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

Proceeding	91172796
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Northrop Grumman Corporation	:	Trademark Registration
	:	Application Serial No. 78/803,273
Opposer	:	
	:	Mark: IMPCS
v.	:	
	:	
ITT Corporation	:	
(by change of name from ITT Industries, Inc.)	:	Published in the Official Gazette: July 11, 2006
	:	
Applicant.	:	Opposition No. 91172796
	:	
	:	

APPLICANT’S RESPONSE TO OPPOSER’S MOTION FOR SUMMARY JUDGMENT

Applicant ITT Corporation (“Applicant”), by counsel, hereby submits the following Response to Opposer’s Motion for Summary Judgment for Descriptiveness (“SJ Motion”) filed by Northrup Grumman Corporation (“Opposer”).

Opposer seeks a Summary Judgment that Applicant’s mark IMPCS is descriptive, based upon Opposer’s assertion that the underlying mark for which IMPCS is an acronym, namely INTEGRATED MONITORING & POWER CONTROL SUBSYSTEM, is descriptive. Applicant respectfully submits that the evidence shows that, if anything, INTEGRATED MONITORING & POWER CONTROL SUBSYSTEM is suggestive or has at least acquired distinctiveness through seven years of exclusive use by Applicant. Furthermore, Applicant’s IMPCS mark is inherently distinctive and has not become generally synonymous with the underlying words in a descriptive sense, but rather, serves as an indicator of the source of goods and services. For all of the reasons that follow, therefore, there are genuine issues of material fact that would make a determination in Opposer’s favor on summary judgment inappropriate.

I. OPPOSER'S "STATEMENT OF UNDISPUTED FACTS" CONTAINS MULTIPLE MISCHARACTERIZATIONS

A. Applicant has not admitted that IMPCS is a "recognized acronym"

Opposer SJ Motion mischaracterizes Applicant's Answer to Paragraph 2 of the Notice of Opposition as an admission "that IMPCS is a recognized acronym for the term 'Integrated Monitoring and Power Control Subsystem.'" While Opposer's Notice of Opposition made the assertion that IMPCS is a "recognized acronym," Applicant's answer very carefully made no such admission. Rather, while Applicant admitted that IMPCS is an acronym for the above underlying phrase, it further stated with unmistakable specificity that IMPCS is "recognized *in association with Applicant's products and services.*" (Emphasis added). Recognition of a word or phrase as being associated with the goods and services of another is a characteristic of a trademark. The phrase "recognized acronym" as used by Opposer implies that others use the acronym to refer to the underlying terms in a context other than in association with a particular source of goods or services. The mischaracterization in Opposer's Statement of Undisputed Facts therefore goes to the very heart of a descriptiveness determination for acronym trademarks.

B. Entry of a Disclaimer Is Not An Admission of Descriptiveness

Opposer has mischaracterized the facts and the law with respect to Applicant's entry of a disclaimer in its co-pending application. Opposer states that the "Trademark Office has found, and Applicant has admitted, that 'Integrated Monitoring and Power Control Subsystems' is descriptive . . ." based upon entry of a disclaimer of the phrase INTEGRATED MONITORING & POWER CONTROL SUBSYSTEM apart from the mark shown in co-pending application Ser. No. 78/803,296 ("the IMPCS logo application"). While such a disclaimer was indeed entered, this disclaimer was entered by Examiner's Amendment. Thus, nowhere in the record is there a "finding" by the Trademark Office of descriptiveness, and nowhere is there an admission by Applicant that the phrase is descriptive. The only inference to which Opposer is entitled from the entry of a disclaimer is that Applicant chose to voluntarily

agree to entry of the subject disclaimer to streamline prosecution. *See* 15 U.S.C. § 1056(a) (“An applicant may voluntarily disclaim a component of a mark sought to be registered.”). The Trademark Act specifically provides that “No disclaimer . . . shall prejudice or affect the applicant’s or registrant’s rights then existing or thereafter arising in the disclaimed matter, or his right of registration on another application if the disclaimed matter be or shall have become distinctive of his goods or services.” 15 U.S.C. § 1056(b). Thus, the entry of a disclaimer does not operate to deprive applicant of any common law rights in the disclaimed matter. *See Victor Tool & Machine Corp. v. Sun Control Awnings, Inc.*, 299 F. Supp. 868, 162 USPQ 389, 394 n.27 (E.D.Mich 1968), *aff’d*, 411 F.2d 792, 162 USPQ 387 (6th Cir. 1969).

Applicant further notes that the drawing for the IMPCS logo application, included as Exhibit B, Page 5 to Opposer’s SJ Motion, clearly shows the letters IMPCS in much larger letters than the lettering for “Integrated Monitoring & Power Control Subsystems.” While it is improper to draw an inference that a disclaimed term in a trademark application has been conceded to be descriptive, it is entirely proper to draw an inference that non-disclaimed terms are considered to be distinctive. By definition, approval for publication of a mark on the Principal Register means that the Trademark Office has found that the mark is not descriptive for the goods and services listed in the application. *See* 15 U.S.C. § 1052(e)(1). Therefore, the fact that the Examining Attorney of the IMPCS logo application did not require entry of a disclaimer for IMPCS, means that the Examining Attorney did not consider the acronym descriptive. Given that the drawing clearly showed on its face the underlying words corresponding to the letters of the acronym, it must be assumed that the Examining Attorney properly weighed whether the acronym was descriptive, and decided it was not. *Fiskars, Inc. v. Hunt Mfg. Co.*, 55 USPQ2d 1569, 1573 (Fed. Cir. 2000) (“[T]here is a presumption that public officers perform their duties correctly, fairly, in good faith, and in accordance with the law and governing regulations . . .”) (citations omitted).

