

ESTTA Tracking number: **ESTTA735371**

Filing date: **03/23/2016**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

## Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

### Opposer Information

Name	Fisher-Rosemount Systems, Inc.
Granted to Date of previous extension	03/23/2016
Address	1100 W. Louis Henna Blvd, Building 1 Round Rock, TX 78681 UNITED STATES

Attorney information	Richard M. LaBarge Marshall, Gerstein & Borun LLP 233 S. Wacker Drive Suite 6300 Chicago, IL 60606 UNITED STATES rlabarge@marshallip.com, mgbtmlitdocket@marshallip.com Phone: 3124746300
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### Applicant Information

Application No	86479382	Publication date	11/24/2015
Opposition Filing Date	03/23/2016	Opposition Period Ends	03/23/2016
Applicant	Delta Industrial Services, Inc. 11501 Eagle Street NW Minneapolis, MN 55448 UNITED STATES		

### Goods/Services Affected by Opposition

Class 009. First Use: 1988/05/00 First Use In Commerce: 1988/05/00 All goods and services in the class are opposed, namely: industrial process control computer software; computer software for control of industrial printing machines for production and processing of web converting; remote access computer software for troubleshooting and updating industrial process control computer software
Class 042. First Use: 1981/01/19 First Use In Commerce: 1981/01/19 Opposed goods and services in the class: custom design and engineering of industrial manufacturing and packing machinery; technical support services, namely, troubleshooting of industrial process control computer software problems

### Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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### Mark Cited by Opposer as Basis for Opposition

U.S. Application/ Registration No.	NONE	Application Date	NONE
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Registration Date	NONE
Word Mark	DeltaV
Goods/Services	process control software

Attachments	delta_industrial_services_opposition.pdf(23591 bytes )
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### **Certificate of Service**

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/rmlabarge/
Name	Richard M. LaBarge
Date	03/23/2016

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Fisher-Rosemount Systems, Inc.,	)	
	)	
Opposer,	)	In the matter of serial no.: 86479382
	)	
v.	)	DELTA
	)	
Delta Industrial Services, Inc.	)	Opposition no.: _____
	)	
Applicant.	)	

**NOTICE OF OPPOSITION**

Fisher-Rosemount Systems, Inc. (“Fisher”), a Delaware corporation and part of Emerson Process Management, with its primary place of business at 1100 W. Louis Henna Boulevard, Building 1, Round Rock, Texas 78681, opposes the above-identified application. Fisher would be damaged by registration because it has prior rights in the use of “DeltaV” in connection with goods recited in the application.

The grounds for opposition are:

1. Fisher is part of the Emerson Process Management group of companies and is one of the world’s leading suppliers of process control equipment. It owns trademark rights in the “DeltaV” mark for its flagship industrial process control software. The mark has been used continuously since the 1990s, is one of the leading brands in the industry, and has served as a Fisher trademark for more than 20 years. The mark has not been abandoned.

2. The opposed application was filed after Fisher began use and obtained its rights in the “DeltaV” mark, and covers the use of “DELTA” in connection with (among other things):

industrial process control computer software;

computer software for control of industrial printing machines for production and processing of web converting;

remote access computer software for troubleshooting and updating industrial process control computer software;

custom design and engineering of industrial manufacturing and packing machinery; and

technical support services, namely, troubleshooting of industrial process control computer software problems;

3. "DELTA" and "DeltaV" are similar in sight, sound, and meaning, and purchasers of the goods in question are likely to think that "Delta" and "DeltaV" products are different grades of product from a common source.

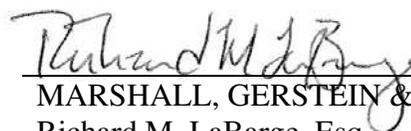
4. The products in the opposed application include the type of products that Fisher sells under its "DeltaV" brand, and products and services related to those products.

5. "DELTA" so resembles Fisher's "DeltaV" mark as to be likely, when used on or in connection with the goods in the opposed application, to cause confusion, or to cause mistake, or deceive. Consequently, registration is precluded by 15 USC §1052(d).

WHEREFORE, Fisher asks that the opposition be sustained and that registration be refused.

Fisher-Rosemount Systems, Inc.

March 23, 2016



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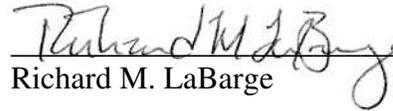
Telephone: (312) 474-6300

Facsimile: (312) 474-0448

**CERTIFICATE OF FILING**

The undersigned affirms that the accompanying NOTICE OF OPPOSITION was filed with the Trademark Trial and Appeal Board via the ESTTA electronic filing system on the date below.

Dated: March 22, 2016

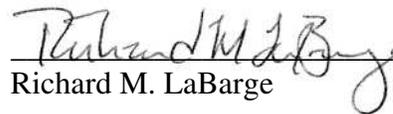
  
Richard M. LaBarge

**CERTIFICATE OF SERVICE**

The undersigned affirms that the accompanying NOTICE OF OPPOSITION was served by U.S. first class mail upon:

Michael Lasky  
Schwegman Lundberg & Woessner  
P.O. Box 2938  
Minneapolis, Minnesota United States 55402

Dated: March 22, 2016

  
Richard M. LaBarge