

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION**

**AUTOMATION MIDDLEWARE  
SOLUTIONS, INC.,**

**Plaintiff,**

**v.**

**ROCKWELL AUTOMATION, INC., and  
ROCKWELL AUTOMATION  
TECHNOLOGIES, INC.,**

**Defendants.**

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**C.A. No. 2:15-cv-01269-RWS**

**JURY TRIAL DEMANDED**

**PLAINTIFF’S FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT**

Plaintiff Automation Middleware Solutions, Inc. (“AMS” or “Plaintiff”) files this First Amended Complaint against Rockwell Automation, Inc. (“Rockwell Automation”) and Rockwell Automation Technologies, Inc., (“Rockwell Technologies”) (collectively, “Rockwell” or “Defendants”) for infringement of U.S. Patent No. 6,513,058 (“the ’058 patent”), U.S. Patent No. 6,516,236 (“the ’236 patent”), U.S. Patent No. 8,073,557 (“the ’557 patent”), U.S. Patent No. 5,691,897 (“the ’897 patent”), and U.S. Patent No. 6,941,543 (“the ’543 patent”).

**THE PARTIES**

1. Automation Middleware Solutions, Inc. is a Texas corporation with its principal place of business at 505 E. Travis St., Suite 203, Marshall, TX 75670.

2. Rockwell Automation, Inc. is a Delaware corporation with its principal place of business at 1201 South 2nd Street, Milwaukee, Wisconsin 53204. This Defendant may be served with process through its agent, CT Corporation System, at 1999 Bryan St., Ste. 900, Dallas, TX

75201-3136. This Defendant does business in the State of Texas and in the Eastern District of Texas.

3. Rockwell Automation Technologies, Inc. is an Ohio corporation with its principal place of business at 1 Allen Bradley Drive, Mayfield Heights, Ohio 44124. This Defendant may be served with process through its agent, CT Corporation System, 1300 East Ninth Street, Cleveland, OH 44114. This Defendant does business in the State of Texas and in the Eastern District of Texas.

### **JURISDICTION AND VENUE**

4. This action arises under the patent laws of the United States, namely 35 U.S.C. §§ 271, 281, and 284-285, among others.

5. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a), and 1367.

6. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b) and (c), and 1400(b). On information and belief, each Defendant is deemed to reside in this judicial district. Each Defendant has committed acts of infringement in this judicial district, has regular and established places of business in this judicial district, and/or has purposely transacted business in this judicial district, including but not limited to making sales in this district, providing service and support to their respective customers in this district, and/or operating an interactive website, available to persons in this district that advertises, markets, and/or offers for sale infringing products.

7. On information and belief, each Defendant is subject to this Court's specific and general personal jurisdiction pursuant to due process and/or the Texas Long Arm Statute, due at least to their substantial business in this State and judicial district, including: (A) at least part of

their infringing activities alleged herein; and (B) regularly doing or soliciting business, engaging in other persistent conduct, and/or deriving substantial revenue from goods sold and services provided to Texas residents. Each Defendant has purposefully availed itself of the privileges of conducting business in the United States, and more specifically in Texas and this District. Rockwell has sought protection and benefit from the laws of the State of Texas by maintaining offices in Texas and by placing infringing products into the stream of commerce through an established distribution channel with the awareness and/or intent that they will be purchased by consumers in this District.

### **BACKGROUND**

8. In the early 1990s, inventors Dave Brown and Jay Clark conceived of a system for motion control utilized in the products and services offered by the company they founded, ROY-G-BIV Corp (“RGB”). The ’058 patent, the ’236 patent, the ’557 patent, the ’897 patent, and the ’543 patent (“the patents-in-suit”) asserted in this Complaint are the subject of Dave Brown and Jay Clark’s inventions. The inventors’ patented approach to universal connectivity has since become the industry standard.

9. The patentability of the patents-in-suit has been confirmed through both reexamination and *inter partes* review before the United States Patent and Trademark Office. Specifically, on June 28, 2011, the USPTO issued reexamination certificates confirming the patentability of all 10 claims of the ’236 patent and all 5 claims of the ’058 patent, without amendment. On January 11, 2011, the USPTO issued a reexamination certificate confirming the patentability of all 25 claims of the ’897 patent without amendment. And on September 4, 2012, the USPTO issued a reexamination certificate confirming the patentability of all 16 claims of the ’543 patent without amendment. Additionally, the claims of the ’058 patent, ’236 patent, and ’557

patent were challenged in five *inter partes* review proceedings. In each case, the Patent Trial and Appeal Board confirmed the patentability of all claims without amendment.

10. The '897, '058, '236, and '543 patents have been previously asserted in this District in *ROY-G-BIV Corp. v. Fanuc Ltd. et al.*, Case No. 2:07-cv-00418-DF (E.D. Texas) and the '058, '236, '543, and '557 patents were previously asserted in this District in the matters of *ROY-G-BIV Corp. v. ABB, Ltd., et al.*, Case No. 6:11-cv-00622-LED-ZJH (E.D. Texas), *ROY-G-BIV Corp. v. Honeywell Int'l., Inc., et al.*, Case No. 6:11-cv-00623-LED-ZJH (E.D. Texas), and *ROY-G-BIV Corp. v. Siemens Corp., et al.*, Case No. 6:11-cv-00624-LED-ZJH (E.D. Texas). In those proceedings, over fifty claim terms from the patents-in-suit were construed by the Court in this District.

