

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

**AUTOMATION MIDDLEWARE
SOLUTIONS, INC.,**

Plaintiff,

v.

INVENSYS SYSTEMS, INC., *ET AL.*,

Defendants.

C.A. No. 2:15-cv-00898-RWS

(LEAD CASE)

**AUTOMATION MIDDLEWARE
SOLUTIONS, INC.,**

Plaintiff,

V.

**EMERSON PROCESS MANAGEMENT,
LLP, ET AL.,**

Defendants.

C.A. No. 2:15-cv-01266-RWS

(Consolidated Case)

JURY TRIAL DEMANDED

PLAINTIFF'S FIFTH AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Automation Middleware Solutions, Inc. (“AMS” or “Plaintiff”) files this Fifth Amended Complaint against Emerson Process Management LLLP and Fisher-Rosemount Systems, Inc. (collectively, “Emerson” 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”) (collectively “the patents-in-suit”).

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. Emerson Process Management LLLP is a Delaware limited partnership with its principal place of business at 1100 W. Louis Henna Blvd., Bldg. 1, Round Rock, TX 78681. 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. Fisher-Rosemount Systems, Inc. is a Delaware corporation with its principal place of business at 1100 W. Louis Henna Blvd., Bldg. 1, Round Rock, TX 78681. 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.

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. Emerson has sought protection and benefit from the laws of the State of Texas by maintaining a corporate presence in Texas through its subsidiaries such as Fisher-Rosemount Systems, Inc., and Emerson Process Management LLLP, as well as related third parties, 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.

8. Each Defendant is a direct or indirect subsidiary of Emerson Electric Co., which is a publicly held company that "designs and manufactures products that bring technology and engineering together to provide innovative solutions for customers in a wide range of industrial, commercial and consumer markets around the world." (Emerson 2015 Annual Report, 53; *see also* Emerson Annual Reports for fiscal years 2010-2014, *available at* <http://www.emerson.com/en-us/Investors/Pages/archives.aspx>). Emerson designs, manufactures, and sells products and delivers services through five business "segments" including the "Process Management" and "Industrial Automation" segments. (*Id.*) These business segments "are organized primarily by the nature of

the products and services they sell.” (*Id.*) The products and systems sold by Emerson include those accused of infringement. For instance, Emerson touts the benefits of its Delta V™ automation system. (*Id.* at 12).

9. Emerson markets and sells its products and services under several trademarks it owns including “Emerson”, “Emerson Industrial Automation” and “Emerson Process Management” that are used by Emerson to designate the products and services it makes, uses, provides and sells as well as those of its subsidiaries while also maintaining control over the quality and nature of those products and services. Emerson’s products include, but are not limited to, industrial process control software and systems and automated process control software and systems, including hardware (such as computers and computer hardware, for the operation of motion control devices and machinery such as valves for controlling the flow of liquids or gases and servo control units for controlling motors and motor drives and performing motion control operations) and software that combine to form the systems and/or perform the processes accused of infringement herein.

10. Emerson markets and sells its many brands of products and product lines under its trademarks Emerson Process Management and Emerson Industrial Automation, including the Delta V product lines either directly, through its business segments, or indirectly through its subsidiaries and agents. (*See e.g.* <http://www2.emersonprocess.com/en-US/brands/Pages/AllBrands.aspx> and <http://www.emersonindustrial.com/en-US/brands/Pages/brands.aspx>.) And Emerson actively promotes and markets these brands through its website and the blogs it maintains. (*See e.g.* <http://www.emersonprocessxperts.com/>.) The Emerson Process Experts blog is maintained by Jim Cahill—of Emerson Process Management. (*See* <http://www.emersonprocessxperts.com/about-jim-cahill/>.)

11. Emerson boasts that, through its business segments such as Emerson Process Management and Emerson Industrial Automation, it provides its customers a “single trusted partner to help solve their most complex challenges and provide end-to-end solutions.” (Emerson 2015 Annual Report, 4 (emphasis added)). Emerson, by and through its various business segments, designs, manufactures, uses, and sells or offers to sell products and/or services relating to industrial process control systems and automated process control systems, including but not limited to those accused of infringement herein, throughout Texas.

12. Moving into 2016, Emerson will have two core business platforms: Automation Solutions and Commercial & Residential Solutions. Automation Solutions includes the Process Management Platform and the Industrial Automation businesses, which are focused on similar markets and customers. (Emerson 2015 Annual Report, 3-4).

13. Emerson maintains a presence and conducts continuous and systemic business activities in this District and specifically at its Emerson Process Management facility in Sherman, Texas located at 4725 US Highway 75, Sherman, TX 75090. The products manufactured and shipped from this facility, such as digitally controlled valves, are the motion control devices that are the subject of the patents-in-suit and part of the systems and/or capable of performing some of the functions and operations of said systems and methods accused of infringement herein. (*See e.g.*, Counts I-V below.) Additionally, Emerson maintains its Global Headquarters for Regulator Technologies in this District at 3200 Emerson Way, McKinney, TX, 75070. (*See <http://www2.emersonprocess.com/en-US/divisions/regulator-technologies/Pages/RegulatorTechnologies.aspx>*.) Emerson brands under this business include Fisher, Francel, Tartarini, TESCON and Enardo. Emerson makes, uses and sells the products and systems accused of infringement herein in this District.

14. In addition, Emerson, upon information and belief, sells and provides consulting and service solutions to customers related to the Emerson Motion Control Systems (defined herein) in connection with its Alliance Program (“Alliance”),¹ Main Automation Contractor projects (“MAC”),² project execution services, and/or related/equivalent services, divisions and/or service offerings. Such services include, but are not limited to, engineering, project management, consulting, implementation, integration, design, procurement, automation systems integration and programming, installation, integrated factory acceptance testing, site acceptance testing, commissioning, training, automation contracting, detailed engineering and design, front end engineering and design, hot cutover, operations support, and related services. Upon information and belief, Emerson has collected substantial revenue from the provision of such services; many of the services constitute infringement of various claims of the asserted patents, as detailed herein.

BACKGROUND

15. 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. (“RBG”). The ’058 patent, the ’236 patent, the ’557 patent, the ’897 patent, and the ’543 patent 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.

16. 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

¹ See e.g., <http://www2.emersonprocess.com/en-US/brands/deltav/alliance/Pages/AllianceProgram.aspx>

² See e.g., <http://www2.emersonprocess.com/en-US/brands/processautomation/projectservices/Pages/ProjectServices.aspx>

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.

17. 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.

18. 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)

19. AMS incorporates paragraphs 1 through 18 herein by reference.

20. 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.

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

22. 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.