II. TO PREVAIL AT SUMMARY JUDGMENT, APPLICANT MUST ONLY SHOW THAT THERE IS A GENUINE ISSUE OF MATERIAL FACT

In deciding a motion for summary judgment, the Board must determine if there are any genuine issues of material fact to be tried. *See, e.g., Opryland USA Inc. v. The Great American Music Show Inc.*, 970 F.2d 847, 23 USPQ2d 1471, 1472 (Fed. Cir. 1992) (the non-movant is not required to present its entire case, but just sufficient evidence to show an evidentiary conflict as to the material facts in dispute). All inferences to be drawn from the undisputed facts must be viewed in the light most favorable to the non-moving party. *Capital Speakers Inc. v. Capital Speakers Club of Washington D.C. Inc.*, 41 USPQ2d 1030, 1034 (TTAB 1996) (Board accepted nonmovant's version of the facts for purposes of deciding motion).

III. THE MARK "INTEGRATED MONITORING & POWER CONTROL SUBSYSTEM" IS NOT MERELY DESCRIPTIVE OF APPLICANTS' GOODS AND SERVICES

Applicant respectfully submits that the mark INTEGRATED MONITORING & POWER CONTROL SUBSYSTEM underlying the acronym mark IMPCS is not merely descriptive. For the purposes of this motion, however, Applicant only needs to show that there is a genuine issue of material fact as to whether this mark is merely descriptive. The circumstances surrounding the selection and use of this mark clearly indicate such a genuine issue of material fact is present.

Applicant was awarded contract DAAB07-00-C-A261 by the U.S. Army in 2000. At the time the contract was awarded and released for bids, the Army titled the project Replacement Defense Satellite Communications System Frequency Division Multiple Access Control Subsystem (RDFCS). *See* Appendix 1, Declaration of Mark Hayes, ¶ 3. Recognizing that this name was not very catchy and would be long associated with Applicant's goods and services, Applicant held a contest to give the project a more distinctive title. *See* Declaration of Mark Hayes, ¶ 4. The contest winner was INTEGRATED MONITORING & POWER CONTROL SUBSYSTEM, and the contract was therefore amended effective November 7, 2000, to reflect the new name for the project under which Applicant has subsequently

exclusively (along with assistance from its subcontractors) provided services¹ as the sole prime contractor. See Declaration of Mark Hayes, ¶¶ 4, 5, Exhibit A. Thus, Applicant's mark INTEGRATED MONITORING & POWER CONTROL SUBSYSTEM is a collection of words specifically chosen to arrive at the acronym mark IMPCS, which rolls off the tongue as "impicks" and suggests the term "impacts," having a connotation that the project "impacts" or has "the power . . . to produce changes." See Definition of "impact" in *Webster's New World College Dictionary*, 1997. "When a term or phrase, as applied to the goods or services in question, possesses double meaning; suggests something more than a characteristic of the goods; and functions as more than a mere description of the goods; it is not merely descriptive of the goods." *In re Computer Business Systems Group*, 229 USPQ 859, 859-60 (TTAB 1985).

Even where individual words may have some descriptive significance, it does not follow that the collection of words in its entirety is descriptive. *Firestone Tire & Rubber Co. v. Goodyear Tire & Rubber Co.*, 186 USPQ 557, 559 (TTAB 1975) (dismissing opposition of the mark BIASTEEL for tires having a steel cord ply arranged at a bias, holding that the combination of terms created a unitary mark that suggested rather than described the character of tires), *aff'd*, 189 USPQ 348, 350 (CCPA 1976) (affirming the TTAB and citing a lack of evidence in the record that the terms "bias" and "steel" had been used by others together descriptively or that the purchasing public would associate the combined terms with a particular tire or class of tires). "Common words in which no one may acquire a trademark because they are descriptive or generic may, when used in combination, become a valid trademark." *Association of Co-operative Members, Inc. v. Farmland Industries, Inc.*, 684 F.2d 1134, 1140, 216 USPQ 361, 366 (5th Cir. 1982), *cert. denied*, 460 U.S. 1038, 75 L. Ed. 2d 788, 103 S. Ct. 1428 (1983). See also *In re Colonial Stores, Inc.*, 394 F.2d 549, 394 F.2d 549, 157 USPQ 382, 385 (CCPA 1968) (finding SUGAR & SPICE not merely descriptive for bakery products). Selection of the particular combination of words that together form the IMPCS acronym were driven by the desire to find a good acronym, and therefore neither the combination of the underlying words nor the acronym are merely descriptive.

¹ While Applicant's application lists both goods and services, Applicant to date has only provided services under the contract. The related goods are not expected to be delivered to the customer for several months to a year.

A test sometimes used by courts to distinguish between descriptive and suggestive marks is “whether competitors would be likely to need the terms used in the trademark in describing their products.” *See, e.g., Vision Center v. Opticks, Inc.*, 596 F.2d 111, 116 (5th Cir. 1979); *Union Carbide Corp. v. Ever-Ready, Inc.*, 531 F.2d 366, 379 (7th Cir. 1976). Opposer has offered no facts indicating that anyone other than Applicant, Applicant’s only current customer for those services (the U.S. Government), or Opposer use INTEGRATED MONITORING & POWER CONTROL SUBSYSTEM (or IMPCS) in any context. Applicant and its sole customer both use the mark as a reference to the project under which Applicant provides services. In this context, therefore, the mark is an indicator of the source of Applicant’s services, which by definition means that it is being used as a trademark. As noted in Applicant’s Answer and included by Opposer among the undisputed facts, Opposer was previously a subcontractor of Applicant’s in connection with the services for which Applicant seeks registration of the IMPCS mark. To the extent that Opposer (and other subcontractors of Applicant) have used the INTEGRATED MONITORING & POWER CONTROL SUBSYSTEM mark when referring to services supplied on behalf of Applicant under subcontract, such use has inured to the benefit of Applicant. *Scranton Plastic Laminating, Inc. v. Mason*, 187 USPQ 335, 342 (TTAB 1975) (goodwill created by use of a mark as a representative or an agent of trademark owner, on behalf of trademark owner, and in the furtherance of trademark owner's business, presumptively inures to the benefit of the trademark owner).