11. Upon information and belief, Defendants make, use, offer to sell, and/or sell within, and/or import into the United States motion control systems that incorporate the fundamental technologies covered by the patents-in-suit.

### **COUNT I**

(INFRINGEMENT OF U.S. PATENT NO. 6,513,058)

12. AMS incorporates paragraphs 1 through 11 herein by reference.

13. U.S. Patent No. 6,513,058, entitled "Distribution of Motion Control Commands Over a Network," was duly and legally issued by the U.S. Patent and Trademark Office on January 28, 2003 after full and fair examination. The '058 patent has been assigned to AMS, and AMS holds all rights, title, and interest in the '058 patent, including the right to exclude others and to enforce, sue, and recover damages for past, present, and future infringements. A true and correct copy of the '058 patent is attached as Exhibit A.

14. The '058 patent is valid, enforceable, and was duly issued in full compliance with Title 35 of the United States Code.

15. Upon information and belief, to the extent any marking or notice was required by 35 U.S.C. § 287, Plaintiff and all predecessors-in-interest to the '058 patent have complied with the requirements of that statute by providing actual or constructive notice to Defendants of their alleged infringement.

16. Defendants have and continue to directly and/or indirectly infringe (by inducing infringement and/or contributing to infringement) one or more claims of the '058 patent in this judicial district and elsewhere in Texas and the United States without the consent or authorization of AMS, by or through their making, having made, offering for sale, selling, importing, and/or using motion control systems including, for example, the Rockwell Integrated Architecture suite of products which includes but is not limited to the FactoryTalk Services Platform, FactoryTalk Transaction Manager, FactoryTalk Integrated Production and Performance Suite, FactoryTalk Gateway, Logix Control Platform, FactoryTalk View SE, FactoryTalk ViewPoint, FactoryTalk View ME, FactoryTalk Live Data, RSLinx, RSLinx Classic, RSLinx Enterprise, RSLogix, RSView32, Rockwell Automation OPC Servers, Rockwell Automation Library of Process Objects, RSOPC Gateway, RSView Supervisory Edition, PlantPAx Process Automation System, EtherNet/IP Network, ControlNet Network, DeviceNet Network, and software (the "Rockwell Motion Control Systems").

17. Defendants directly infringe the apparatus claims of the '058 patent by making, using, offering to sell, selling, and/or importing the Rockwell Motion Control Systems. Defendants are thereby liable for direct infringement.

18. Additionally, Defendants are liable for indirect infringement of the '058 patent because they induce and/or contribute to the direct infringement of the patent by their customers and other end users who use the Rockwell Motion Control Systems to practice the claimed

inventions. Since obtaining knowledge of the '058 patent, Defendants have specifically intended and continue to specifically intend for persons who acquire and use the Rockwell Motion Control Systems, including Defendants' customers to use such systems in a manner that infringes the '058 patent.

19. Specifically, as an example of the infringing features in this case,<sup>1</sup> the Rockwell Motion Control Systems comprise components that, either individually or in conjunction with each other, allow an application program to communicate with any one of a group of supported hardware devices. The Rockwell Motion Control Systems include an application program comprising a series of component functions defining a desired motion sequence. The Rockwell Motion Control Systems include a set of motion control operations in the form of primitive and/or non-primitive operations for operating motion control devices. The Rockwell Motion Control Systems also include a set of core driver functions that are associated with the primitive operations, and a set of extended driver functions that are associated with the non-primitive operations. The Rockwell Motion Control Systems include a motion control component comprising component code that associates a set of component functions with the driver functions. The Rockwell Motion Control Systems also include a set of software drivers, each being associated with a selected hardware device and further comprising driver code for implementing the driver functions. The Rockwell Motion Control Systems include a control command generating module for generating control commands and a network communication protocol that allows the control commands to be communicated to the supported hardware devices over a network. Through the incorporation and

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<sup>1</sup> The exemplar description of Rockwell's infringement is merely representative, but not exhaustive or limited, and therefore should not be construed as limiting Plaintiff's theories of infringement, whether direct, indirect, literal, or pursuant to the Doctrine of Equivalents.

use of these elements, the Rockwell Motion Control Systems infringe the claims of the '058 patent, including at least Claim 1.

20. Defendants have had knowledge of the '058 patent, at least as early as service of the Original Complaint. *See, e.g., Patent Harbor, LLC v. Dreamworks Animation SKG, Inc.*, No. 6:11-cv-229, 2012 U.S. Dist. LEXIS 114199, at \*17 (E.D. Tex. Jul. 27, 2012).

21. Despite having knowledge of the '058 patent, Defendants named in this Count have specifically intended and continue to specifically intend for persons who acquire and use the Rockwell Motion Control Systems, including Defendants' customers, to use such systems in a manner that infringes one or more claims of the '058 patent. This is evident when Defendants encourage and instruct customers and other end users in the use and operation of the Rockwell Motion Control Systems via advertisement and instructional materials, in addition to providing consulting services on the use and operation of the Rockwell Motion Control Systems.

