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Emerson Says It Doesn't Belong In Ex-Unit's $100M IP Row

By **Lauraann Wood**

Law360 (November 14, 2018, 10:33 PM EST) -- Emerson Electric Co. asked an Illinois federal judge Tuesday to let it out of a $100 million lawsuit claiming its former subsidiary misappropriated trade secrets that caused a rival's declined lithium-ion battery sales, saying its status as a former parent company makes liability a "factual impossibility."

The St. Louis-based company told U.S. District Judge Ronald Guzman that although LiiON LLC's lawsuit stems from an agreement it entered in 2014 with an Emerson subsidiary called Liebert Corp., Emerson sold the company in 2016 and the alleged conduct at issue occurred after that sale.

LiiON might be able to obtain third-party discovery from Emerson if its lawsuit survives dismissal, but the complaint itself "does not aver a basis in fact or law for asserting a claim against Emerson," the filing argued.

"Emerson Electric Co. would arguably not be liable in this suit even if it was still Liebert Corporation's parent or affiliate, but in any case, Emerson Electric Co. is now merely a previous parent company and no longer affiliated with Liebert Corporation — alleviating any and all factual issues," Emerson said.

LiiON's **September lawsuit** claims it did business with Liebert but their relationship eventually went sour and the company began using plaintiff's trade secrets for not only its own benefit, but for the benefit of LiiON's competitor Samsung as well. Private equity-backed Vertiv Group Corp. bought Liebert and other assets from Emerson in 2016, and is named in the suit.

LiiON claims it worked for years to enhance the uninterruptable power solutions systems that traditionally used certain types of batteries which often needed replacing. Its lithium-ion UPS system was an improvement that didn't need regular battery replacements, would work effectively and could be properly controlled, the company claims.

LiiON's relationship with Liebert started in May 2013 when it sent a prototype of the company's battery to Emerson Power Network, the suit says. A nondisclosure agreement was struck between the two entities later that year, according to the complaint.

In March 2014, the companies struck an agreement that allowed Liebert to sell LiiON products for use in a Chicago data center. The collaboration was announced that May and various documents were signed where the sides promised to keep certain information confidential, the suit says. Liebert received hardware that its employees had to learn how to use, and the batteries started being installed in the Chicago data center in 2015, LiiON claims.

The company says it was in a "unique position" to offer lithium-ion battery systems in 2016, but toward the end of 2017, Vertiv, at that point the owner of Liebert, canceled an order with LiiON. Then in January, Vertiv announced it was expanding its lithium-ion UPS product line and has illegally continued to sell products LiiON claims is protected by its own patents and trade secrets.

However, in urging Judge Guzman to toss the suit, Emerson and EECO also argued that LiiON's complaint is "so riddled with error and inconsistencies, that even determining whether LiiON has

alleged anything that could amount to, for example, the mere existence of a trade secret, is confusing and difficult to parse."

For example, LiiON "repeatedly" refers to Vertiv's "use" or sometimes "supplying" of its patents, but the complaint lobs several claims under federal and state trade secrets laws and "never addresses why LiiON has failed to bring a patent infringement suit" over its claims, Emerson argued.

Counsel for LiiON and Vertiv did not immediately respond Wednesday to requests for comment.

LiiON is represented by James A. Karamanis of Barney & Karamanis LLP.

Vertiv is represented by Joel Erik Connolly and Nicole E. Wrigley of Benesch, Friedlander, Coplan & Aronoff LLP.

Emerson is represented by Rudolph Anthony Telscher Jr., Erin Darnell Knese and Steven Edward Holtshouser of Husch Blackwell.

EECO is represented by Rudolph Anthony Telscher Jr. of Husch Blackwell.

The case is LiiON LLC v. Vertiv Group Corp. et al., case number 1:18-cv-06133, in the U.S. District Court for the Northern District of Illinois.

--Additional reporting by Michael Phillis. Editing by Janice Carter Brown.