23. Defendants³ 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, via any Emerson affiliated company, including subsidiaries, parents, or other related entities, motion control systems including, for example, Emerson DeltaV Distributed Control System suite of products, including software, hardware, and systems sold, marketed, or offered for sale in connection with Delta V products, which includes but is not limited to Emerson HMI products such as Delta V Operate (and all packages, suites, and/or bundled product offerings

³ Plaintiff and Defendants have entered into a Second Joint Stipulation related to various matters in this case, including, but not limited to, the Emerson Defendants agreeing not to assert defenses related to joint or divided infringement theories between or amongst themselves (as well as other Emerson direct and indirect subsidiaries), in response to Plaintiff's assertions of patent infringement in this case. This footnote is specifically incorporated by reference, as if specifically stated therein, for each of the counts of infringement provided in this Fifth Amended Complaint. Plaintiff's assertion of joint or divided infringement, as detailed herein, should not be construed as inconsistent with the parties' Second Joint Stipulation, but rather, are pleadings in the alternative in connection with third parties. In addition, Plaintiff has served the Emerson Defendants with initial infringement contentions, identifying the accused products and systems.

that include DeltaV Operate), Emerson products including Delta V Model Predictive Control, Emerson OPC products such as OPC.Net and OPC Server (and all packages, suites, and/or bundled product offerings that include Emerson OPC.Net and OPC Server), and related software and systems; hardware including Emerson motion controllers and motion control devices, including motion control devices sold and marketed under affiliated brands such as Control Techniques, Fisher, Bettis, Shafer, Virgo, Baumann, and others; any products, software, and/or services that share the same or similar functionality and or operation as the foregoing examples in relation to the claims of the asserted patents; and/or any parts or products made, sold, offered for sale, used, or marketed with or in conjunction with the above software and systems as part of a functional unit (the “Emerson Motion Control Systems”).

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

25. 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 Emerson 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 Emerson Motion Control Systems, including Defendants' customers, to use such systems in a manner that infringes the '058 patent.

26. Specifically, as an example of the infringing features in this case,⁴ the Emerson Motion Control Systems comprise hardware and software 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 Emerson Motion Control Systems include an application program comprising a series of component functions defining a desired motion sequence. The Emerson 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 Emerson 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 Emerson Motion Control Systems include a motion control component comprising component code that associates a set of component functions with the driver functions. The Emerson 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 Emerson 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. And the Emerson Motion Control Systems include the motion control hardware devices that are operated and controlled by the other elements of the system. Through the incorporation and use of these elements, the Emerson Motion Control Systems infringe the claims of the '058 patent, including at least Claim 1.

⁴ The exemplar description of Emerson'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.

27. For example, the Emerson Motion Control Systems include application programs, such as Delta V Operate, operating on workstations and combining with the Delta V platform, including, for example, Delta V OPC.Net, in conjunction with software drivers, such as an OPC Server, to implement a set of motion control operations performed by a selected motion control device, such as Fisher digitally controlled valves. (*See*, for example, the system shown in the Emerson DeltaV Product Data Sheet – DeltaV OPC .NET Server, p. 2, available at: http://www2.emersonprocess.com/siteadmincenter/PM%20DeltaV%20Documents/ProductDataSheets/PDS_OPCdotNETServer.pdf.)

28. Defendants have had knowledge of the '058 patent, at least as early as the filing 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). Additionally, on information and belief, and as provided in the section of this Complaint titled “Willfulness,” Defendants have had knowledge of the '058 patent prior to the filing of the Original Complaint and prior to the expiration of the '058 patent. Paragraphs 105 through 111 are incorporated herein by reference.

29. 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 Emerson 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, operation, setup, configuration, and engineering of the Emerson Motion Control Systems via advertisement and instructional materials, in addition to providing consulting services, training, and instruction on the use and operation of the Emerson Motion Control Systems.

30. 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.emerson.com/en-us/automation/deltav>, <http://www.emerson.com/catalog/en-us/deltav-distributed-control-system-process-industries>, <http://www.emerson.com/en-us/automation-solutions>, 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 Emerson 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. Additionally, Emerson provides consulting and service solutions to customers related to the Emerson Motion Control Systems in connection with its Alliance Program ("Alliance"),⁵ Main Automation Contractor projects ("MAC"),⁶ project execution services, and/or related/equivalent services, divisions and/or service offerings. Such services include, but are not limited to, engineering, project management, consulting, implementation, integration, design, procurement, automation systems integration and programming, installation, integrated factory acceptance testing, site acceptance testing, commissioning, training, automation contracting, detailed engineering and design, front end engineering and design, hot cutover, operations support, and related services. Through these programs, Emerson contracts with third-parties to provide services that result in the direct

⁵ See e.g., <http://www2.emersonprocess.com/en-US/brands/deltav/alliance/Pages/AllianceProgram.aspx>

⁶ See e.g., <http://www2.emersonprocess.com/en-US/brands/processautomation/projectservices/Pages/ProjectServices.aspx>

infringement of the Asserted Patents by third-parties at the instruction and specific intention of Emerson.

31. Additionally, Defendants named in this Count know, and have known, that the Emerson 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.

32. Specifically, each of the Emerson Motion Control Systems contains one or more processors coupled with memory elements implementing, in combination with software instructions, functionality that is specifically programmed and/or configured to practice the process of associating a hardware independent motion control operation with a hardware dependent control command implemented by a motion control device through multiple levels of abstraction resulting in a universal connectivity, as claimed in the '058 patent. Upon information and belief, the Emerson Motion Control Systems contains discrete code that uniquely provides this functionality. The code, which is configured to control the processor(s) and other components for performing these functions, is a material part of the inventions of the '058 patent and there is no substantial non-infringing use for this combination of hardware and software components.

33. On information and belief, Defendants Emerson Process Management LLLP, and Fisher-Rosemount System, Inc., test, make, use, offer for sale, sell, and/or import the Emerson Motion Control Systems and supported hardware devices, individually or by and through one another pursuant to a joint enterprise or to one or more contractual agreements between them relating to, at least, the distribution, sale, and operation of such systems. Accordingly, Emerson

Process Management LLLP and Fisher-Rosemount System, Inc., are jointly, severally, or alternatively liable for infringements described in this Count.

34. 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)

35. AMS incorporates paragraphs 1 through 34 herein by reference.

36. 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.

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

38. 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.

39. 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 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, via any Emerson affiliated company, including subsidiaries, parents, or other related entities, motion control systems including, for example, Emerson DeltaV Distributed Control System suite of products, including software, hardware, and systems sold, marketed, or offered for sale in connection with Delta V products, which includes but is not limited to Emerson HMI products such as Delta V Operate (and all packages, suites, and/or bundled product offerings that include DeltaV Operate), Emerson products including Delta V Model Predictive Control, Emerson OPC products such as OPC.Net and OPC Server (and all packages, suites, and/or bundled product offerings that include Emerson OPC.Net and OPC Server), and related software and systems;; hardware including Emerson motion controllers and motion control devices, including motion control devices sold and marketed under affiliated brands such as Control Techniques, Fisher, Bettis, Shafer, Virgo, Baumann, and others; any products, software, and/or services that share the same or similar functionality and or operation as the foregoing examples in relation to the claims of the asserted patents; and/or any parts or products made, sold, offered for sale, used, or marketed with or in conjunction with the above software and systems as part of a functional unit (the “Emerson Motion Control Systems”).