22. In particular, despite having knowledge of the '058 patent, Defendants have provided, and continue to provide, product descriptions and instructional materials, such as user guides, owner manuals, and similar online resources (available for example, via <http://www.rockwellautomation.com/rockwellsoftware/products/overview.page>, <http://www.rockwellautomation.com/global/products-technologies/overview.page>, and other instructional materials and documentation provided or made available by Defendants to customers after purchase) that specifically teach the customers and other end users to use the Rockwell Motion Control Systems in an infringing manner. By providing such instructions, Defendants know (and have known), or should know (and should have known), that their actions have, and continue to, actively induce infringement.

23. Additionally, Defendants named in this Count know, and have known, that the Rockwell Motion Control Systems include proprietary hardware components and software instructions that work in concert to perform specific, intended functions. Such specific, intended functions, carried out by these hardware and software combinations, are a material part of the inventions of the '058 patent and are not staple articles of commerce suitable for substantial non-infringing use.

24. On information and belief, Defendants' acts of infringement of the '058 patent have been willful and intentional. Defendants are, and have been, specifically aware of the original owner of the asserted patents, RGB, the inventors of the patents-in-suit, RGB's business and products, and RGB's patent portfolio. For example, Defendants have specific knowledge of the '058 patent since at least service of the Original Complaint. In addition, Defendants have specifically known about the '058 patent prior to this lawsuit, as evidenced by citation to the '058 patent on the face of patents and patent applications owned by Rockwell (*see e.g.*, U.S. Pat. No. 7,904,184, U.S. Patent No. 7,983,769, U.S. App. No. 20070058929, and U.S. App. No. 20080058993). Further, on information and belief, Defendants have known about the patents-in-suit, including the asserted patent in this paragraph, prior to the filing of the Original Complaint given its history in the relevant industry, prior dealings with RGB specifically, and Defendants' patenting activity in this technology space. Since learning of the '058 patent, Defendants have disregarded an objectively high likelihood that its actions constituted infringement of the '058 patent.

25. On information and belief, Defendants Rockwell Automation and Rockwell Technologies test, make, use, offer for sale, sell, and/or import the Rockwell Motion Control Systems described in this Count, pursuant to one or more contractual agreements between them



relating to, at least, the distribution, sale, and operation of such systems. Accordingly, Rockwell Automation and Rockwell Technologies are jointly, severally, or alternatively liable for infringements described in this Count.

26. AMS has been damaged as a result of Defendants' infringing conduct described in this Count. Defendants are, thus, liable to AMS in an amount that adequately compensates AMS for Defendants' infringements, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

## **COUNT II**

(INFRINGEMENT OF U.S. PATENT NO. 6,516,236)

27. AMS incorporates paragraphs 1 through 26 herein by reference.

28. U.S. Patent No. 6,516,236, entitled "Motion Control Systems," was duly and legally issued by the U.S. Patent and Trademark Office on February 4, 2003 after full and fair examination. The '236 patent has been assigned to AMS, and AMS holds all rights, title, and interest in the '236 patent, including the right to exclude others and to enforce, sue, and recover damages for past, present, and future infringements. A true and correct copy of the '236 patent is attached as Exhibit B.

29. The '236 patent is valid, enforceable, and was duly issued in full compliance with Title 35 of the United States Code.

30. Upon information and belief, to the extent any marking or notice was required by 35 U.S.C. § 287, Plaintiff and all predecessors-in-interest to the '236 patent have complied with the requirements of that statute by providing actual or constructive notice to Defendants of their alleged infringement.

31. Defendants have and continue to directly and/or indirectly infringe (by inducing infringement and/or contributing to infringement) one or more claims of the '236 patent, including at least Claim 1, in this judicial district and elsewhere in Texas and the United States without the consent or authorization of AMS, by or through their making, having made, offering for sale, selling, importing, and/or using motion control systems including, for example, the Rockwell Integrated Architecture suite of products which includes but is not limited to the FactoryTalk Services Platform, FactoryTalk Transaction Manager, FactoryTalk Integrated Production and Performance Suite, FactoryTalk Gateway, Logix Control Platform, FactoryTalk View SE, FactoryTalk ViewPoint, FactoryTalk View ME, FactoryTalk Live Data, RSLinx, RSLinx Classic, RSLinx Enterprise, RSLogix, RSView32, Rockwell Automation OPC Servers, Rockwell Automation Library of Process Objects, RSOPC Gateway, RSView Supervisory Edition, PlantPAX Process Automation System, EtherNet/IP Network, ControlNet Network, DeviceNet Network, and software (the "Rockwell Motion Control Systems").

32. Defendants directly infringe the apparatus claims of the '236 patent by making, using, offering to sell, selling, and/or importing the Rockwell Motion Control Systems. Defendants are thereby liable for direct infringement.

