

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

PHILIPS NORTH AMERICA LLC

Plaintiff,

v.

**IMAGE TECHNOLOGY CONSULTING,
LLC; and MARSHALL R. SHANNON,**

Defendants.

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

DEFENDANTS' FIRST AMENDED COUNTERCLAIMS

Defendants Image Technology Consulting II, LLC, incorrectly named as Image Technology Consulting, LLC, and Marshall R. Shannon (“Shannon” together with Image Technology Consulting II, LLC referred to as “Image”) hereby file this their First Amended Counterclaims (the “Counterclaims”) as follows:

PARTIES

1. Image Technology Consulting II, LLC, is a Texas limited liability company with a principal place of business located in Lancaster, Texas.
2. Shannon is an individual living and residing in DeSoto, Texas.
3. 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

4. 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.

5. This Court has personal jurisdiction over Philips because Image's 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 in this Court.

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

INTRODUCTION

7. Philips has launched an aggressive corporate campaign against Image aimed at sabotaging Image's business and stealing Image's market share for Philips. Philips has intentionally and maliciously blocked Image 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 Image directly to Image's customers and clients by spreading lies about Image's ability to service customers in attempt to steal those customers for Philips. Philips' unsavory business practices have cost Image customers, have tarnished Image's respectable reputation in the industry, and caused significant financial and reputational harm to Image and its business.

FACTS

8. 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.

9. 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 Image. Thus, hospitals and medical facilities often prefer to use ISOs, like Image, 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.

10. ISOs, including Image, provide the necessary installation, service, and repair work on Philips' MRI Machines for doctors and hospitals. 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. ISOs operate as an intermediary between Philips and the owners of the Philips MRI Machines. 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 service providers like Image and other ISOs have timely access to the parts, tools, information, and training from Philips, including access to the Philips MRI Machines themselves, to effectively carry out necessary repair and servicing work.

11. Image is an ISO that specializes in installation, servicing, maintaining, and repairing medical imaging equipment, per performance specifications as required by Food and Drug Administration regulations, manufactured and sold by the Manufacturers, including Philips. Image's customers comprise healthcare facilities such as hospitals and imaging clinics. Image distinguishes itself from the major Manufacturers by offering high quality service, customer care, and expedited service at a lower cost. Image prides itself on its ability to provide on-demand service and repair of an MRI Machine at a moment's notice. Image's 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.

12. Typically, in order to perform diagnostic checks and to calibrate MRI Machines after service or maintenance work is performed, Image will need access to the MRI Machine's basic operating system. Toshiba, GE, and Siemens all provide Image with service and installation

information required under 21 CFR § 820 as well as a free digital key that allows Image 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 Image access to Philips MRI Machines' operating systems for the purpose of installing, maintaining, servicing and repair, Philips has now locked out all ISOs, including Image, from Philips MRI Machines.

A. Philips' Anticompetitive and Exclusionary Conduct.

13. Historically, Philips and ISOs, like Image, had the ability to install, maintain, 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 to choose a service provider is an important selling point when a medical facility is looking to purchase an MRI Machine, as they typically want to avoid being forced to pay premium prices for the equipment manufacturer to service the MRI Machine.

14. Starting on December 18, 2018, Philips began issuing field change orders to Philips' field engineers to implement a series of firmware updates under the title Service Pack 5 ("SP5") to Philips MRI Machines owned and operated by medical facilities that, for the first time, imposed a new log-in screen that blocks anyone without Philips access credentials from accessing any part of the Philips MRI Machine's operating menu, operating systems, and diagnostic software, restricting the purchasers of Philips MRI Machines of the ability to choose their service provider and forcing the after-market service industry to cancel contracts with existing ISOs, like Image, and switch to Philips. Philips field engineers and technicians began implementing the field

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