The fact that the original IMPCS contract was awarded under a different name with a different acronym prior to Applicant’s involvement suggests not only that different words can and have been used to describe the goods and services associated with Applicant’s mark, but is also evidence that the INTEGRATED MONITORING & POWER CONTROL SUBSYSTEM mark has only ever been associated with services provided by applicant. Third parties seeking similar services use other terminology, not Applicant’s trademarks. *See Declaration of Mark Hayes*, ¶ 9. For example, NATO’s Notification of Intent (NOI) to Invite Bids for International Competitive Bidding (ICB) for Acquisition of Advanced SATCOM Network Monitoring and Control Capabilities (ASNMC), uses ASNMC and the words underlying that acronym to refer to services similar to those provided by Applicant in connection with its INTEGRATED MONITORING & POWER CONTROL SUBSYSTEM and IMPCS marks. *See*

Declaration of Mark Hayes, ¶ 9, Exhibit C. As another example, a recent request from the U.S. Army, the same customer for which Applicant currently provides its IMPCS services, uses “Spectrum Management System (SMS)” to describe goods and services similar to those provided by Applicant in connection with the INTEGRATED MONITORING & POWER CONTROL SUBSYSTEM and IMPCS marks. *See* Declaration of Mark Hayes, ¶ 10, Exhibit D. This evidence clearly shows that others in the relevant field do not find the need to use Applicant’s marks to describe the goods and services provided by applicant in connection with those marks.

Finally, even if, *arguendo*, INTEGRATED MONITORING & POWER CONTROL SUBSYSTEM could have been found descriptive in 2000 when the mark was selected by Applicant for the name of the project associated with its services, the mark has taken on secondary meaning in the almost 7 years since its selection, through exclusive use in connection with services provided by Applicant to the sole customer for the services. Proof of substantially exclusive and continuous use of a mark in commerce in connection with the relevant goods and services for five years may be accepted as *prima facie* evidence of acquired distinctiveness. 15 U.S.C. § 1052(f).

For all of the above reasons, applicant contends that the mark INTEGRATED MONITORING & POWER CONTROL SUBSYSTEM is suggestive, not merely descriptive, or in the alternative, has acquired distinctiveness after seven years of substantially exclusive use by Applicant. Applicant has made no admission of descriptiveness, and any inferences of descriptiveness that Opposer suggests should be drawn from a disclaimer filed in a different application are impermissible. At a minimum, on the scant evidence available at this time without any discovery having been taken from relevant third parties as to their perception of Applicant’s marks, there are at least genuine issues of material fact as to whether INTEGRATED MONITORING & POWER CONTROL SUBSYSTEM is descriptive. Accordingly, taking all inferences in favor of Applicant, this issue is not ripe for determination at the Summary Judgment stage.

**IV. ACRONYM MARKS ARE NOT DESCRIPTIVE UNLESS
THEY ARE SYNONYMOUS WITH DESCRIPTIVE TERMS**

While Opposer's brief focuses on alleged descriptiveness of INTEGRATED MONITORING & POWER CONTROL SUBSYSTEM, the mark that Applicant actually seeks to register is IMPCS, not the words underlying that mark. Even if, despite ample evidence to the contrary, the words underlying the IMPCS mark are considered descriptive for the purposes of this motion, Opposer misstates the law with respect to acronym marks. It is well settled law that acronyms of descriptive words are not considered to be descriptive themselves unless "they have become so generally understood as representing descriptive words as to be accepted as substantially synonymous therewith." *Modern Optics, Inc. v. The Univis Lens Co.*, 234 F.2d 504, 110 USPQ 293, 295 (CCPA 1956) (Affirming opposition ruling in favor of applicant that CV is not descriptive, where the record was "unconvincing that CV is a generally recognized term for multifocal lenses and lens blanks"). "Each case must be determined on the basis of the particular facts involved." *Id.* at 295. The "particular facts involved" in this case are in dispute. Actually, Opposer has offered no undisputed facts to support a contention that the IMPCS mark has become generally understood to represent an underlying descriptive phrase -- only that it has come to represent the underlying project name that is associated with Applicant's services. Thus, for the purposes of this motion, a ruling in Opposer's favor would be inappropriate at summary judgment.

"If some operation of the imagination is required to connect the initials with the product, the initials cannot be equated with the generic phrase but are suggestive in nature, thereby rendering them protectable." *Anheuser-Busch, Inc. v. Stroh Brewery Co.*, 750 F.2d 631, 635-636 (8th Cir. 1984); *Accord United States Conf. of Catholic Bishops v. Media Research Ctr.*, 2005 TTAB LEXIS 177 (TTAB 2005) (non-precedential). Clearly, some imagination is required to connect the initials IMPCS to the services provided by Applicant. Opposer has proffered no evidence that the mark IMPCS itself is a defined word in the English (or any other) language, let alone evidence that the term IMPCS standing alone is descriptive of the goods or services in connection with which the mark is used.

Opposer offers no evidence that the IMPCS mark is used by others to refer generally to services similar to those provided by Applicant to its customer. To be descriptive, an acronym must be generally used descriptively by others in the relevant field to refer to goods and services similar to those sought to be registered in connection with the mark. *Racine Industries Inc. v. Bane-Clene Corp.*, 35 USPQ2d 1832, 1839 (TTAB 1995) (PCA not synonymous for Professional Cleaners' Association where evidence was lacking that the acronym was understood by the relevant public to refer generally to trade associations or other membership groups in the carpet cleaning industry). Opposer has simply not presented any evidence that the term IMPCS is used by anyone, including the relevant purchaser, to refer to anything other than the services provided by Applicant. Applicant respectfully submits this is because no such evidence exists.

Opposer asserts that "Applicant, Opposer and the Government all use IMPCS as an acronym for the integrated Monitoring [sic] and power control subsystems for satellite communications." As noted above, Applicant and the Government both use the IMPCS mark only to refer to the goods to be delivered and services performed by Applicant under contract and do not use IMPCS to refer to satellite monitoring or power control systems generally. Also as noted above, any use by Opposer of the IMPCS mark while Opposer was a subcontractor, inured to the benefit of Applicant. Any use or attempted use by Opposer of the IMPCS mark after its subcontract was discontinued, except nominative fair use, have been improper and cannot be offered as self-serving evidence of descriptiveness.