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

41. 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 Emerson 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 Emerson Motion Control Systems, including Defendants' customers to use such systems in a manner that infringes the '236 patent.

42. Specifically, as an example of the infringing features in this case,⁷ the Emerson Motion Control Systems comprise hardware and software 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 Emerson 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 Emerson 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 Emerson Motion Control Systems include an application program comprising a series of component functions. The Emerson Motion Control Systems include a motion control component comprising component code that associates a set of component functions with the driver functions. The Emerson Motion Control Systems also include a set of software drivers, each being associated with a selected motion control device. And the Emerson Motion Control Systems include the motion control hardware devices that are operated and controlled by the other elements of the system. Through the incorporation and use of these elements, the Emerson Motion Control Systems infringe the claims of the '236 patent, including at least Claim 1.

⁷ The exemplar description of Emerson'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.

43. For example, the Emerson Motion Control Systems include application programs, such as Delta V Operate, operating on workstations and combining with the Delta V platform, including, for example, Delta V OPC.Net, in conjunction with software drivers, such as an OPC Server, to implement a set of motion control operations performed by a selected motion control device, such as Fisher digitally controlled valves. (*See*, for example, the system shown in the Emerson DeltaV Product Data Sheet – DeltaV OPC .NET Server, p. 2, available at: http://www2.emersonprocess.com/siteadmincenter/PM%20DeltaV%20Documents/ProductDataSheets/PDS_OPCdotNETServer.pdf.)

44. Defendants have had knowledge of the '236 patent, at least as early as the filing 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). Additionally, on information and belief, and as provided in the section of this Complaint titled “Willfulness,” Defendants have had knowledge of the '236 patent prior to the filing of the Original Complaint and prior to the expiration of the '236 patent. Paragraphs 105 through 111 are incorporated herein by reference.

45. 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 Emerson 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 encourage and instruct customers and other end users in the use, operation, setup, configuration, and engineering of the Emerson Motion Control Systems via advertisement and instructional materials, in addition to providing consulting services, training, and instruction on the use and operation of the Emerson Motion Control Systems.

46. 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.emerson.com/en-us/automation/deltav>, <http://www.emerson.com/catalog/en-us/deltav-distributed-control-system-process-industries>, <http://www.emerson.com/en-us/automation-solutions>, 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 Emerson 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. Additionally, Emerson provides consulting and service solutions to customers related to the Emerson Motion Control Systems in connection with its Alliance Program ("Alliance"),⁸ Main Automation Contractor projects ("MAC"),⁹ project execution services, and/or related/equivalent services, divisions and/or service offerings. Such services include, but are not limited to, engineering, project management, consulting, implementation, integration, design, procurement, automation systems integration and programming, installation, integrated factory acceptance testing, site acceptance testing, commissioning, training, automation contracting, detailed engineering and design, front end engineering and design, hot cutover, operations support, and related services. Through these programs, Emerson contracts with third-parties to provide services that result in the direct

⁸ See e.g., <http://www2.emersonprocess.com/en-US/brands/deltav/alliance/Pages/AllianceProgram.aspx>

⁹ See e.g., <http://www2.emersonprocess.com/en-US/brands/processautomation/projectservices/Pages/ProjectServices.aspx>

infringement of the Asserted Patents by third-parties at the instruction and specific intention of Emerson.

47. Additionally, Defendants named in this Count know, and have known, that the Emerson 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.

48. Specifically, each of the Emerson Motion Control Systems contains one or more processors coupled with memory elements implementing, in combination with software instructions, functionality that is specifically programmed and/or configured to practice the process of associating a hardware independent motion control operation with a hardware dependent control command implemented by a motion control device through multiple levels of abstraction resulting in a universal connectivity, as claimed in the '236 patent. Upon information and belief, the Emerson Motion Control Systems contains discrete code that uniquely provides this functionality. The code, which is configured to control the processor(s) and other components for performing these functions, is a material part of the inventions of the '236 patent and there is no substantial non-infringing use for this combination of hardware and software components.

49. On information and belief, Defendants Emerson Process Management LLLP, and Fisher-Rosemount System, Inc., test, make, use, offer for sale, sell, and/or import the Emerson Motion Control Systems and supported hardware and devices, individually or by and through one another pursuant to a joint enterprise or to one or more contractual agreements between them relating to, at least, the distribution, sale, and operation of such systems. Accordingly, Emerson

Process Management LLLP, and Fisher-Rosemount System, Inc., Rosemount, Inc., are jointly, severally, or alternatively liable for infringements described in this Count.

50. 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)

51. AMS incorporates paragraphs 1 through 50 herein by reference.

52. 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.

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

54. 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.

55. 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, via any Emerson affiliated company, including subsidiaries, parents, or other related entities, motion control systems including, for example, Emerson DeltaV Distributed Control System suite of products, including software, hardware, and systems sold, marketed, or offered for sale in connection with Delta V products, which includes but is not limited to Emerson HMI products such as Delta V Operate (and all packages, suites, and/or bundled product offerings that include DeltaV Operate), Emerson products including Delta V Model Predictive Control, Emerson OPC products such as OPC.Net and OPC Server (and all packages, suites, and/or bundled product offerings that include Emerson OPC.Net and OPC Server), and related software and systems;; hardware including Emerson motion controllers and motion control devices, including motion control devices sold and marketed under affiliated brands such as Control Techniques, Fisher, Bettis, Shafer, Virgo, Baumann, and others; any products, software, and/or services that share the same or similar functionality and or operation as the foregoing examples in relation to the claims of the asserted patents; and/or any parts or products made, sold, offered for sale, used, or marketed with or in conjunction with the above software and systems as part of a functional unit (the “Emerson Motion Control Systems”).

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

57. 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 Emerson 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 Emerson Motion Control Systems, including Defendants' customers to use such systems in a manner that infringes the '557 patent.

58. Specifically, as an example of the infringing features in this case,¹⁰ the Emerson Motion Control Systems comprise hardware and software components that, either individually or in conjunction with each other, form a motion control system. The Emerson Motion Control Systems include an application program comprising a series of component functions. The Emerson 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 Emerson 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 Emerson Motion Control Systems also include a mechanical system capable of causing a motion control operation. The Emerson 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 Emerson 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 Emerson 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

¹⁰ The exemplar description of Emerson'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.

commands generated in the controller language of the associated motion control device. The Emerson 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 Emerson Motion Control Systems associates a set of component functions with the driver functions. And the Emerson Motion Control Systems include the motion control hardware devices that are operated and controlled by the other elements of the system. Through the incorporation and use of these elements, the Emerson Motion Control Systems infringe the claims of the '557 patent, including at least Claims 16 and 46.

