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.	§	

BP P.L.C'S MOTION TO DISMISS FOR
FAILURE TO STATE A CLAIM AND FOR MISJOINDER

Plaintiffs have filed this action alleging infringement of multiple patents by so-called Emerson "Smart Wireless Solution" products. Defendant BP p.l.c. moves to dismiss the claims asserted against it pursuant to Federal Rules of Civil Procedure Nos. 12(b)(6) and 21. Plaintiffs have not and cannot plead that BP p.l.c. itself has purchased or used the "Smart Wireless Solution" products at issue. (Dkt. 19). BP p.l.c. is a holding company that indirectly owns as subsidiaries two of the other defendants: BP America Production Company and BP America, Inc. BP p.l.c. apparently is included in the Complaint only because it has that indirect parent relationship. (*See* Dkt. 19 at ¶9). The Complaint contains no allegation that BP p.l.c. engages in independent business operations outside of the allegations made against BP America Production Company and BP America, Inc. (*See, e.g.*, Dkt 19 at ¶12). The latter two entities have answered the allegations in the Complaint. (Dkt 49 and 52). No factually-supported allegations have been

made that BP p.l.c. has liability for the actions of either BP America Production Company or BP America, Inc. Thus, the Plaintiffs have insufficiently pled a specific allegation of infringement by BP p.l.c.

In addition, because BP p.l.c. is not itself alleged to have purchased or used the "Smart Wireless Solutions" products, it shares no common question of law or fact arising from this action with the other Defendants, and is therefore misjoined in this action. Fed. R. Civ. P. 20; *see also* 35 U.S.C. § 299 (strictly limiting joinder in patent cases).

BP p.l.c. appears in this case specially and only for the limited purpose of filing this motion.

FACTS

On October 16, 2015, Plaintiffs SIPCO LLC and IP CO., LLC filed the present action against Defendants Emerson Electric Co., Fisher-Rosemount Systems, Inc., and Rosemount Inc. alleging patent infringement based on the making, using, selling, offering for sale, and importing of the accused "Smart Wireless Solutions" products that Plaintiffs allege "provide monitoring and control of remote wireless devices in industrial environments." (Dkt. 1 at ¶¶ 56, 72, 87, 102, 117, 131, 147, 161, 175, 189, 203).

After Defendants Emerson Electric Co., Fisher-Rosemount Systems, Inc. and Rosemount Inc. ("Emerson Defendants") moved to dismiss or transfer to a different, first-filed jurisdiction on December 10, 2015 (Dkt. 10), Plaintiffs filed their First Amended Complaint to attempt to beef up their Texas contacts by adding an Emerson customer identified as BP p.l.c., BP America, Inc., and BP America Production Company ("BP Defendants"). (Dkt. 19).

The Amended Complaint alleges that BP p.l.c. is a public limited company with headquarters in London, England. (Dkt. 19 at ¶9). BP America, Inc. is allegedly a Delaware

corporation and a subsidiary of defendant BP p.l.c. (*Id*. at ¶¶ 9 and 12). BP America Production Company is allegedly a Delaware corporation and also a subsidiary of BP p.l.c. (*Id.*). Both BP America, Inc. and BP America Production Company have answered the allegations in the Complaint. (Dkt. 49 and 52).

In the Amended Complaint, Plaintiffs first define "BP" as the conglomerate of the three separate, but related, BP Defendants. (Dkt. 19 at Preamble). Thereafter, all of the Counts that apply to any of the three "BP" entities are grouped so as to apply to all of the BP entities. (*E.g.*, Dkt. 19 at ¶¶ 101, 125, 149, 173, 191, 209, 227, 244, 262, 280, and 298). None of the allegations in the Counts apply specifically to *only* the BP p.l.c. entity. (Dkt. 19).

In only one paragraph does the Amended Complaint even mention anything with respect to the Movant *per se*. It does so in its introduction to BP p.l.c. in ¶9:

> "9. BP p.l.c. is a British public limited company with its corporate headquarters in London, England, SW1Y 4PD. BP p.l.c.is the global parent company of the world-wide business operating under the "BP" logo. Defendants BP America, Inc. and BP America Production Company are wholly-owned subsidiaries of BP p.l.c. and are sufficiently controlled by BP p.l.c. so as to be BP p.l.c.'s agents in Texas. BP p.l.c. does substantial business in Texas, including within this judicial district, and may be served with process by serving its registered agent, C.T. Corporation System, at 350 N. St. Paul St., Suite 2900, Dallas, Texas 75201-4234.

