

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

PHILIPS NORTH AMERICA LLC

Plaintiff,

v.

IMAGE TECHNOLOGY CONSULTING, LLC; MARSHALL R. SHANNON, IMAGE TECHNOLOGY CONSULTING II, LLC; and AXIOM IMAGING SOLUTIONS, INC.,

Defendants.

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Case No. 3:22-cv-00147-G

IMAGE TECHNOLOGY CONSULTING II, LLC AND AXIOM IMAGING SOLUTIONS, INC.,’S AMENDED COUNTERCLAIMS

Defendants Image Technology Consulting II, LLC (“**Image II**”) and Axiom Imaging Solutions, Inc. (“**Axiom**” together with Image II referred to herein as “**Defendants**” and/or “**Counter Plaintiffs**”) hereby file their Amended Counterclaims (“Amended Counterclaims”) against Plaintiff Philips North America LLC (“**Philips**”) as follows:

FED. R. CIV. P. 15(a)(1) – AMENDMENT AS A MATTER OF COURSE

1. Fed. R. Civ. P. 15(a)(1) provides that a party may amend its pleading once as a matter of course, within 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier. FED. R. CIV. P. 15(a)(1).

2. Philips served its Motion to Dismiss Defendants’ Counterclaims [Doc. 139, Doc. 140] on October 30, 2023.

3. Accordingly, Defendants’ Amended Counterclaims are timely under Fed. R. Civ. P. 15(a)(1).

PARTIES

4. Image II is a Texas limited liability company with a principal place of business located in Desoto, Texas.

5. Axiom is a Texas limited liability company with a principal place of business located in Desoto, Texas.

6. Philips is a Delaware limited liability company, formerly known and doing business as Philips North America Corporation (a Delaware Corporation), with a principal place of business located in Andover, Massachusetts.

JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331, as this action alleges a claim arising under the laws of the United States. The Court has supplemental jurisdiction over the state law claims alleged herein pursuant to 28 U.S.C. § 1367.

8. This Court has personal jurisdiction over Philips because Counter Plaintiffs' Counterclaims arise out of Philips contacts with Texas. Further, the Court has personal jurisdiction over Philips because it has generally appeared by filing its claims against Image II and Axiom in this Court.

9. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391 because Image II and Axiom reside in this judicial district and/or a substantial part of the conduct, events, or omissions giving rise to Image II's claims occurred in this judicial district and/or had or have connections to this judicial district.

INTRODUCTION

10. Philips has launched an aggressive corporate campaign against Counter Plaintiffs aimed at sabotaging Counter Plaintiffs' business and stealing Counter Plaintiffs' market share for

Philips. Philips has intentionally and maliciously blocked Counter Plaintiffs from servicing Philips' magnetic resonance imaging machines ("MRI Machines") owned and/or used by hospitals and other medical facilities in a wrongful attempt to quash competition and corner the aftermarket service industry for Philips' MRI Machines. By implementing malware on Philips-brand MRI Machines under the guise of a software upgrade, Philips has locked out its competition from being able to access, service, repair, and maintain Philips-brand MRI Machines owned by hospitals and healthcare facilities. Moreover, Philips has and continues to defame and disparage Counter Plaintiffs directly to Counter Plaintiffs' customers and clients by spreading lies about Counter Plaintiffs' ability to service customers in attempt to steal those customers for Philips. Philips' unsavory business practices have prevented Counter Plaintiffs from satisfying service contracts with Counter Plaintiffs' customers, have tarnished Counter Plaintiffs' respectable reputation in the industry, and caused significant financial and reputational harm to Counter Plaintiffs' and their business.