59. For example, the Emerson Motion Control Systems include application programs, such as Delta V Operate, operating on workstations and combining with the Delta V platform, including, for example, Delta V OPC.Net, in conjunction with software drivers, such as an OPC Server, to implement a set of motion control operations performed by a selected motion control device, such as Fisher digitally controlled valves. (*See*, for example, the system shown in the Emerson DeltaV Product Data Sheet – DeltaV OPC .NET Server, p. 2, available at: http://www2.emersonprocess.com/siteadmincenter/PM%20DeltaV%20Documents/ProductDataSheets/PDS_OPCdotNETServer.pdf.)

60. Defendants have had knowledge of the '557 patent, at least as early as the filing 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). Additionally, on information and belief, and as provided in the section of this Complaint titled “Willfulness,” Defendants have had knowledge of the '557 patent prior to the filing of the Original Complaint and

prior to the expiration of the '557 patent. Paragraphs 105 through 111 are incorporated herein by reference.

61. 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 Emerson 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, operation, setup, configuration, and engineering of the Emerson Motion Control Systems via advertisement and instructional materials, in addition to providing consulting services, training, and instruction on the use and operation of the Emerson Motion Control Systems.

62. 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.emerson.com/en-us/automation/deltav>, <http://www.emerson.com/catalog/en-us/deltav-distributed-control-system-process-industries>, <http://www.emerson.com/en-us/automation-solutions>, 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 Emerson 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. Additionally, Emerson provides consulting and service solutions to customers related to the Emerson Motion Control

Systems in connection with its Alliance Program (“Alliance”),¹¹ Main Automation Contractor projects (“MAC”),¹² project execution services, and/or related/equivalent services, divisions and/or service offerings. Such services include, but are not limited to, engineering, project management, consulting, implementation, integration, design, procurement, automation systems integration and programming, installation, integrated factory acceptance testing, site acceptance testing, commissioning, training, automation contracting, detailed engineering and design, front end engineering and design, hot cutover, operations support, and related services. Through these programs, Emerson contracts with third-parties to provide services that result in the direct infringement of the Asserted Patents by third-parties at the instruction and specific intention of Emerson.

63. Additionally, Defendants named in this Count know, and have known, that the Emerson 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.

64. Specifically, each of the Emerson Motion Control Systems contains one or more processors coupled with memory elements implementing, in combination with software instructions, functionality that is specifically programmed and/or configured to practice the process of associating a hardware independent motion control operation with a hardware

¹¹ See e.g., <http://www2.emersonprocess.com/en-US/brands/deltav/alliance/Pages/AllianceProgram.aspx>

¹² See e.g., <http://www2.emersonprocess.com/en-US/brands/processautomation/projectservices/Pages/ProjectServices.aspx>

dependent control command implemented by a motion control device through multiple levels of abstraction resulting in a universal connectivity, as claimed in the '557 patent. Upon information and belief, the Emerson Motion Control Systems contains discrete code that uniquely provides this functionality. The code, which is configured to control the processor(s) and other components for performing these functions, is a material part of the inventions of the '557 patent and there is no substantial non-infringing use for this combination of hardware and software components.

65. On information and belief, Defendants Emerson Process Management LLLP, and Fisher-Rosemount System, Inc., test, make, use, offer for sale, sell, and/or import the Emerson Motion Control Systems and supported hardware and devices, individually or by an through one another pursuant a joint enterprise or to one or more contractual agreements between them relating to, at least, the making, distribution, sale, and operation of such systems. Accordingly, Emerson Process Management LLLP, and Fisher-Rosemount System, Inc., are jointly, severally, or alternatively liable for infringements described in this Count.

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 IV

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

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

68. 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.

69. The '897 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 and/or indirectly infringe (including, but not limited to, direct infringement, induced, contributory, and/or joint or divided infringement)¹³ 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, via any Emerson affiliated company, including subsidiaries, parents, or other related entities, motion control systems including, for example, Emerson DeltaV Distributed Control System suite of products, including software, hardware, and systems sold, marketed, or offered for sale in connection with Delta V products, which includes but is not limited to Emerson HMI products such as Delta V Operate (and all packages, suites, and/or bundled product offerings that include DeltaV Operate), Emerson products including Delta V Model Predictive Control, Emerson OPC products such as OPC.Net and OPC Server (and all packages, suites, and/or bundled product offerings that include Emerson OPC.Net and OPC Server), and related software and systems; hardware including Emerson motion controllers and motion control devices, including motion control devices sold and marketed under

¹³ *Akamai Technologies, Inc. v. Limelight Networks, Inc.*, 797 F.3d 1020 (Fed.Cir.2015) (en banc); *Mankes v. Vivid Seats Ltd.*, 2015-1500, 2016 WL 1613280 (Fed. Cir. Apr. 22, 2016) (“The en banc court changed the result in the Akamai–Limelight case, now ruling against Limelight and for Akamai. *Id.* at 1025. The court did so by broadening the circumstances in which others' acts may be attributed to an accused infringer to support direct-infringement liability for divided infringement, relaxing the tighter constraints on such attribution reflected in our earlier precedents and in the three previous rulings for Limelight on direct infringement.”).

affiliated brands such as Control Techniques, Fisher, Bettis, Shafer, Virgo, Baumann, and others; any products, software, and/or services that share the same or similar functionality and or operation as the foregoing examples in relation to the claims of the asserted patents; and/or any parts or products made, sold, offered for sale, used, or marketed with or in conjunction with the above software and systems as part of a functional unit (the “Emerson Motion Control Systems”).

71. Defendants directly infringe (including, but not limited to, direct infringement and/or joint or divided infringement) the method claims of the ’897 patent by operating, making, and/or using, including but not limited to testing, servicing, and/or maintaining, the Emerson Motion Control Systems that practice the claimed methods. Defendants are thereby liable for direct infringement (including, but not limited to, direct infringement and/or joint or divided infringement).

72. Additionally, Defendants are liable for indirect infringement of the ’897 patent because they induce and/or contribute to the direct infringement of the patent by their customers and other end users who use the Emerson Motion Control Systems to practice the claimed inventions. Since obtaining knowledge of the ’897 patent, Defendants have specifically intended and continue to specifically intend for persons who acquire and use the Emerson Motion Control Systems, including Defendants’ customers to use such systems in a manner that infringes the ’897 patent.

73. Specifically, as an example of the infringing features in this case,¹⁴ the Emerson Motion Control Systems comprise hardware and software components that, either individually or in conjunction with each other, generate a sequence of control commands for controlling a motion

¹⁴ The exemplar description of Emerson’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.

control device to perform a given series of motion steps defined by an application program. Emerson and/or the Emerson 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. Emerson and/or the Emerson 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. Emerson and/or the Emerson Motion Control Systems define a set of component functions and provide component code which cross-references the component functions with the driver functions. Emerson and/or the Emerson 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. Emerson and/or the Emerson Motion Control Systems generate control commands based on the application program, the component code, and the driver code of the selected software driver. And the Emerson Motion Control Systems include the motion control hardware devices that are operated and controlled by the claimed process of the '897 patent. Through the incorporation and use of these elements, Emerson and/or the Emerson Motion Control Systems infringe the claims of the '897 patent, including at least Claim 17.