33. Additionally, Defendants are liable for indirect infringement of the '236 patent because they induce and/or contribute to the direct infringement of the patent by their customers and other end users who use the Rockwell Motion Control Systems to practice the claimed inventions. Since obtaining knowledge of the '236 patent, Defendants have specifically intended and continue to specifically intend for persons who acquire and use the Rockwell Motion Control Systems, including Defendants' customers to use such systems in a manner that infringes the '236 patent.

34. Specifically, as an example of the infringing features in this case,<sup>2</sup> the Rockwell Motion Control Systems comprise components that, either individually or in conjunction with each other, generate a sequence of control commands for controlling a selected motion control device selected from a group of supported motion control devices. The Rockwell Motion Control Systems include a set of motion control operations in the form of primitive and/or non-primitive operations for operating motion control devices. The Rockwell Motion Control Systems also include a set of core driver functions that are associated with the primitive operations, and a set of extended driver functions that are associated with the non-primitive operations. The Rockwell Motion Control Systems include an application program comprising a series of component functions. The Rockwell Motion Control Systems include a motion control component comprising component code that associates a set of component functions with the driver functions. The Rockwell Motion Control Systems also include a set of software drivers, each being associated with a selected motion control device. Through the incorporation and use of these elements, the Rockwell Motion Control Systems infringe the claims of the '236 patent, including at least Claim 1.

35. Defendants have had knowledge of the '236 patent, at least as early as service of the Original Complaint. *See, e.g., Patent Harbor, LLC v. Dreamworks Animation SKG, Inc.*, No. 6:11-cv-229, 2012 U.S. Dist. LEXIS 114199, at \*17 (E.D. Tex. Jul. 27, 2012).

36. Despite having knowledge of the '236 patent, Defendants named in this Count have specifically intended and continue to specifically intend for persons who acquire and use the Rockwell Motion Control Systems, including Defendants' customers, to use such systems in a manner that infringes one or more claims of the '236 patent. This is evident when Defendants

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<sup>2</sup> The exemplar description of Rockwell's infringement is merely representative, but not exhaustive or limited, and therefore should not be construed as limiting Plaintiff's theories of infringement, whether direct, indirect, literal, or pursuant to the Doctrine of Equivalents.

encourage and instruct customers and other end users in the use and operation of the Rockwell Motion Control Systems via advertisement and instructional materials, in addition to providing consulting services on the use and operation of the Rockwell Motion Control Systems.

37. In particular, despite having knowledge of the '236 patent, Defendants have provided, and continue to provide, product descriptions and instructional materials, such as user guides, owner manuals, and similar online resources (available for example, via <http://www.rockwellautomation.com/rockwellsoftware/products/overview.page>, <http://www.rockwellautomation.com/global/products-technologies/overview.page>, and other instructional materials and documentation provided or made available by Defendants to customers after purchase) that specifically teach the customers and other end users to use the Rockwell Motion Control Systems in an infringing manner. By providing such instructions, Defendants know (and have known), or should know (and should have known), that their actions have, and continue to, actively induce infringement.

38. Additionally, Defendants named in this Count know, and have known, that the Rockwell Motion Control Systems include proprietary hardware components and software instructions that work in concert to perform specific, intended functions. Such specific, intended functions, carried out by these hardware and software combinations, are a material part of the inventions of the '236 patent and are not staple articles of commerce suitable for substantial non-infringing use.

39. On information and belief, Defendants' acts of infringement of the '236 patent have been willful and intentional. Defendants are, and have been, specifically aware of the original owner of the asserted patents, RGB, the inventors of the patents-in-suit, RGB's business and products, and RGB's patent portfolio. For example, Defendants have specific knowledge of the

'236 patent since at least service of the Original Complaint. In addition, Defendants have specifically known about the '236 patent prior to this lawsuit, as evidenced by citation to the '236 patent on the face of patents and patent applications owned by Rockwell (*see e.g.*, U.S. Pat. No. 8,688,258). Further, on information and belief, Defendants have known about the patents-in-suit, including the asserted patent in this paragraph, prior to the filing of the Original Complaint given its history in the relevant industry, prior dealings with RGB specifically, and Defendants' patenting activity in this technology space. Since learning of the '236 patent, Defendants have disregarded an objectively high likelihood that its actions constituted infringement of the '236 patent.

40. On information and belief, Defendants Rockwell Automation and Rockwell Technologies test, make, use, offer for sale, sell, and/or import the Rockwell Motion Control Systems described in this Count, pursuant to one or more contractual agreements between them relating to, at least, the distribution, sale, and operation of such systems. Accordingly, Rockwell Automation and Rockwell Technologies are jointly, severally, or alternatively liable for infringements described in this Count.

41. AMS has been damaged as a result of Defendants' infringing conduct described in this Count. Defendants are, thus, liable to AMS in an amount that adequately compensates AMS for Defendants' infringements, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

### **COUNT III**

(INFRINGEMENT OF U.S. PATENT NO. 8,073,557)

42. AMS incorporates paragraphs 1 through 41 herein by reference.

43. U.S. Patent No. 8,073,557, entitled "Motion Control Systems," was duly and legally issued by the U.S. Patent and Trademark Office on December 6, 2011 after full and fair

examination. The '557 patent has been assigned to AMS, and AMS holds all rights, title, and interest in the '557 patent, including the right to exclude others and to enforce, sue, and recover damages for past, present, and future infringements. A true and correct copy of the '557 patent is attached as Exhibit C.