FACTS

11. There are four major manufacturers of MRI Machines – Toshiba, GE, Siemens, and Philips (the "Manufacturers"). MRIs from these Manufacturers cost hundreds of thousands of dollars and have a life expectancy of between 10 and 15 years. Despite their long lifespan, these machines require frequent maintenance, testing, and calibration to ensure patient safety, as required by Food and Drug Administration ("FDA") standards. *See* 21 C.F.R. § 820.170. The Manufacturers typically sell a new MRI Machine with only a one-year warranty for repair parts and service. Accordingly, the hospitals and medical facilities that purchase MRI Machines will also purchase a service contract to provide servicing and maintenance work after the one-year Manufacturer warranty expires.

12. Philips develops, manufactures, and sells medical imaging systems, including MRI Machines (“Philips MRI Machines”), to hospitals and other medical facilities. The Philips MRI Machines provide critical imaging information for doctors treating seriously ill patients and are a critical step in treatment and diagnosis as well as overall patient care. Hospitals and medical centers operate Philips MRI Machines at all hours and need them to be available at a moment’s notice. The Philips MRI Machines require technical precision in installation, service, and repair work. See 21 C.F.R. § 820.170. Philips offers service contracts to hospitals and medical facilities to service and repair Philips MRI Machines, often at a premium compared to the services offered by an independent servicing organization (“ISO”), like Counter Plaintiffs. Thus, hospitals and medical facilities often prefer to use ISOs, like Counter Plaintiffs, rather than the Manufacturers, as the ISOs tend to be more affordable, faster, more efficient, and provide a better customer experience. In fact, the Manufacturers have been found to charge up to seven times the per-hour cost of an ISO for maintenance services.

13. ISOs allow the owners of a Philips MRI Machine to receive installation, service, and repair work on a Philips MRI Machine from a consistent service provider that has knowledge of their requirements and specific systems and can perform work quickly and efficiently to provide services.. Modern medical imaging devices, like Philips MRI Machines, are complex machines that use computers and electronics to control nearly every function. As a result, diagnosing and repairing medical imaging devices is a complex and highly technical operation. It is critical that ISOs have timely access to the parts, tools, information, and training from Philips to effectively carry out necessary repair and servicing work.

14. Counter Plaintiffs are ISOs that specializes in installation, servicing, maintaining, and repairing medical imaging equipment, per performance specifications as required by Food and

Drug Administration (“FDA”) regulations, manufactured and sold by the Manufacturers, including Philips. Counter Plaintiffs’ customers comprise healthcare facilities such as hospitals and imaging clinics. Counter Plaintiffs distinguish themselves from the major Manufacturers by offering high quality service, customer care, and expedited service at a lower cost. Counter Plaintiffs pride themselves on their ability to provide on-demand service and repair of an MRI Machine at a moment’s notice. Counter Plaintiffs’ rapid response time is critical to its business, as it is extremely disruptive to the operations of a hospital or imaging center if its machines are inoperable for any length of time.

15. Typically, in order to perform diagnostic checks and to calibrate MRI Machines after service or maintenance work is performed, Counter Plaintiffs will need access to the MRI Machine’s basic operating system. Toshiba, GE, and Siemens all provide Counter Plaintiffs with service and installation information required under 21 CFR § 820 as well as a free digital key that allows Counter Plaintiffs technicians access to the MRI Machines’ operating systems for purposes of installing, maintaining, and servicing the equipment as required by the FDA. While Philips had previously provided ISOs like Counter Plaintiffs access to Philips MRI Machines’ operating systems for the purpose of installing, maintaining, servicing and repair, Philips has now locked out all ISOs, including Counter Plaintiffs, from Philips MRI Machines.

A. Philips’ Anticompetitive and Exclusionary Conduct.

16. Historically, Philips and ISOs, like Counter Plaintiffs, had the ability to install, maintain, and service a Philips’ MRI Machine for hospitals and imaging centers. At the time they purchased a Philips’ MRI Machine, these medical facilities understood that they had options regarding service of the MRI Machine, and that they could retain their own in-house engineers or any ISO to service, maintain, and repair the Philips’ MRI Machine. 21 CFR § 1000.55. The ability

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