

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

**EMERSON PROCESS MANAGEMENT  
LLP,**

**Plaintiff,**

**vs.**

**WETRO LAN, LLC,**

**Defendant.**

**Case No: 1:15-cv-416**

**JURY TRIAL DEMAND**

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**COMPLAINT FOR DECLARATORY JUDGMENT OF  
NON-INFRINGEMENT**

COMES NOW Plaintiff Emerson Process Management, LLLP (“Emerson”), by and through its attorneys, and for its Complaint against Wetrolan, LLC (“Wetro”) hereby alleges, as follows:

**NATURE OF THE ACTION**

1. This is an action for declaratory judgment of non-infringement of United States Patent No. 6,795,918 (the “’918 Patent”), entitled “Service Level Computer Security.” A true and correct copy of the ‘918 patent is attached as Exhibit 1.

2. Upon information and belief, the ‘918 Patent was applied for on or about March 7, 2000, by sole inventor Steven T. Trolan. The ‘918 Patent was issued on or about September 21, 2004. The ‘918 Patent expired for lack of payment of maintenance fees on or about September 21, 2012. Steven T. Trolan remained the owner of the ‘918 Patent until it was assigned to Wetro on or about January 10, 2015.

3. Based on the January 10, 2015 assignment, Wetro purports to be the owner of all right, title, and interest in the '918 patent. Wetro, therefore, acquired a patent that had expired over two years prior to its acquisition.

4. Emerson seeks judgment under the patent laws of the United States, 35 U.S.C. § 1 *et seq.*, and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202.

### **THE PARTIES**

5. Emerson is a Limited Liability Limited Partnership, organized under the laws of Delaware, having its principal place of business at 1100 W. Louis Henna Blvd., Building One, Round Rock, Texas, 78681-7430. Emerson is owned by two members: Fisher-Rosemount Systems, Inc. ("FRSI") (94%) and Rosemount, Inc. ("Rosemount") (6%). FRSI is a direct, wholly owned subsidiary of EPMCO Holdings, Inc. ("EPMCO"). FRSI's principal place of business is also at 1100 W. Louis Henna Blvd., Building One, Round Rock, Texas, 78681-7430. Rosemount is a direct, wholly owned subsidiary of Emerson Electric (U.S.) Holding Corporation ("EEUSHC"). Rosemount's principal place of business is at 6021 Innovation Blvd., Shakopee, Minnesota 55379. Both EPMCO and EEUSHC are wholly owned subsidiaries of Emerson Electric Co., headquartered in St. Louis, Missouri.

6. Upon information and belief, Defendant Wetro is a Texas limited liability company organized under the laws of Texas on or about December 23, 2104, and has its only known place of business at 3400 Silverstone Drive, Suite 191-D, Plano, Texas 75023.

### **THE SUBSTANTIAL CONTROVERSY BETWEEN THE PARTIES**

7. On March 23, 2015, Wetro filed a patent infringement lawsuit asserting the '918 patent against Emerson Electric Co. ("Emerson Electric") in the Eastern District of Texas. That

case, which is pending, is styled *Wetro Lan LLC v. Emerson Electric Co.*, Civil Action No. 2:2015-cv-00414 RWS- RSP (“the Eastern District of Texas Litigation”).

8. In the Eastern District of Texas Litigation, Wetro asserts that certain products allegedly made, offered for sale and sold by Emerson Electric in Texas infringe the ‘918 patent. Specifically, in the Eastern District of Texas Litigation, Wetro alleges that Emerson Electric “ships, distributes, uses, offers for sale, sells, and/or advertises” the product described as Emerson “DeltaV Controller Firewall and similarly situated wireless routers.”

9. As part of the Eastern District of Texas Litigation, Emerson Electric challenges the complaint itself as failing to state a claim upon which relief can be granted, because the ‘918 patent is invalid due to patent ineligible subject matter under 35 U.S.C. §101.

10. Emerson Electric also does not make, use, provide, offer for sale, or sell the product described as Emerson “DeltaV Controller Firewall and similarly situated wireless routers”.

11. Emerson Electric is a parent holding company of a series of separate legal entities which in turn own separate subsidiaries, including FRSI, Rosemount and Emerson.

12. Emerson offers for sale and sells DeltaV Controller Firewall product.

13. Emerson has not infringed and does not infringe, either directly or indirectly, any valid and enforceable claim of the ‘918 patent, either literally or under the doctrine of equivalents.

14. By virtue of the foregoing, a substantial controversy exists between the parties that is of sufficient immediacy and reality to warrant declaratory relief.

#### **JURISDICTION AND VENUE**

15. Based on the Complaint filed by Wetro, an actual, justiciable controversy now exists between Emerson and Wetro relating to the ‘918 Patent.

16. This is a complaint for declaratory judgment relief under the patent laws of the United States, 35 U.S.C. §§1.

17. Emerson seeks declaratory relief under 28 U.S.C. §§2201 and 2202.

18. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338, and the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202.

19. This Court has personal jurisdiction over Wetro. According to Wetro's complaint in the Eastern District of Texas Litigation Wetro: it is present within or has minimum contacts within the State of Texas; it has purposefully availed itself of the privileges of conducting business in the State of Texas; it has sought protection and benefit from the laws of the State of Texas; it regularly conducts business within the State of Texas; and its cause of action arises directly from Defendant's business contacts and other activities in the State of Texas.

20. Venue is proper in the Western District of Texas under 28 U.S.C. §1391(b)(2), because, a substantial part of the events or omissions giving rise to the claim occurred in, and a substantial part of property that is the subject of the action is situated in, the Western District of Texas.

21. Alternatively, venue is also proper in the Western District of Texas under 28 U.S.C. §1391(b)(3), because Wetro is subject to personal jurisdiction in Texas and the Western District of Texas with respect to the claim.

**CLAIM FOR DECLARATORY JUDGMENT OF  
NON-INFRINGEMENT OF THE '918 PATENT**

22. Emerson re-alleges and incorporates by reference the allegations set forth in paragraphs 1-21 above.

23. As a result of the acts described in the foregoing paragraphs, there exists a substantial controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

24. A judicial declaration is necessary and appropriate so that Emerson may ascertain its rights regarding the '918 patent.

25. Emerson's using, selling, and offering for sale the DeltaV Controller Firewall and similarly situated wireless routers products, or parts thereof, do not constitute infringement of any claim of the '918 patent.

26. Emerson is entitled to a declaratory judgment that it has not infringed, and does not infringe, literally or under the doctrine of equivalents, any valid and enforceable claim of the '918 patent, whether directly, indirectly, individually, jointly, contributorily, and/or by inducement.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Emerson prays relief as follows:

A declaration that Emerson has not infringed, either directly or indirectly, any valid and enforceable claim of the '918 patent;

An order declaring that Emerson is a prevailing party and that this is an exceptional case, awarding Emerson its costs, expenses, disbursements, and reasonable attorney's fees under 35 U.S.C. §285, and all other statutes, rules, and common law;

That Wetco be ordered to pay all costs associated with this action; and

That Emerson be granted such other and additional relief as the Court deems just and proper.

**JURY DEMAND**

Emerson demands a jury trial pursuant to Rule 38 of the Federal Rules of Civil Procedure.

Dated: May 18, 2015

Respectfully submitted,



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