74. For example, the Emerson Motion Control Systems include application programs, such as Delta V Operate, operating on workstations and combining with the Delta V platform, including, for example, Delta V OPC.Net, in conjunction with software drivers, such as an OPC Server, to implement a set of motion control operations performed by a selected motion control device, such as Fisher digitally controlled valves. (*See*, for example, the system shown in the Emerson DeltaV Product Data Sheet – DeltaV OPC .NET Server, p. 2, available at:

http://www2.emersonprocess.com/siteadmincenter/PM%20DeltaV%20Documents/ProductDataSheets/PDS_OPCdotNETServer.pdf).

75. In addition to the examples set forth in the foregoing,¹⁵ and specifically incorporated herein by reference, on information and belief, Defendants are directly infringing via joint or divided infringement through their partnerships, contractual agreements, agency relationships, and equivalent agreements with third-parties, such as partners, system integrators, distributors, and equivalent parties (*e.g.*, distributors and resellers) (collectively, “Third Parties”)¹⁶ wherein some and/or all of the foregoing Third Parties may perform certain steps of the asserted method claims, such as Claim 17 for example. Upon information and belief, Defendants exercise direction or control over such Third Parties as a result of their agency, partnership, and other like contractual agreements to sell, offer to sell, configure, test, demonstrate, and/or use the Emerson Motion Control Systems sufficient to hold Defendants vicariously liable for infringement of said method claims. Additionally, on information and belief, Defendants direct or control Third Parties by conditioning receipt of a benefit or participation in some business activity upon performance of a step or steps of the asserted method claims and establish the manner or timing of that performance through their contractual relationships and/or through making and/or selling the infringing Emerson Motion Control Systems and/or testing, demonstrating, or training the Third Parties on how to configure, set-up, and/or use the infringing systems. Alternatively, on information and belief, Defendants and/or Third Parties have formed a joint enterprise, as discussed in the *Akamai*

¹⁵ Plaintiffs are permitted to plead in the alternative. FED.R.CIV.P. 8(e)(2); *Vasquez v. Bridgestone/Firestone, Inc.*, 325 F.3d 665, 674 (5th Cir. 2003).

¹⁶ See *e.g.*, <http://newenglandcontrols.com/about-us/>;
<https://www.youtube.com/watch?v=J5z2G55Iw5c&index=3&list=PL4AA9055D80FEEE4A>;
https://www.youtube.com/watch?v=Vs0_tcL7PpQ&list=PL4AA9055D80FEEE4A&index=4;
https://www.youtube.com/watch?v=PJMTI_kI7cY.

decision wherein Defendants can be charged with the acts of the Third Parties who may be performing certain steps of the asserted method claims, such as Claim 17 for example. On information and belief Defendants and Third Parties have (1) an agreement, express or implied, among the members of the group (*e.g.*, contracts, partnerships, and/or like contractual agreements) to make, use, sell, test, and/or demonstrate the Emerson Motion Control Systems; (2) a common purpose to be carried out by the group (*e.g.*, the sale of the Emerson Motion Control Systems); (3) a community of pecuniary interest in that purpose, among the members (*e.g.*, the Defendants and Third Parties are financially incentivized to sell the Emerson Motion Control Systems); and (4) an equal right to a voice in the direction of the enterprise (*e.g.*, Defendants and Third Partners describe their relationships as “Partners”), which gives an equal right of control. To the extent that Defendants do not perform each and every step of the asserted claims, upon information and belief, the steps that Defendants do not perform are performed by the Third Parties. Upon information and belief, the relationship between Defendants and the Third Parties is such that these actions by the Third Parties may be attributed to Defendants under vicarious liability pursuant to joint or divided infringement. While such specific information is not publicly-available, and must be the subject of discovery,¹⁷ Defendants substantially advertise and market their relationships with Third Parties as it relates to the Emerson Motion Control Systems.

¹⁷ See *e.g.*, *Charles E. Hill & Associates, Inc. v. Abercrombie & Fitch Co. et al*, Case No. 07-cv-234 at 8 (E.D. Tex. July 2, 2010) (Dkt. No. 335) (“In conclusion, the Court finds a dismissal of Hill's fact-intensive joint infringement claim under Rule 12(c) would be unfair as significant discovery remains. Further, this issue would be more appropriately addressed at the summary judgment stage, after discovery has completed. Indeed, the core dispute here really centers around whether or not Hill can prove his joint infringement contention. The Court makes no prediction as to whether Hill can do so. However, the Court does find that Hill sufficiently pleaded direct infringement under 35 U.S.C. § 271 and applicable case law as Hill has put the Defendants on notice as to what they must defend against.”).

76. Defendants have had knowledge of the '897 patent, at least as early as the filing of the 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). Additionally, on information and belief, and as provided in the section of this Complaint titled "Willfulness," Defendants have had knowledge of the '897 patent prior to the filing of the First Amended Complaint and prior to the expiration of the '897 patent. Paragraphs 105 through 111 are incorporated herein by reference.

77. Despite having knowledge of the '897 patent, Defendants named in this Count have specifically intended and continue to specifically intend for persons who acquire and use the Emerson Motion Control Systems, including Defendants' customers, to use such systems in a manner that infringes one or more claims of the '897 patent. This is evident when Defendants encourage and instruct customers and other end users in the use, operation, setup, configuration, and engineering of the Emerson Motion Control Systems via advertisement and instructional materials, in addition to providing consulting services, training, and instruction on the use and operation of the Emerson Motion Control Systems.

78. In particular, despite having knowledge of the '897 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.emerson.com/en-us/automation/deltav>, <http://www.emerson.com/catalog/en-us/deltav-distributed-control-system-process-industries>, <http://www.emerson.com/en-us/automation-solutions>, 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 Emerson 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. Additionally, Emerson provides consulting and service solutions to customers related to the Emerson Motion Control Systems in connection with its Alliance Program (“Alliance”),¹⁸ Main Automation Contractor projects (“MAC”),¹⁹ project execution services, and/or related/equivalent services, divisions and/or service offerings. Such services include, but are not limited to, engineering, project management, consulting, implementation, integration, design, procurement, automation systems integration and programming, installation, integrated factory acceptance testing, site acceptance testing, commissioning, training, automation contracting, detailed engineering and design, front end engineering and design, hot cutover, operations support, and related services. Through these programs, Emerson contracts with third-parties to provide services that result in the direct infringement of the Asserted Patents by third-parties at the instruction and specific intention of Emerson.

79. Additionally, Defendants named in this Count know, and have known, that the Emerson 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 ’897 patent and are not staple articles of commerce suitable for substantial non-infringing use.