Applicant does not dispute that the sole customer for Applicant's services (the U.S. Army) recognizes that the IMPCS mark is a reference to the project for which it has contracted Applicant to provide services. Opposer mischaracterizes this recognition by the customer after seven years of exclusive use by Applicant in connection with services provided to the customer as evidence of descriptiveness, when it more properly comprises evidence of secondary meaning. As the IMPCS program has only had one prime contractor -- Applicant-- for the life of the project under that mark, this recognition of IMPCS in connection with the project under which Applicant performs services is necessarily an association of those services with their source. The fact that Applicant currently provides

the services to only a single customer is of no relevance. Recognition by that customer that Applicant's mark refers to the contract under which Applicant's services are provided only reinforces the trademark significance of the mark, rather than being evidence to the contrary, as asserted by Opposer.

Applicant further notes the propensity of acronym trademarks to transcend their initial meaning. For example, Applicant's own house mark -- ITT -- was originally coined as an acronym for International Telephone & Telegraph. Applicant no longer offers telephone or telegraph services, but still uses ITT as its house mark. Similarly, the IMPCS project has evolved with technology. The "power control" aspect of the services are no longer an important technological feature of the contract, as technology has evolved such that standard technology outside the scope of the goods and services Applicant is currently providing under the contract now provide the power control contemplated at the time the contract was originally awarded. *See* Declaration of Mark Hayes, ¶ 7. Instead, applicant's services and goods to be delivered under the contract now focus primarily on spectrum monitoring. *See* Declaration of Mark Hayes, ¶ 7. Thus, with power control no longer included within the focus of the contract, the concept of "integrating" the power control with the spectrum monitoring is no longer a meaningful concept, either. Thus, the underlying terms corresponding to the I P and C of the IMPCS mark no longer retain any descriptive significance, nor does the mark underlying the acronym retain its descriptive significance when taken as a whole. Nonetheless, Applicant continues to use and intends to continue to use the mark IMPCS in connection with delivery of goods and services under the existing and future contracts, as well as in connection with bids made to other parties desiring similar services. Why? Because Applicant wishes to continue to trade on the goodwill established in the IMPCS mark through Applicant's nearly seven years of successful, high-profile work on the IMPCS project.

V. OPPOSER'S INFRINGING USE SHOWS OPPOSER'S RECOGNITION THAT APPLICANT'S MARKS ARE DISTINCTIVE, FUNCTION AS TRADEMARKS, AND HAVE GOODWILL ASSOCIATED WITH THEM

At the root of Opposer's case is Opposer's desire to trade on the goodwill Applicant has established in the INTEGRATED MONITORING & POWER CONTROL SUBSYSTEM and IMPCS

marks. Opposer has already attempted to use Applicant's mark in advertisements for its own services (or its capability to provide such services) not related in any way to Applicant's IMPCS project. See Opposer's brochure, attached to letter dated July 6, 2006, addressed to Roger Fujii and Christopher W. Plummer, in Appendix 2. This use is the basis of Applicant's unclean hands defense. Use by Opposer in its own brochure was anything but descriptive. Opposer capitalized each of the words in Integrated Monitoring & Power Control Subsystem, used the term initially as an adjective, and throughout the brochure referred not to the IMPCS project for which Applicant provides services, but rather discussed "Northrup Grumman's Integrated Monitoring and Power Control Subsystem (IMPCS) solution." Throughout the brochure, the IMPCS mark is used as a reference to Opposer's specific goods and services -- its solution to a problem -- not as a descriptive acronym to refer to a general type of goods or services or to refer to the government project for which Applicant is the prime service provider. To a reader having only a passing knowledge of the IMPCS mark and no knowledge of the true source of the services in connection with the mark, Opposer's brochure would lead that reader to believe that Northrup Grumman was the exclusive owner of the IMPCS mark, not just a supplier or prospective supplier of equipment known descriptively as an "integrated monitoring and power control subsystem." If it had been Opposer's intention to use the acronym to stand in the place of the underlying words, it would have referred to "an" IMPCS or "the" IMPCS in its brochure.

Applicant does not dispute that Opposer is entitled to nominative fair use of Applicant's mark to refer to Opposer's contribution to Applicant's project as a subcontractor before its relationship with the project was discontinued. Where Opposer has run afoul is by insisting it is entitled to use the Applicant's marks to describe its own services or prospective services not associated with Applicant's project. Applicant objected to such attempted use by Opposer when it was discovered, which is consistent with Applicant's duty to police its trademark rights. See letters exchanged between Applicant and Opposer, attached as Appendix 2. Although Applicant agreed to destroy its brochure, which contained a blatant infringement of applicant's copyright in addition to infringement of Applicant's trademarks, Opposer continues to maintain that it has a right to use Applicant's marks to describe its own goods and services.

With so many other words available to Opposer to describe spectrum monitoring services generally, why would Opposer choose to use Applicant's IMPCS mark that Applicant has exclusively used for seven years to refer to its successful project? To trade on Applicant's goodwill. Opposer's desire to use Applicant's marks is perhaps some of the most persuasive evidence that the Applicant's marks are not at all descriptive, but, on the contrary, possess valuable goodwill that is coveted by Opposer. Such goodwill is evidence of secondary meaning. Furthermore, attempted use of Applicant's mark as a trademark by Opposer is relevant evidence that is "illuminative of shade and tone in the total picture confronting" the Board. *Racine Industries*, 35 USPQ2d at 1839 (TTAB 1995) (finding it relevant that Opposer had previously attempted to register the same mark it later opposed as descriptive), quoting *Interstate Brands Corp. v. Celestial Seasoning, Inc.*, 576 F2d 926, 198 USPQ 151, 154 (CCPA 1978).