44. The '557 patent is valid, enforceable, and was duly issued in full compliance with Title 35 of the United States Code.

45. Upon information and belief, to the extent any marking or notice was required by 35 U.S.C. § 287, Plaintiff and all predecessors-in-interest to the '557 patent have complied with the requirements of that statute by providing actual or constructive notice to Defendants of their alleged infringement.

46. Defendants have and continue to directly and/or indirectly infringe (by inducing infringement and/or contributing to infringement) one or more claims of the '557 patent in this judicial district and elsewhere in Texas and the United States without the consent or authorization of AMS, by or through their making, having made, offering for sale, selling, importing, and/or using motion control systems including, for example, the Rockwell Integrated Architecture suite of products which includes but is not limited to the FactoryTalk Services Platform, FactoryTalk Transaction Manager, FactoryTalk Integrated Production and Performance Suite, FactoryTalk Gateway, Logix Control Platform, FactoryTalk View SE, FactoryTalk ViewPoint, FactoryTalk View ME, FactoryTalk Live Data, RSLinx, RSLinx Classic, RSLinx Enterprise, RSLogix, RSView32, Rockwell Automation OPC Servers, Rockwell Automation Library of Process Objects, RSOPC Gateway, RSView Supervisory Edition, PlantPAX Process Automation System, EtherNet/IP Network, ControlNet Network, DeviceNet Network, and software (the "Rockwell Motion Control Systems").

47. Defendants directly infringe the apparatus claims of the '557 patent by making, using, offering to sell, selling, and/or importing the Rockwell Motion Control Systems. Defendants are thereby liable for direct infringement.

48. Additionally, Defendants are liable for indirect infringement of the '557 patent because they induce and/or contribute to the direct infringement of the patent by their customers and other end users who use the Rockwell Motion Control Systems to practice the claimed inventions. Since obtaining knowledge of the '557 patent, Defendants have specifically intended and continue to specifically intend for persons who acquire and use the Rockwell Motion Control Systems, including Defendants' customers to use such systems in a manner that infringes the '557 patent.

49. Specifically, as an example of the infringing features in this case,<sup>3</sup> the Rockwell Motion Control Systems comprise components that, either individually or in conjunction with each other, form a motion control system. The Rockwell Motion Control Systems include an application program comprising a series of component functions. The Rockwell Motion Control Systems include a plurality of unique controller languages associated with a plurality of motion control devices, each controller language comprising control commands for processing information associated with motion control devices. The Rockwell Motion Control Systems include, as part of each motion control device, a controller capable of generating electrical signals based on the control commands associated with the motion control device. The Rockwell Motion Control Systems also include a mechanical system capable of causing a motion control operation. The Rockwell Motion Control Systems include a set of motion control operations in the form of

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<sup>3</sup> The exemplar description of Rockwell's infringement is merely representative, but not exhaustive or limited, and therefore should not be construed as limiting Plaintiff's theories of infringement, whether direct, indirect, literal, or pursuant to the Doctrine of Equivalents.

primitive and/or non-primitive operations for operating motion control devices. The Rockwell Motion Control Systems also include service provider interface defining a set of core driver functions that are associated with the primitive operations, and a set of extended driver functions that are associated with the non-primitive operations. The Rockwell Motion Control Systems also include a set of software drivers, each being associated with a selected motion control device and further comprising driver code for associating the driver functions with the control commands generated in the controller language of the associated motion control device. The Rockwell Motion Control Systems include a motion component exposing an application programming interface comprising a set of component functions implemented by component code that is independent of the plurality of controller languages. The component code included as part of the Rockwell Motion Control Systems associates a set of component functions with the driver functions. Through the incorporation and use of these elements, the Rockwell Motion Control Systems infringe the claims of the '058 patent, including at least Claims 16 and 46.

50. Defendants have had knowledge of the '557 patent, at least as early as service of the Original Complaint. *See, e.g., Patent Harbor, LLC v. Dreamworks Animation SKG, Inc.*, No. 6:11-cv-229, 2012 U.S. Dist. LEXIS 114199, at \*17 (E.D. Tex. Jul. 27, 2012).

51. Despite having knowledge of the '557 patent, Defendants named in this Count have specifically intended and continue to specifically intend for persons who acquire and use the Rockwell Motion Control Systems, including Defendants' customers, to use such systems in a manner that infringes one or more claims of the '557 patent. This is evident when Defendants encourage and instruct customers and other end users in the use and operation of the Rockwell Motion Control Systems via advertisement and instructional materials, in addition to providing consulting services on the use and operation of the Rockwell Motion Control Systems.



52. In particular, despite having knowledge of the '557 patent, Defendants have provided, and continue to provide, product descriptions and instructional materials, such as user guides, owner manuals, and similar online resources (available for example, via <http://www.rockwellautomation.com/rockwellsoftware/products/overview.page>, <http://www.rockwellautomation.com/global/products-technologies/overview.page>, and other instructional materials and documentation provided or made available by Defendants to customers after purchase) that specifically teach the customers and other end users to use the Rockwell Motion Control Systems in an infringing manner. By providing such instructions, Defendants know (and have known), or should know (and should have known), that their actions have, and continue to, actively induce infringement.

