action. As set forth in detail in SIPCO’s Opposition Brief, meaningful differences exist between the patents at issue here and the two patents at issue in Georgia: the patents do not all have the same limitations or claim the same subject matter or devices. *See* Opposition Brief at 8-10 & Exh. B.

SIPCO will pursue its infringement claims on these patents whether this action proceeds or the case is transferred. Consequently, even if this case proceeds into discovery pending resolution of Emerson’s motion, the parties’ initial disclosures, other discovery, and claim construction in this proceeding can still be utilized. *See* Hr’g Tr., *Datamize*, ECF No. 87 (“In the meantime, everyone should go forward. Whatever work you do here, if I should not transfer it,

² Emerson cites *Hernandez v. ASNI, Inc.*, No. 2:15-cv-00078-LDG-NJK, 2015 WL 3932415 (D. Nev. June 24, 2015), as support for applying a three-factor test here. But the test cited is a test for “deciding whether to stay proceedings pending resolution of a request to transfer to an MDL,” which is a decision that will be made by an MDL Panel—not by the court entertaining the motion to stay. *Id.* at *1. Emerson has not cited any authority concerning what factors a court should consider when that court has complete control over the event terminating the stay—namely, the court’s own decision on the motion before it. In any event, on these facts, the three-factor test Emerson applies weighs heavily in favor of denying the stay for the reasons stated in the body of this memorandum.

obviously will be needed here. If it is [transferred], I am sure it can be used in California.”).

Thus, moving forward in this case will promote efficiency without unnecessarily delaying resolution of SIPCO’s infringement claims.

In sum, the lack of any benefit to granting the stay does not outweigh the cost of needlessly stalling this proceeding and delaying SIPCO’s pursuit of its infringement claims. *See Luv N’ Care, Ltd. v. Jackel Int’l Ltd.*, No. 2:14-cv-00855-JRG, 2014 WL 5841501, at *3 (E.D. Tex. Nov. 10, 2014) (“This Court places emphasis on the speedy resolution of a party’s rights—including patent rights”). Simply, a stay will benefit no one but will prejudice SIPCO and cause more inefficiencies than it could possibly prevent. This Court should exercise its discretion to deny Emerson’s request for a stay.

III. CONCLUSION

For the foregoing reasons, SIPCO respectfully requests that this Court deny Emerson’s Motion to Stay.

Dated: January 8, 2016

/s/ Paul J. Cronin by permission Claire Abernathy
Henry

Paul J. Cronin, (MA Bar No. 641230)

LEAD ATTORNEY

James C. Hall (MA Bar No. 656019)

Nutter, McClennen & Fish LLP

155 Seaport Boulevard

Boston, MA 02210-2604

Telephone: (617) 439-2000

Facsimile: (617) 310-9000

Email: pcronin@nutter.com

Email: jhall@nutter.com

T. Johnny Ward, Bar No.

Claire Henry, Bar No.

Ward, Smith & Hill, PLLC

1127 Judson Rd., Ste. 220

Longview, Texas 75601

Telephone: (903) 757-6400

Facsimile: (903) 757-2323

Email: jw@wsfirm.com

Email: ch@wsfirm.com

ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was filed electronically in compliance with Local Rule CV-5(a). Therefore, 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 8th day of January, 2016.

/s/ Claire Abernathy Henry