VI. CONCLUSION

For all of the above reasons, Applicant contends that there is ample evidence that IMPCS is not merely descriptive. In fact, the Board could readily decide that IMPCS is entitled to protection on the Principal Register based upon the facts currently of record, if the Board reaches the conclusion that either INTEGRATED MONITORING & POWER CONTROL SUBSYSTEM is not inherently merely descriptive, or that Applicant's seven years of substantially exclusive use is undisputable evidence of secondary meaning, or that, regardless of the nature of the underlying words, the acronym IMPCS is sufficiently fanciful to merit trademark protection and has not become generally synonymous with a descriptive underlying term. Opposer, who contends that no facts are in dispute, has provided no evidence of third party use of IMPCS descriptively and no evidence of use by Applicant or its sole customer that is inconsistent with use as a trademark. Opposer relies only upon mischaracterized "admissions." Accordingly, at a minimum, Opposer has failed to meet its burden of showing that the IMPCS mark is synonymous with an underlying descriptive term in the minds of relevant purchasers, as opposed to a designation of the source of Applicant's services. Furthermore, Applicant has at least raised a genuine issue of material fact that supports a finding that the words underlying the IMPCS acronym are

distinctive, whether that distinctiveness was inherent or has been acquired. Accordingly, summary judgment in favor of Opposer is clearly unwarranted.

Respectfully Submitted,

RatnerPrestia

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Date: April 6, 2007

CERTIFICATE OF SERVICE

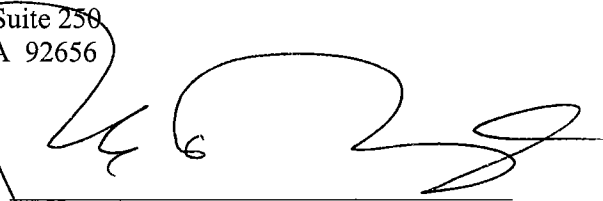
The undersigned hereby certifies that, on the date set forth below, the document identified below is being served on Bruce B. Brunda, Esquire, via United States Mail, postage prepaid, by depositing a copy thereof within a sealed package bearing the addressee information set forth below:

Date of Service: April 6, 2007

Title of Document: **APPLICANT'S RESPONSE TO
OPPOSER'S MOTION FOR SUMMARY JUDGMENT**

Place of Mailing: Wilmington, DE

Name of Party Served: Bruce B. Brunda
Stetina Brunda Garred & Brucker
75 Enterprise, Suite 250
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Rex A. Donnelly

Northrop Grumman Corporation v. ITT Corporation

Opposition No. 91172796

Applicant's Response to Opposer's Motion for Summary Judgment

ITT Appendix 1

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

Northrop Grumman Corporation	:	Trademark Registration
	:	Application Serial No. 78/803,273
Opposer	:	
	:	Mark: IMPCS
v.	:	
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(by change of name from ITT Industries, Inc.)	:	Published in the Official Gazette: July 11, 2006
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	:	Opposition No. 91172796
Applicant.	:	

**DECLARATION OF MARK HAYES IN SUPPORT OF APPLICANT'S RESPONSE TO
OPPOSER'S MOTION FOR SUMMARY JUDGMENT**

I, MARK HAYES declare under penalty of perjury under the laws of the United States of America that:

1. I am an employee of ITT Corporation (hereinafter "ITT") and currently am the Technical Director for the Communications and Information Systems business area in Colorado Springs, CO. In my current role, I provide technical oversight and guidance for ITT's IMPCS project.

2. I was assigned as the initial Program Manager for ITT's IMPCS project in 2000, when ITT was first awarded the contract for this project from the U.S. Army.

3. The IMPCS program for which ITT was awarded the contract as the sole prime contractor under contract DAAB07-00-C-A261, was originally titled Replacement Defense Satellite Communications System Frequency Division Multiple Access Control Subsystem (RDFCS).

4. ITT jointly sponsored with the government technical acquisition office a contest to rename the project, from which INTEGRATED MONITORING & POWER CONTROL SUBSYSTEM (IMPCS) was selected as the winner.

5. The name of the program was modified on November 7, 2000 to change the name to Integrated Monitoring and Power Control Subsystem (IMPCS). Exhibit A, Amendment of Solicitation/Modification of Contract dated 07 Nov. 2000, shows the amendment that was made at that time.

6. Since 2000, ITT has continuously and exclusively used the IMPCS mark in connection with presentations, status reports, brochures, training manuals, specifications, and other documents in connection with performing its services and preparing to deliver goods under the contract. Exhibit B provides exemplary cover pages from some of these types of documents.

7. The specifications for services to be provided in connection with the IMPCS mark have evolved technologically such that the power control aspects of the technology that were contemplated at the time the contract was originally awarded are now provided by standard technology outside the scope of goods and services ITT is now providing under the contract. Instead, ITT's services and goods to be delivered under the contract now focus primarily on spectrum monitoring.

8. I am not aware of third parties using the term IMPCS descriptively to relate to goods and services similar to those provided by ITT in connection with the IMPCS mark.

9. In fact, third parties use other terminology generally to refer to the kinds of goods and services provided by ITT under the IMPCS mark. For example, a recent invitation for bids from NATO uses the terminology "Acquisition of Advanced SATCOM Network Monitoring and Control Capabilities (ASNMC)" in connection with its request for prospective services similar to those provided by ITT in connection

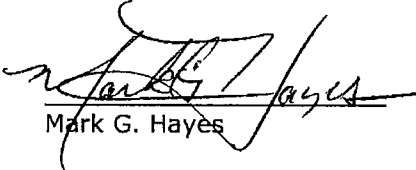
with the IMPCS mark. See Exhibit C, NATO Notification of Intent (NOI) to Invite Bids for International Competitive Bidding (ICB).

10. As another example, a recent request from the Army (the same client for whom ITT provides services in connection with the IMPCS mark) uses the terminology "Spectrum Management System" to describe goods and services similar to those provided by ITT in connection with its IMPCS mark. See Exhibit D, "WWSS PERFORMANCE WORK STATEMENT (PWS) Spectrum Management System (SMS)"

DECLARATION

The undersigned being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements may jeopardize the validity of any of the registrations or applications or registrations resulting therefrom named above, declares that all of the above statements made on my own knowledge are true, and all statements made Information and belief, are believed to be true.