¹⁸ See e.g., <http://www2.emersonprocess.com/en-US/brands/deltav/alliance/Pages/AllianceProgram.aspx>

¹⁹ See e.g., <http://www2.emersonprocess.com/en-US/brands/processautomation/projectservices/Pages/ProjectServices.aspx>

80. Specifically, each of the Emerson Motion Control Systems contains one or more processors coupled with memory elements implementing, in combination with software instructions, functionality that is specifically programmed and/or configured to practice the process of associating a hardware independent motion control operation with a hardware dependent control command implemented by a motion control device through multiple levels of abstraction resulting in a universal connectivity, as claimed in the '897 patent. Upon information and belief, the Emerson Motion Control Systems contains discrete code that uniquely provides this functionality. The code, which is configured to control the processor(s) and other components for performing these functions, is a material part of the inventions of the '897 patent and there is no substantial non-infringing use for this combination of hardware and software components.

81. On information and belief, Defendants Emerson Process Management LLLP, and Fisher-Rosemount System, Inc., test, make, use, offer for sale, sell, and/or import the Emerson Motion Control Systems and supported hardware and devices, individually or by an through one another in a joint enterprise or pursuant to one or more contractual agreements between them relating to, at least, the making, distribution, sale, and operation of such systems. Accordingly, Emerson Process Management LLLP, and Fisher-Rosemount System, Inc., are jointly, severally, or alternatively liable for infringements described in this Count.

82. 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)

83. AMS incorporates paragraphs 1 through 82 herein by reference.

84. 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.

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

86. Defendants have and continue to directly and/or indirectly infringe (including, but not limited to, direct infringement, induced infringement, contributory infringement, and/or joint or divided infringement)²⁰ 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, via any Emerson affiliated company, including subsidiaries, parents, or other related entities, motion control systems including, for example, Emerson DeltaV Distributed Control System suite of products, including software, hardware, and systems sold, marketed, or offered for sale in connection with Delta V products, which includes but is not limited to Emerson HMI products such as Delta V Operate (and all packages, suites, and/or bundled product offerings that include DeltaV Operate), Emerson products including Delta V Model Predictive Control, Emerson OPC

²⁰ *Akamai Technologies, Inc. v. Limelight Networks, Inc.*, 797 F.3d 1020 (Fed.Cir.2015) (en banc); *Mankes v. Vivid Seats Ltd.*, 2015-1500, 2016 WL 1613280 (Fed. Cir. Apr. 22, 2016) (“The en banc court changed the result in the Akamai–Limelight case, now ruling against Limelight and for Akamai. *Id.* at 1025. The court did so by broadening the circumstances in which others' acts may be attributed to an accused infringer to support direct-infringement liability for divided infringement, relaxing the tighter constraints on such attribution reflected in our earlier precedents and in the three previous rulings for Limelight on direct infringement.”).

products such as OPC.Net and OPC Server (and all packages, suites, and/or bundled product offerings that include Emerson OPC.Net and OPC Server), and related software and systems; hardware including Emerson motion controllers and motion control devices, including motion control devices sold and marketed under affiliated brands such as Control Techniques, Fisher, Bettis, Shafer, Virgo, Baumann, and others; any products, software, and/or services that share the same or similar functionality and or operation as the foregoing examples in relation to the claims of the asserted patents; and/or any parts or products made, sold, offered for sale, used, or marketed with or in conjunction with the above software and systems as part of a functional unit (the “Emerson Motion Control Systems”).

87. Defendants directly infringe (including, but not limited to, direct infringement and/or joint or divided infringement) the method claims of the ’543 patent by operating, making, and/or using, including but not limited to testing, servicing, and/or maintaining, the Emerson Motion Control Systems that practice the claimed methods. Defendants are thereby liable for direct infringement (including, but not limited to, direct infringement and/or joint or divided infringement).

88. Additionally, Defendants are liable for indirect infringement of the ’543 patent because they induce and/or contribute to the direct infringement of the patent by their customers and other end users who use the Emerson Motion Control Systems to practice the claimed inventions. Since obtaining knowledge of the ’543 patent, Defendants have specifically intended and continue to specifically intend for persons who acquire and use the Emerson Motion Control Systems, including Defendants’ customers to use such systems in a manner that infringes the ’543 patent.

89. Specifically, as an example of the infringing features in this case,²¹ the Emerson Motion Control Systems comprise hardware and software components that, either individually or in conjunction with each other, move an object in a desired manner using a motion control device. Emerson and/or the Emerson Motion Control Systems select a software driver comprising driver code to control one or more motion control devices. Emerson and/or the Emerson 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. Emerson and/or the Emerson Motion Control Systems associate at least some of the component functions with the driver functions. Emerson and/or the Emerson 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 Emerson 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. And the Emerson Motion Control Systems include the motion control hardware devices that are operated and controlled by the claimed process of the '543 patent. Through the incorporation and use of these elements, Emerson and/or the Emerson Motion Control Systems infringe the claims of the '543 patent, including at least Claim 1.

90. For example, the Emerson Motion Control Systems include application programs, such as Delta V Operate, operating on workstations and combining with the Delta V platform,

²¹ The exemplar description of Emerson'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.

including, for example, Delta V OPC.Net, in conjunction with software drivers, such as an OPC Server, to implement a set of motion control operations performed by a selected motion control device, such as Fisher digitally controlled valves. (*See*, for example, the system shown in the Emerson DeltaV Product Data Sheet – DeltaV OPC .NET Server, p. 2, available at: http://www2.emersonprocess.com/siteadmincenter/PM%20DeltaV%20Documents/ProductDataSheets/PDS_OPCdotNETServer.pdf).

91. In addition to the examples set forth in the foregoing,²² and specifically incorporated herein by reference, on information and belief, Defendants are directly infringing via joint or divided infringement through their partnerships, contractual agreements, agency relationships, and equivalent agreements with third parties, such as partners, system integrators, distributors, and equivalent parties (*e.g.*, distributors and resellers) (collectively, “Third Parties”)²³ wherein some and/or all of the foregoing Third Parties may perform certain steps of the asserted method claims, such as Claim 1. Upon information and belief, Defendants exercise direction or control over such Third Parties as a result of their agency, partnership, and other like contractual agreements to sell, offer to sell, configure, test, demonstrate, and/or use the Emerson Motion Control Systems sufficient to hold Defendants vicariously liable for infringement of said method claims. Additionally, on information and belief, Defendants direct or control Third Parties by conditioning receipt of a benefit or participation in some business activity upon performance of a step or steps of the asserted method claims and establish the manner or timing of that performance

²² Plaintiffs are permitted to plead in the alternative. FED.R.CIV.P. 8(e)(2); *Vasquez v. Bridgestone/Firestone, Inc.*, 325 F.3d 665, 674 (5th Cir. 2003).