(Dkt. 19 at ¶9). In other words, taking the allegations of the Amended Complaint as true for purposes of this Motion, there is nothing alleged about BP p.l.c. that isn't alleged against BP America, Inc. and/or BP America Production Company, except that the latter two are "controlled" by the former and are its "agents in Texas." (*Id.*). That is, the conclusory infringement allegations against BP p.l.c. are identical to the conclusory allegations against its subsidiaries. (Dkt. 19 at ¶¶ 101, 125, 149, 173, 191, 209, 227, 244, 262, 280, and 298). The Amended Complaint makes no attempt whatsoever to plead any facts specific to BP p.l.c. (*Id.*).

1. STANDARD OF REVIEW

When considering a motion under Rule 12(b)(6), the Court is obligated to presume that all well-pleaded allegations are true, resolve all doubts and inferences in the plaintiffs' favor, and view the pleadings in the light most favorable to the plaintiffs. *See Fitzgerald v. Barnstable Sch. Comm.*, 555 U.S. 246, 249 (2009); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). However, the Court *cannot accept as true* bald assertions, conclusions, inferences, or legal conclusions couched as facts. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678-79 (2009); *Twombly*, 550 U.S. at 555. The allegations contained within the complaint must be "plausible" and they must be supported by sufficient facts that permit "the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* 550 U.S. at 570; *Iqbal*, 556 U.S. at 678.

2. THE COMPLAINT FAILS TO STATE A CLAIM AGAINST BP P.L.C.

A cause of action for infringement arises under 35 U.S.C. § 271(a), which provides that "whoever without authority makes, uses, offers to sell, or sells any patented invention ... during the term of the patent therefor, infringes the patent." The counts of Plaintiffs' complaint are deficient as they do not allege any meaningful identification of specific acts that constitute such infringement within the United States by BP p.l.c. specifically. In the opening paragraph of the Amended Complaint, Plaintiffs define three separate legal entities (BP, p.l.c, BP America, Inc., and BP America Production Company) collectively as "BP" (Dkt. 19 at Preamble), and then proceed to allege that the collective defendant group "BP," as defined, improperly uses or imports the accused products. (Dkt. 19 at Preamble and ¶¶ 101, 125, 149, 173, 191, 209, 227, 244, 262, 280, and 298). Plaintiffs allege infringement by the collective BP entities through their alleged use and/or importation of "infringing products sold by Emerson Electric, Emerson Process Management, Fisher Rosemount Systems, and/or Rosemount." (Dkt. 19 at ¶12).

Plaintiffs rely only upon that conclusion and do not allege any *facts* showing that BP p.l.c. has used or imported the accused products.

In essence, Plaintiffs have alleged that the collective action of the three distinct BP Defendants amounts to infringement without identifying what specific action BP p.l.c. has taken beyond a conclusory allegation that it "controls" its subsidiary "agents," the other two BP Defendants. *See* Dkt. 19 at ¶9; *Hargrave v. Fibreboard Corp.*, 710 F.2d 1154, 1160 (5th Cir. 1983) ("Generally, our cases demand proof of control by the parent over the internal business operations and affairs of the subsidiary in order to fuse the two for jurisdictional purposes…The degree of control exercised by the parent must be greater than that normally associated with common ownership and directorship.") The conclusory allegations of parent "control" of a subsidiary here do not adequately substitute for the need to plead infringement facts specific to BP p.l.c. since the alleged "control" over the conduct by the subsidiaries is itself only conclusory and unsupported by *facts*. *See Tegal Corp. v. Tokyo Electron Co.*, 248 F.3d 1376, 1380 (Fed. Cir. 2001) (a company has no affirmative obligation to stop its corporate affiliates from selling or servicing infringing products in the absence of proof that it controlled the operations of those affiliates); *Manville Sales Corp. v. Paramount Systems, Inc.*, 917 F.2d 544, 552 (Fed. Cir.1990) ("general rule that the corporate entity should be recognized and upheld, unless specific, unusual circumstances call for an exception"); *A. Stucki Co. v. Worthington Industries, Inc.*, 849 F.2d 593, 596–97 (Fed. Cir.1988) (in the absence of evidence showing that the parent company either was an alter ego of the subsidiary or controlled the conduct of the subsidiary, a parent company is not liable for direct infringement for mere inaction in the face of infringement by a subsidiary); *Jaffer v. Standard Chartered Bank*, 301 F.R.D. 256, 263 (N.D. Tex. 2014) ("Plaintiffs must allege sufficient facts to show the requisite degree of dominion and control needed to pierce the

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