Dated: April 6, 2007


Mark G. Hayes

Northrop Grumman Corporation v. ITT Corporation

Opposition No. 91172796

Applicant's Response to Opposer's Motion for Summary Judgment

ITT Appendix 1, Exhibit A

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT 1. Contract ID Code Firm-Fixed-Price Page 1 Of 11

2. Amendment/Modification No. P00003 3. Effective Date 07 NOV 2000 4. Requisition/Purchase Req No. SEE SCHEDULE 5. Project No. (If applicable)

6. Issued By Code W15P7T 7. Administered By (If other than Item 6) Code 80602A
 COMMANDER US ARMY CECOM
 ANSEL-ACCA-RT-6
 JUNE STONE (732) 532-5489
 FORT MONMOUTH NJ 07703-8008
 EMAIL: JUNE.STONE@MAIL1.MONMOUTH.ARMY.MIL
 DCMC, DENVER
 ORCHARD PLACE 2, SUITE 200
 5975 GREENWOOD PLAZA BLVD.
 ENGLEWOOD, CO 80111-4715
 SCD C FAS NONE ADF PT SC1002

8. Name And Address Of Contractor (No., Street, City, County, State and Zip Code)
 ITT INDUSTRIES
 SYSTEMS DIV
 1460 GARDEN OF GODS RD.
 COLORADO SPRINGS, CO 80907
 TYPE BUSINESS: Large Business Performing in U.S.
 Code 08KML Facility Code
 9A. Amendment Of Solicitation No.
 9B. Dated (See Item 11)
 10A. Modification Of Contract/Order No. DAAB07-00-C-A251
 10B. Dated (See Item 13) 2000JUN21

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

The above numbered solicitation is amended as set forth in item 14. The hour and date specified for receipt of Offers
 is extended, is not extended.
 Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended by one of the following methods:
 (a) By completing items 8 and 15, and returning _____ copies of the amendments; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. Accounting And Appropriation Data (If required)
 NO CHANGE TO OBLIGATION DATA

13. THIS ITEM ONLY APPLIES TO MODIFICATIONS OF CONTRACTS/ORDERS
 If Modifies The Contract/Order No. As Described In Item 14.

KIND MOD CODE: 7
 A. This Change Order is Issued Pursuant To: The Changes Set Forth In Item 14 Are Made In The Contract/Order No. In Item 10A.
 B. The Above Numbered Contract/Order Is Modified To Reflect The Administrative Changes (such as changes in paying office, appropriation data, etc.) Set Forth In Item 14, Pursuant To The Authority of FAR 43.103(b).
 C. This Supplemental Agreement Is Entered Into Pursuant To Authority Of:
 D. Other (Specify type of modification and authority)

E. IMPORTANT: Contractor is not, is required to sign this document and return _____ copies to the Issuing Office.

14. Description Of Amendment/Modification (Organized by UCF section headings, including solicitation/contract subject matter where feasible)
 SEE SECOND PAGE FOR DESCRIPTION

cc: J. Capobianco
 K. Kaslan
 M. Hayer
 K. Lehinger

Contract Expiration Date: 2010JUL31

Except as provided herein, all terms and conditions of the document referenced in item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.

15A. Name And Title Of Signer (Type or print) Paul Parzanese Assistant Controller	15B. Contractor/Order No. 	15C. Date Signed 11/2/00	16A. Name And Title Of Contracting Officer (Type or print) JOHN M. ADAMITIS JOHN.ADAMITIS@MAIL1.MONMOUTH.ARMY.MIL (732) 532-3473	16B. United States Of America 	16C. Date Signed 07 NOV 2000
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CONTINUATION SHEET

Reference No. of Document Being Continued

Page 2 of 11

PIIN/SHN DAAB07-00-C-A261

MOD/AMD P00003

Name of Offeror or Contractor: ITT INDUSTRIES

ACTION A - SUPPLEMENTAL INFORMATION

This modification is being issued to make the following changes to the contract as a result of discussions held during the Post Award Conference held 25-26 July 2000:

1. Delete clause 52.232-2, Clean Air and Water, subsection I-31 of this contract in accordance with FAC 97-15, 64 FR 72414, 12/27/99, effective 2/25/00.
2. Correct the FAR cite of subsection I-33 of the contract, Duty Free Entry, from 52.225-10 to 52.225-8, Duty Free Entry, (2/2000) as specified in the attached clause.
3. Correct the FAR cite for subsection I-34, Restrictions on Certain Foreign Purchases, from 52.225-11 to 52.225-13 (2/2000).
4. Delete FAR 52.244-5, Competition in Subcontracting, Dec/1996, from the contract because it does not apply.
5. Add FAR clause 52.245-5, Government Property (Cost Reimbursement, Time-and-Materials, or Labor-Hour Contract) (1/86) to the contract.
6. Add FAR clause 52.232-32, Performance Based Payments, (5/97), to the contract. The Performance Based Payments clause is not effective until such time that a performance based payment schedule is included in the contract.
7. Delete FAR 52.245-9, Use and Charges, Apr/1984, from the contract because it does not apply.
8. Correct CDRL, Exhibit C, Data Item Number C001, Performance and Cost Report, Block A, Contract Line Item Number to read CLIN 0127AA, 0225AA-0925AA.
9. Correct CDRL, Exhibit E, Data Item Number E001, Contractor's Progress, Status, and Management Report, Block A, Contract Line Item Number to read CLIN 0128AA, 0226AA-0926AA.
10. This modification is also being issued to:
 - a. Change the name of the program from Replacement Defense Satellite Communications System Frequency Division Multiple Access Control Subsystem (RDFCS) to Integrated Monitoring and Power Control Subsystem (IMPCS).
 - b. Incorporate the IMPCS specification dated 22 September 2000 into the contract which replaces in its entirety the RDFCS specification dated 1 April 2000.
11. All other terms and conditions remain unchanged.