53. Additionally, Defendants named in this Count know, and have known, that the Rockwell Motion Control Systems include proprietary hardware components and software instructions that work in concert to perform specific, intended functions. Such specific, intended functions, carried out by these hardware and software combinations, are a material part of the inventions of the '557 patent and are not staple articles of commerce suitable for substantial non-infringing use.

54. On information and belief, Defendants' acts of infringement of the '557 patent have been willful and intentional. Defendants are, and have been, specifically aware of the original owner of the asserted patents, RGB, the inventors of the patents-in-suit, RGB's business and products, and RGB's patent portfolio. For example, Defendants have specific knowledge of the '557 patent since at least service of the Original Complaint. Further, on information and belief, Defendants have known about the patents-in-suit, including the asserted patent in this paragraph, prior to the filing of the Original Complaint given its history in the relevant industry, prior dealings

with RGB specifically, and Defendants' patenting activity in this technology space. Since learning of the '557 patent, Defendants have disregarded an objectively high likelihood that its actions constituted infringement of the '557 patent.

55. On information and belief, Defendants Rockwell Automation and Rockwell Technologies test, make, use, offer for sale, sell, and/or import the Rockwell Motion Control Systems described in this Count, pursuant to one or more contractual agreements between them relating to, at least, the distribution, sale, and operation of such systems. Accordingly, Rockwell Automation and Rockwell Technologies are jointly, severally, or alternatively liable for infringements described in this Count.

56. AMS has been damaged as a result of Defendants' infringing conduct described in this Count. Defendants are, thus, liable to AMS in an amount that adequately compensates AMS for Defendants' infringements, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

#### **COUNT IV**

(INFRINGEMENT OF U.S. PATENT NO. 5,691,897)

57. AMS incorporates paragraphs 1 through 56 herein by reference.

58. U.S. Patent No. 5,691,897, entitled "Motion Control Systems," was duly and legally issued by the U.S. Patent and Trademark Office on November 25, 1997 after full and fair examination. The '897 patent has been assigned to AMS, and AMS holds all rights, title, and interest in the '897 patent, including the right to exclude others and to enforce, sue, and recover damages for past, present, and future infringements. A true and correct copy of the '897 patent is attached as Exhibit D.

59. The '897 patent is valid, enforceable, and was duly issued in full compliance with Title 35 of the United States Code.

60. Defendants have and continue to directly infringe one or more claims of the '897 patent in this judicial district and elsewhere in Texas and the United States without the consent or authorization of AMS, by or through their making, having made, offering for sale, selling, importing, and/or using motion control systems including, for example, the Rockwell Integrated Architecture suite of products which includes but is not limited to the FactoryTalk Services Platform, FactoryTalk Transaction Manager, FactoryTalk Integrated Production and Performance Suite, FactoryTalk Gateway, Logix Control Platform, FactoryTalk View SE, FactoryTalk ViewPoint, FactoryTalk View ME, FactoryTalk Live Data, RSLinx, RSLinx Classic, RSLinx Enterprise, RSLogix, RSView32, Rockwell Automation OPC Servers, Rockwell Automation Library of Process Objects, RSOPC Gateway, RSView Supervisory Edition, PlantPAx Process Automation System, EtherNet/IP Network, ControlNet Network, DeviceNet Network, and software (the "Rockwell Motion Control Systems").

61. Defendants directly infringe the method claims of the '897 patent by operating, making, using, testing, servicing, and/or maintaining the Rockwell Motion Control Systems that practice the claimed methods. Defendants are thereby liable for direct infringement.

62. Specifically, as an example of the infringing features in this case,<sup>4</sup> the Rockwell Motion Control Systems comprise components that, either individually or in conjunction with each other, generate a sequence of control commands for controlling a motion control device to perform a given series of motion steps defined by an application program. Rockwell and/or the Rockwell

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<sup>4</sup> The exemplar description of Rockwell's infringement is merely representative, but not exhaustive or limited, and therefore should not be construed as limiting Plaintiff's theories of infringement, whether direct, indirect, literal, or pursuant to the Doctrine of Equivalents.

Motion Control Systems define a set of motion control operations in the form of primitive and/or non-primitive operations for operating motion control devices. Rockwell and/or the Rockwell Motion Control Systems also define a set of core driver functions that are associated with the primitive operations, and a set of extended driver functions that are associated with the non-primitive operations. Rockwell and/or the Rockwell Motion Control Systems define a set of component functions and provide component code which cross-references the component functions with the driver functions. Rockwell and/or the Rockwell Motion Control Systems also develop a set of software drivers comprising driver code for implementing the motion control operations, each selected software driver developed for and associated with a selected motion control device. Rockwell and/or the Rockwell Motion Control Systems generate control commands based on the application program, the component code, and the driver code of the selected software driver. Through the incorporation and use of these elements, Rockwell and/or the Rockwell Motion Control Systems infringe the claims of the '897 patent, including at least Claim 17.