²³ *See e.g.*, <http://newenglandcontrols.com/about-us/>;
<https://www.youtube.com/watch?v=J5z2G55Iw5c&index=3&list=PL4AA9055D80FEEE4A>;
https://www.youtube.com/watch?v=Vs0_tcL7PpQ&list=PL4AA9055D80FEEE4A&index=4;
https://www.youtube.com/watch?v=PJMTI_kI7cY

through their contractual relationships and/or through making and/or selling the infringing Emerson Motion Control Systems and/or testing, demonstrating, or training the Third Parties on how to configure, set-up, and/or use the infringing systems. Alternatively, on information and belief, Defendants and/or Third Parties have formed a joint enterprise, as discussed in the *Akamai* decision wherein Defendants can be charged with the acts of the Third Parties who may be performing certain steps of the asserted method claims, such as Claim 1. On information and belief Defendants and Third Parties have (1) an agreement, express or implied, among the members of the group (*e.g.*, contracts, partnerships, and/or like contractual agreements to make, use, sell, test, and/or demonstrate the Emerson Motion Control Systems; (2) a common purpose to be carried out by the group (*e.g.*, the sale of the Emerson Motion Control Systems); (3) a community of pecuniary interest in that purpose, among the members (*e.g.*, the Defendants and Third Parties are financially incentivized to sell the Emerson Motion Control Systems); and (4) an equal right to a voice in the direction of the enterprise (*e.g.*, Defendants and Third Parties describe their relationships as “Partners”), which gives an equal right of control. To the extent that Defendants do not perform each and every step of the asserted claims, upon information and belief, the steps that Defendants do not perform are performed by the Third Parties. Upon information and belief, the relationship between Defendants and the Third Parties is such that these actions by the Third Parties may be attributed to Defendants under vicarious liability pursuant to joint or divided infringement. While such specific information is not publicly-available, and must be the subject of discovery,²⁴

²⁴ See *e.g.*, *Charles E. Hill & Associates, Inc. v. Abercrombie & Fitch Co. et al*, Case No. 07-cv-234 at 8 (E.D. Tex. July 2, 2010) (Dkt. No. 335) (“In conclusion, the Court finds a dismissal of Hill's fact-intensive joint infringement claim under Rule 12(c) would be unfair as significant discovery remains. Further, this issue would be more appropriately addressed at the summary judgment stage, after discovery has completed. Indeed, the core dispute here really centers around whether or not Hill can prove his joint infringement contention. The Court makes no prediction as to whether Hill can do so. However, the Court does find that Hill sufficiently pleaded direct

Defendants substantially advertise and market their relationships with Third Parties as it relates to the Emerson Motion Control Systems.

92. Defendants have had knowledge of the '543 patent, at least as early as the filing of the 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). Additionally, on information and belief, and as provided in the section of this Complaint titled "Willfulness," Defendants have had knowledge of the '543 patent prior to the filing of the First Amended Complaint and prior to the expiration of the '543 patent. Paragraphs 105 through 111 are incorporated herein by reference.

93. Despite having knowledge of the '543 patent, Defendants named in this Count have specifically intended and continue to specifically intend for persons who acquire and use the Emerson Motion Control Systems, including Defendants' customers, to use such systems in a manner that infringes one or more claims of the '543 patent. This is evident when Defendants encourage and instruct customers and other end users in the use, operation, setup, configuration, and engineering of the Emerson Motion Control Systems via advertisement and instructional materials, in addition to providing consulting services, training, and instruction on the use and operation of the Emerson Motion Control Systems.

94. In particular, despite having knowledge of the '543 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.emerson.com/en-us/automation/deltav>, [---

infringement under 35 U.S.C. § 271 and applicable case law as Hill has put the Defendants on notice as to what they must defend against."\).](http://www.emerson.com/catalog/en-</p></div><div data-bbox=)

us/deltav-distributed-control-system-process-industries, <http://www.emerson.com/en-us/automation-solutions>, 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 Emerson 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. Additionally, Emerson provides consulting and service solutions to customers related to the Emerson Motion Control Systems in connection with its Alliance Program (“Alliance”),²⁵ Main Automation Contractor projects (“MAC”),²⁶ project execution services, and/or related/equivalent services, divisions and/or service offerings. Such services include, but are not limited to, engineering, project management, consulting, implementation, integration, design, procurement, automation systems integration and programming, installation, integrated factory acceptance testing, site acceptance testing, commissioning, training, automation contracting, detailed engineering and design, front end engineering and design, hot cutover, operations support, and related services. Through these programs, Emerson contracts with third-parties to provide services that result in the direct infringement of the Asserted Patents by third-parties at the instruction and specific intention of Emerson.

95. Additionally, Defendants named in this Count know, and have known, that the Emerson Motion Control Systems include proprietary hardware components and software instructions that work in concert to perform specific, intended functions. Such specific, intended

²⁵ See e.g., <http://www2.emersonprocess.com/en-US/brands/deltav/alliance/Pages/AllianceProgram.aspx>

²⁶ See e.g., <http://www2.emersonprocess.com/en-US/brands/processautomation/projectservices/Pages/ProjectServices.aspx>

functions, carried out by these hardware and software combinations, are a material part of the inventions of the '543 patent and are not staple articles of commerce suitable for substantial non-infringing use.

96. Specifically, each of the Emerson Motion Control Systems contains one or more processors coupled with memory elements implementing, in combination with software instructions, functionality that is specifically programmed and/or configured to practice the process of associating a hardware independent motion control operation with a hardware dependent control command implemented by a motion control device through multiple levels of abstraction resulting in a universal connectivity, as claimed in the '543 patent. Upon information and belief, the Emerson Motion Control Systems contains discrete code that uniquely provides this functionality. The code, which is configured to control the processor(s) and other components for performing these functions, is a material part of the inventions of the '543 patent and there is no substantial non-infringing use for this combination of hardware and software components.

97. On information and belief, Defendants Emerson Process Management LLLP, and Fisher-Rosemount System, Inc. test, make, use, offer for sale, sell, and/or import the Emerson Motion Control Systems and supported hardware and devices, individually or by and through one another in a joint enterprises or pursuant to one or more contractual agreements between them relating to, at least, the distribution, sale, and operation of such systems. Accordingly, Emerson Process Management LLLP, and Fisher-Rosemount System, Inc., are jointly, severally, or alternatively liable for infringements described in this Count.

98. 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

99. AMS incorporates paragraphs 1 through 98 herein by reference.

100. On information and belief, Emerson Process Management LLLP, and Fisher-Rosemount System, Inc., each individually or by and through one another in a joint enterprise participate in or are responsible for the making, having made, offering for sale, selling, importing, and/or using the Emerson Motion Control systems and supported hardware and devices that are the subject of Counts I through V (or some subset thereof). Thus, for these Counts, the right to relief against each Defendant is asserted jointly and severally with all other Defendants.

101. 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 Emerson systems made the subject of Counts I through V.

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

103. Thus, joinder of Emerson Process Management LLLP, and Fisher-Rosemount System, Inc., is proper in this litigation pursuant to 35 U.S.C. § 299(a).