*** END OF NARRATIVE A 010 ***

Northrop Grumman Corporation v. ITT Corporation

Opposition No. 91172796

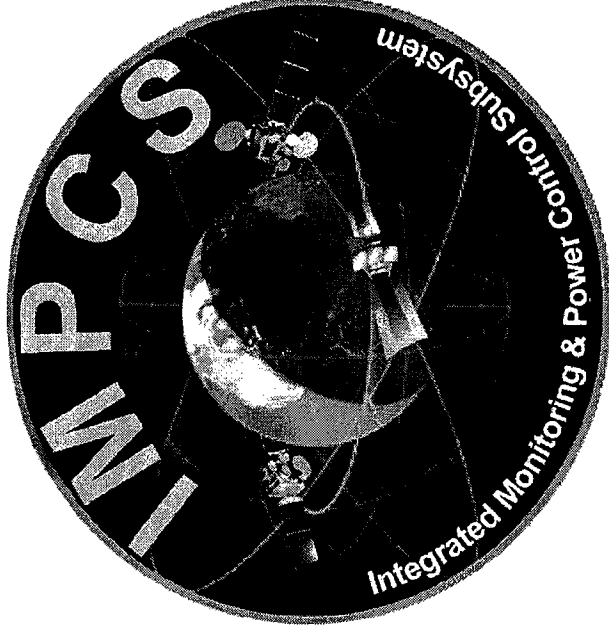
Applicant's Response to Opposer's Motion for Summary Judgment

ITT Appendix 1, Exhibit B



ITT Industries
Engineered for life

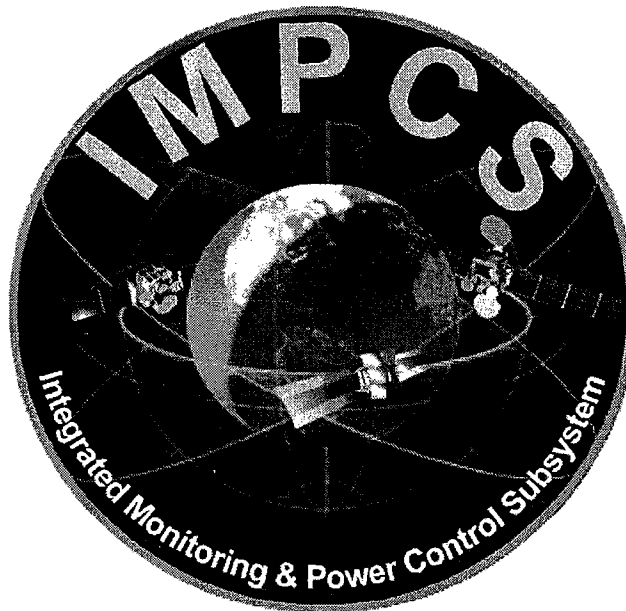
Integrated Monitoring and Power Control Subsystem (IMPCS)



Systems Division *Communications and Information Systems (CIS)*

IMPCS Program and System Overview

***INTEGRATED MONITORING AND POWER CONTROL
SUBSYSTEM (IMPCS)
PROGRESS, STATUS, AND MANAGEMENT REPORT
DECEMBER 2000***



Prepared Under Contract:

DAAB07-00-C-A261
CDRL E001

Prepared for:

Department of the Army
Project Manager, Defense Communications and Army Transmission Systems (PM DCATS)
DSCS Control
Fort Monmouth, NJ 07703-5509

Distribution authorized to Department of Defense (DOD) personnel and U.S. DOD contractors only. Other requests for this document shall be referred to Commander, CECOM, ATTN: AMSEL-DSA-TSD, Fort Monmouth, NJ 07703-5000.

Destruction Notice: Destroy by any method that will prevent disclosure of contents or reconstruction of document.

IMPCS

Integrated Monitoring and
Power Control Subsystem



IMPCS sets a new standard for the US Army's capability to monitor and control Frequency Division Multiple Access (FDMA) carriers on Defense Satellite Communications System (DSCS), Gapfiller, and Commercial satellites while minimizing use of valuable power and bandwidth resources in support of the US Army's strategic and tactical worldwide missions.



ITT Industries

TRAINING CONDUCT SUPPORT DOCUMENT

**INTEGRATED MONITORING AND POWER CONTROL
SYSTEM (IMPCS) LESSON PLANS AND STUDENT GUIDE**

(65% DRAFT)



DAAB07-00-C-A261
CDRL D006

Prepared for:
Department of the Army
Project Manager, Defense Communications and Army Transmission Systems
(PM DCATS)
Fort Monmouth, NJ 07703-5509

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DESTRUCTION NOTICE: For this document, destroy by any method that will prevent disclosure of contents or reconstruction of material.

SUPERSESION STATEMENT: This is the initial document, and has not been superseded.

Systems Division



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1460 Garden of the Gods Road ■ Colorado Springs, CO 80907 ■ (719) 594-4475

NCT/NT
IMPCS

TM-11-5895-1731-13&P

TM-11-5895-1732-13&P



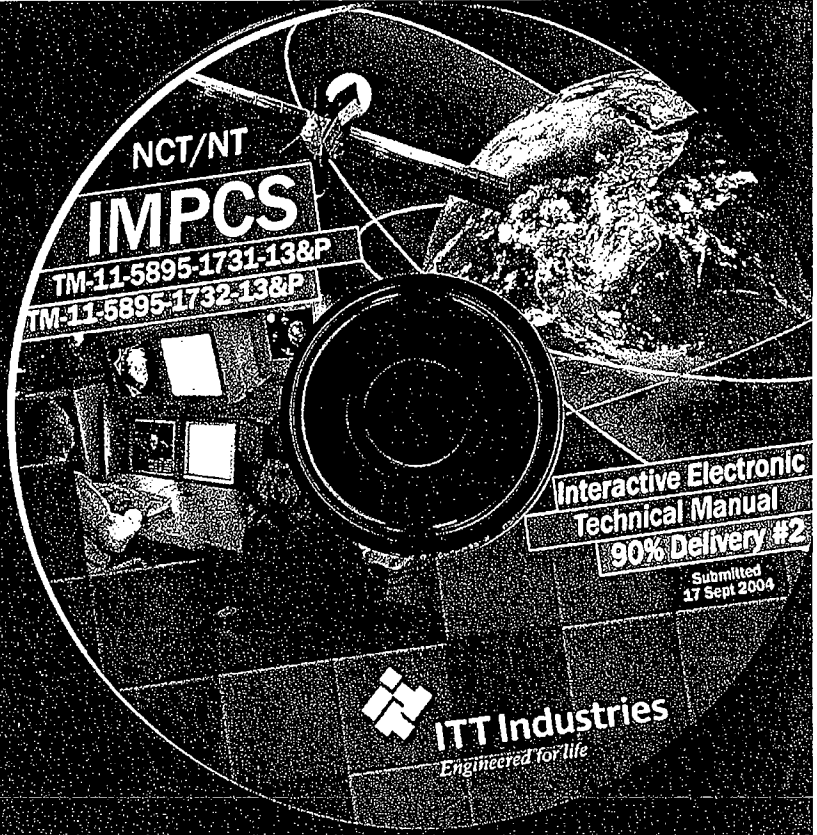
**Interactive Electronic
Technical Manual**