63. Defendants have had knowledge of the '897 patent, at least as early as service of this First Amended Complaint. *See, e.g., Patent Harbor, LLC v. Dreamworks Animation SKG, Inc.*, No. 6:11-cv-229, 2012 U.S. Dist. LEXIS 114199, at \*17 (E.D. Tex. Jul. 27, 2012).

64. On information and belief, Defendants Rockwell Automation and Rockwell Technologies test, make, use, offer for sale, sell, and/or import the Rockwell Motion Control Systems described in this Count, pursuant to one or more contractual agreements between them relating to, at least, the distribution, sale, and operation of such systems. Accordingly, Rockwell Automation and Rockwell Technologies are jointly, severally, or alternatively liable for infringements described in this Count.

65. On information and belief, Defendants' acts of infringement of the '897 patent have been willful and intentional. Defendants are, and have been, specifically aware of the original owner of the asserted patents, RGB, the inventors of the patents-in-suit, RGB's business and products, and RGB's patent portfolio. In addition, Defendants have specifically known about the '897 patent prior to this lawsuit, as evidenced by citation to the '897 patent on the face of patents and patent applications owned by Rockwell (*see e.g.*, U.S. Pat. Nos. 6,470,377, 6,606,665, and 6,401,005). Further, on information and belief, Defendants have known about the patents-in-suit, including the asserted patent in this paragraph, prior to the filing of the Original Complaint given its history in the relevant industry, prior dealings with RGB specifically, and Defendants' patenting activity in this technology space. Since learning of the '897 patent, Defendants have disregarded an objectively high likelihood that its actions constituted infringement of the '897 patent.

66. AMS has been damaged as a result of Defendants' infringing conduct described in this Count. Defendants are, thus, liable to AMS in an amount that adequately compensates AMS for Defendants' infringements, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

### **COUNT V**

(INFRINGEMENT OF U.S. PATENT NO. 6,941,543)

67. AMS incorporates paragraphs 1 through 66 herein by reference.

68. U.S. Patent No. 6,941,543, entitled "Motion Control System and Method," was duly and legally issued by the U.S. Patent and Trademark Office on September 6, 2005 after full and fair examination. The '543 patent has been assigned to AMS, and AMS holds all rights, title, and interest in the '543 patent, including the right to exclude others and to enforce, sue, and

recover damages for past, present, and future infringements. A true and correct copy of the '543 patent is attached as Exhibit E.

69. The '543 patent is valid, enforceable, and was duly issued in full compliance with Title 35 of the United States Code.

70. Defendants have and continue to directly infringe one or more claims of the '543 patent in this judicial district and elsewhere in Texas and the United States without the consent or authorization of AMS, by or through their making, having made, offering for sale, selling, importing, and/or using motion control systems including, for example, the Rockwell Integrated Architecture suite of products which includes but is not limited to the FactoryTalk Services Platform, FactoryTalk Transaction Manager, FactoryTalk Integrated Production and Performance Suite, FactoryTalk Gateway, Logix Control Platform, FactoryTalk View SE, FactoryTalk ViewPoint, FactoryTalk View ME, FactoryTalk Live Data, RSLinx, RSLinx Classic, RSLinx Enterprise, RSLogix, RSView32, Rockwell Automation OPC Servers, Rockwell Automation Library of Process Objects, RSOPC Gateway, RSView Supervisory Edition, PlantPAx Process Automation System, EtherNet/IP Network, ControlNet Network, DeviceNet Network, and software (the "Rockwell Motion Control Systems").

71. Defendants directly infringe the method claims of the '543 patent by operating, making, using, testing, servicing, and/or maintaining the Rockwell Motion Control Systems that practice the claimed methods. Defendants are thereby liable for direct infringement.

72. Specifically, as an example of the infringing features in this case,<sup>5</sup> the Rockwell Motion Control Systems comprise components that, either individually or in conjunction with each

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<sup>5</sup> The exemplar description of Rockwell's infringement is merely representative, but not exhaustive or limited, and therefore should not be construed as limiting Plaintiff's theories of infringement, whether direct, indirect, literal, or pursuant to the Doctrine of Equivalents.

other, move an object in a desired manner using a motion control device. Rockwell and/or the Rockwell Motion Control Systems select a software driver comprising driver code to control one or more motion control devices. Rockwell and/or the Rockwell Motion Control Systems generate control commands based on an application program comprising a sequence of component functions, the driver code of the selected software driver, and driver functions defining one or more incremental motion steps that may be performed by the motion control device. Rockwell and/or the Rockwell Motion Control Systems associate at least some of the component functions with the driver functions. Rockwell and/or the Rockwell Motion Control Systems also operate the selected motion control device in accordance with the control command to move the object. The driver functions of the Rockwell Motion Control Systems comprise a first subset of driver functions identifying an incremental motion step that may be performed by a motion control device, and a second subset of driver functions identifying a plurality of incremental motion steps that may be performed by a motion control device. Through the incorporation and use of these elements, Rockwell and/or the Rockwell Motion Control Systems infringe the claims of the '543 patent, including at least Claims 1-4.