WILLFULNESS

104. AMS incorporates paragraphs 1 through 103 herein by reference.

105. On information and belief, the Emerson Defendants' acts of infringement of the '058 patent, '236 patent, '897 patent, '543 patent and '557 patent have been willful and intentional pursuant to the standard enunciated by the United States Supreme Court in *Halo Elecs., Inc. v.*

Pulse Elecs., Inc., 136 S. Ct. 1923 (2016). As admitted by the Emerson Defendants, various employees at Emerson were aware of the inventors of the patents-in-suit. For example, Fisher-Rosemount, Inc., was a founding member of the OPC Task Force and led formation of the OPC Foundation as well as the creation of OPC specifications. Fisher-Rosemount, Inc. has admitted that RGB was one of the first non-founding members of the OPC Foundation. And the first president of the OPC Foundation was then-Fisher-Rosemount, Inc.-employee David Rehbein. Mr. Rehbein was at least aware of RGB and had contact with RGB representatives who at least attempted to comment on and modify OPC specifications. Neil Peterson was another Fisher-Rosemount, Inc., employee who worked closely with the OPC Task Force and Foundation and development of early OPC specifications. Both Mr. Rehbein and Mr. Peterson recognize a photograph of at least Jay Clark in connection with their OPC activities. RGB representatives attended OPC Foundation meetings and Microsoft updates offered to OPC Foundation members. The time period relevant to the foregoing would have likely been, on information and belief, at least as early as the late 1990's. On information and belief, the Emerson Defendants—given their substantial participation in the OPC Foundation, would have had to have been aware of the inventors of the patents-in-suit, RGB, RGB's products, and would have been aware of the '897 patent, which was filed in May of 1995, and is the parent patent of the balance of the patents-in-suit.

106. In addition, the Emerson Defendants have admitted that they were aware of RGB, its XMC line of products, its patents and the fact that RGB had asserted some of its patents in then-pending infringement litigation against, at least, ABB Corporation. As a result, the Emerson Defendants would have also been aware of the substantial *inter partes* and *ex parte* reexaminations that the patents-in-suit have been through, as detailed *supra*.

107. Also, Emerson has admitted that the Emerson Defendants²⁷ met with RGB in 2014 to discuss RGB's patents, including the patents-in-suit. In connection with that meeting, Emerson was provided claim charts the showed infringement related to the patents-in-suit on industrial automation products and systems.

108. Further, the patents-in-suit are widely-known for several reasons, each individually sufficient to support a finding of willful infringement, including: (1) RGB's presence in the industrial automation industry and standard setting organizations, such as OPC; (2) RGB's products that were out in the market and the marking of said products with RGB's substantial patent portfolio; (3) the fact that the patents-in-suit have been cited a substantial number of times in the public record by other patents and publications (*e.g.*, '058 cited by 47 patents; '236 patent cited by 55 patents; '057 patent cited by 5 patents; '897 patent cited by 97 patents; and '543 patent cited by 42 patents); (4) the prior RGB patent litigation brought against the industrial automation industry; and (5) the prior RGB patent litigation brought against members of OPC.²⁸ These facts and evidence all individually support a finding of willful infringement, or at least an inference, that the Emerson Defendants had knowledge of the patents-in-suit.

109. It is apparent from the record that the Emerson Defendants were well-aware of the patents-in-suit, RGB, the inventors of the patents-in-suit, and the patent litigation cases that RGB had filed against competitors of Emerson in the industrial automation industry, and that despite that knowledge, the Emerson Defendants continued to infringe the patents-in-suit. And given the nature of the relationship between the Emerson Defendants, there is sufficient reason to impute the

²⁷ Emerson Electric Co. is a third party to this litigation, but is subject to the Second Joint Stipulation in place between the parties as referenced in Footnote 3, *supra*. Emerson Electric Co. is the parent company of the Emerson Defendants.

²⁸ Indeed, on information and belief, the OPC Foundation tracked prior patent litigation brought by a party against members related to a patent that originated at Schneider Electric. *See e.g.*, <http://www.csemag.com/home/single-article/schneider-electric-attorney-respond-to-opc-patent-suits/bd5c4a6609d682be2c63a02b45cff9c2.html>

knowledge of Emerson Process Management LLLP and Fisher-Rosemount Systems, Inc. to each other and/or Emerson. *See Mobile Telecommunications Techs., LLC v. Blackberry Corp.*, No. 3:12-CV-1652-M, 2016 WL 1642927, at *2 (N.D. Tex. Apr. 26, 2016) (Noting that there is no “authority that the specific facts establishing that knowledge may be imputed must be alleged in order to avoid dismissal at the pleading stage.”). Notwithstanding, the various Emerson Defendants share in-house legal counsel, share facilities, have ownership interests in one another, have “vertical corporate connection[s],” and are involved in making and selling the same accused products, and are equally liable for the willful infringement of the patents-in-suit. *See generally*, Dkt. 36, 36-2, 40, 40-1, and 44, n. 4 (all are incorporated herein by reference as if fully set forth herein).

110. In addition, the Emerson Defendants share a corporate parent and file consolidated financial statements. Further, the Emerson Defendants have admitted that they had knowledge, of the patents-in-suit. These Emerson entities were also in possession of exemplary claim charts that, at the very least, provide the Emerson Defendants with constructive knowledge of the patents and theories of infringement. Also, Emerson and certain Emerson entities are members of relevant standard setting organizations, such as OPC, where, on information and belief, such standard setting organizations (including OPC) monitor patent litigation that may be relevant to its members and inform members of the status of such cases. As a result, Plaintiff alleges that Emerson, and all of its relevant subsidiaries (including named Emerson Defendants) were on notice of Plaintiff’s patents, including, but not limited to, notice of RGB’s prior patent assertions against industrial automation industry members, such as General Electric, ABB, Siemens, and others.

111. In sum, the infringement of the patents-in-suit by Emerson’s products and services is willful. And it is apparent from the record that, across several Emerson entities, Emerson

engaged in acts of willful infringement related to the DeltaV motion control products, systems, and related hardware and components. The evidence demonstrates that these accused products are made, sold, offered for sale, imported, exported, marketed, etc., by one or more of the named Emerson Defendants and Plaintiff's allegations against the Emerson Defendants related to willful patent infringement are applicable to all named Emerson Defendants.

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, and/or joint or divided infringement by Defendants;
- b. Judgement that Defendants have induced infringement of one or more claims of the '058, '236, '557, 897, and '543 patents;
- c. 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;
- 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. 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;
- f. 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

- g. That AMS be granted such other and further relief as the Court may deem just and proper under the circumstances.

Dated: March 30, 2017

Respectfully submitted,

/s/ Monte Bond

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CERTIFICATE OF SERVICE

I hereby certify that on March 30, 2017, I electronically submitted the foregoing document to the Clerk of Court for the United States District Court, Eastern District of Texas, using the CM/ECF system of the Court. The electronic case filing system sent a "Notice of Electronic Filing" to the attorneys of record who have consented in writing to accept this Notice as service of this document by electronic means.

/s/ Monte Bond