73. Defendants have had knowledge of the '543 patent, at least as early as service of this First Amended Complaint. *See, e.g., Patent Harbor, LLC v. Dreamworks Animation SKG, Inc.*, No. 6:11-cv-229, 2012 U.S. Dist. LEXIS 114199, at \*17 (E.D. Tex. Jul. 27, 2012).

74. On information and belief, Defendants Rockwell Automation and Rockwell Technologies test, make, use, offer for sale, sell, and/or import the Rockwell Motion Control Systems described in this Count, pursuant to one or more contractual agreements between them relating to, at least, the distribution, sale, and operation of such systems. Accordingly, Rockwell

Automation and Rockwell Technologies are jointly, severally, or alternatively liable for infringements described in this Count.

75. On information and belief, Defendants' acts of infringement of the '543 patent have been willful and intentional. Defendants are, and have been, specifically aware of the original owner of the asserted patents, RGB, the inventors of the patents-in-suit, RGB's business and products, and RGB's patent portfolio. In addition, Defendants have specifically known about the '543 patent prior to this lawsuit, as evidenced by citation to the '543 patent on the face of patents and patent applications owned by Rockwell (*see e.g.*, U.S. Pat. No. 8,688,258). Further, on information and belief, Defendants have known about the patents-in-suit, including the asserted patent in this paragraph, prior to the filing of the Original Complaint given its history in the relevant industry, prior dealings with RGB specifically, and Defendants' patenting activity in this technology space. Since learning of the '543 patent, Defendants have disregarded an objectively high likelihood that its actions constituted infringement of the '543 patent.

76. AMS has been damaged as a result of Defendants' infringing conduct described in this Count. Defendants are, thus, liable to AMS in an amount that adequately compensates AMS for Defendants' infringements, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

#### **JOINDER OF PARTIES**

77. AMS incorporates paragraphs 1 through 76 herein by reference.

78. On information and belief, both Rockwell Technologies is a wholly-owned subsidiary of Rockwell Automation and thus, both Rockwell Automation and Rockwell Technologies have been participating in or responsible for the making, having made, offering for sale, selling, importing, and/or using the Rockwell systems that are the subject of Counts I through



V (or some subset thereof). Thus, for these Counts, the right to relief against Rockwell Automation is asserted jointly and severally with Rockwell Technologies.

79. The alleged infringements set forth in Counts I through V arise out of the same transaction, occurrence, or series of transactions or occurrences relating to the testing, making, using, offering for sale, selling, and/or importing of the Rockwell systems made the subject of Counts I through V.

80. Questions of fact common to all Defendants will arise in this action including, for example, infringement by, or through use of, Rockwell systems.

81. Thus, joinder of Rockwell Automation and Rockwell Technologies is proper in this litigation pursuant to 35 U.S.C. § 299(a).

#### **JURY DEMAND**

AMS hereby requests a trial by jury pursuant to Rule 38 of the Federal Rules of Civil Procedure.

#### **PRAYER FOR RELIEF**

AMS requests that the Court find in its favor and against Defendants, and that the Court grant AMS the following relief:

- a. Judgment that one or more claims of the '058, '236, '557, '897, and '543 patents have been infringed, either literally and/or under the doctrine of equivalents, by Defendants and/or by others whose infringements have been induced by Defendants and/or by others to whose infringements Defendants have contributed;
- b. Judgment that Defendants account for and pay to AMS all damages to and costs incurred by AMS because of Defendants' infringing activities and other conduct complained of herein;
- c. That Defendants' infringements relative to the '058, '236, '557, '897, and/or '543 patents be found willful from the time that Defendants became aware of the infringing nature of their products, and that the Court award treble damages for the period of such willful infringement pursuant to 35 U.S.C. § 284;

- d. That AMS be granted pre-judgment and post-judgment interest on the damages caused by Defendants' infringing activities and other conduct complained of herein;
- e. A judgment and order finding this to be an exceptional case and requiring Defendants to pay the costs of this action (including all disbursements) and attorneys' fees as provided by 35 U.S.C. § 285; and
- f. That AMS be granted such other and further relief as the Court may deem just and proper under the circumstances

Dated: December 23, 2015

Respectfully submitted,

/s/ Monte Bond

Monte Bond (lead attorney)

Texas Bar No. 02585625

Jeffrey R. Bragalone

Texas Bar No. 02855775

Patrick J. Conroy

Texas Bar No. 24012448

Terry A. Saad

Texas Bar No. 24066015

**Bragalone Conroy PC**

2200 Ross Avenue

Suite 4500W

Dallas, TX 75201

Tel: (214) 785-6670

Fax: (214) 785-6680

[jbragalone@bcpc-law.com](mailto:jbragalone@bcpc-law.com)

[pconroy@bcpc-law.com](mailto:pconroy@bcpc-law.com)

[mbond@bcpc-law.com](mailto:mbond@bcpc-law.com)

[tsaad@bcpc-law.com](mailto:tsaad@bcpc-law.com)

Attorneys for Plaintiff

**AUTOMATION MIDDLEWARE  
SOLUTIONS, INC.**