90% Delivery #2

Submitted
17 Sept. 2004



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Interactive Electronic
Technical Manual
90% Delivery #2

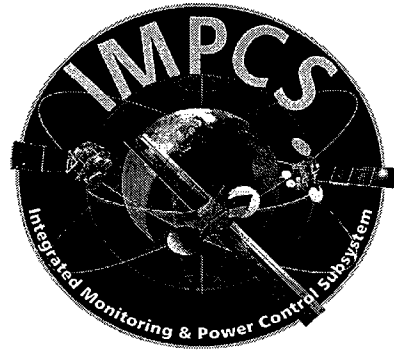
Submitted
17 Sept 2004

 **ITT Industries**
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Software Requirements Specification



*Integrated Monitoring and Power
Control Subsystem (IMPCS) Control
Network Management Service*



Systems Division *Communications Systems Group (CSG)*

Northrop Grumman Corporation v. ITT Corporation

Opposition No. 91172796

Applicant's Response to Opposer's Motion for Summary Judgment

ITT Appendix 1, Exhibit C

Vendors ★
Federal Business Opportunities



H -- NATO Notification of Intent (NOI) to Invite Bids for International Competitive Bidding (ICB) for Acquisition of Advanced SATCOM Network Monitoring and Control Capabilities (ASNMC)

General Information

Document Type: Presolicitation Notice
Solicitation Number: IFB-CO-12011-ASNMC
Posted Date: Jun 02, 2006
Original Response Date: Jun 27, 2006
Current Response Date: Jun 27, 2006
Original Archive Date: Jun 30, 2006
Current Archive Date: Jun 30, 2006
Classification Code: H -- Quality control, testing & inspection services
Naics Code: 517410 -- Satellite Telecommunications

Contracting Office Address

Department of Commerce, Bureau of Industry & Security, Office of Strategic Industries and Economic Security, Defense Programs Division, Room 3876 1401 Constitution Avenue, NW, Washington, DC, 20230

Description

The NATO Consultation, Command and Control Agency (NC3A) intends to advertise for International Competitive Bidding (ICB) on works and services within the framework of the NATO Security

Investment Program. Eligible firms will be invited to bid for the provision of Advanced SATCOM Network Monitoring and Control Capabilities (ASNMC).

NC3A is serving as the Host Nation for this project, which was authorized by the NATO Infrastructure Committee under the Two Stage Authorization Procedure, where the authorization of the first stage provides agreement on the physical scope, while the authorization of the second stage, normally to be sought by the Host National before contract signature at the latest, grants agreement on the financial scope and funds and therefore provides authority for signing the contract resulting from the competition.

The rough cost estimate of the current phase of the project is Euro 6.4 million (\$8.2 million USD).

The project is expected to be completed after 19 months from the Effective Date of Contract (EDC).

The project, to be presented in the Invitation for Bid (IFB), will constitute a basic contract for immediate procurement and implementation and 2 optional slices for additional functionalities and procurement of more of the same type of systems. A fourth optional slice will be included to constitute a basis for possible future purchase of the same type of systems by NATO Nations.

Bidders will be required to declare a bid validity of 12 months from closing date for receipt of bids, supported by a Bid Guarantee of Euro 100,000. Should the selection and award procedure extend beyond the 12th month after the Bid Closing Date, firms will be requested to voluntarily extend the validity of their bids and Bid Guarantee accordingly. Bidders may decline to do so, withdraw their bid, and excuse themselves from the bidding process without penalty.

The ICB package, including technical specifications applicable to the bidding and the contractual documents, is NATO UNCLASSIFIED to the exclusion of the INFOSEC technical characteristics, which will be included in the IFB package, the security classification of which are NATO RESTRICTED. If classified material has to be included in the Bidder response to the IFB, the transmission of it shall be processed through the US Mission to NATO.

The successful contractor will be required to handle and store classified information up to the level of NATO SECRET and only companies maintaining such a facility clearance will be eligible to bid on this project. In addition, contractor personnel working on NATO sites will be required to hold individual security clearances of NATO SECRET.

The envisaged method of bidding will be the One Envelope Procedure, in which the Price Proposals are opened and evaluated and the bids ranked in order by lowest price. Technical Evaluation then commences with the lowest price bid until a fully compliant bid is found.

Bidders will be required to quote for the provision of the subject systems to include hardware, software, documentation, testing, on-site training and transition on-site support. A one year warranty period will also be included for maintenance and support of the systems. Quotations shall be on a fixed price basis for the total of the contract. The Bidders will be also required to quote for the optional slices referring to additional quantity of the same equipment and one year CLS. These options will not be evaluated in the determination of the lowest bidder.

The solicitation will include a requirement for prospective bidders to demonstrate their ability to undertake this project, and mandatory criteria for experience with the provision of a similar type of system.

The successful bidder will be required to achieve successful completion of FAST (Fist Article System

Test) no later than 11 months after Contract Award.

The reference of the Invitation for International Bid (IFB) is IFB-CO-12011-ASNMC. The U.S. Department of Commerce will be using the same IFB reference.

SCOPE OF PROJECT

Overall Requirements of ASNMC

NATO has identified the need for an Advanced SATCOM Network Monitoring & Control Capability (ASNMC) operating at Super High Frequency (SHF). That capability is to be provided by the ASNMC System.

The ASNMC functions shall be capable of operating in the context of multiple satellites (with a minimum of 2), multiple transponders, some split into multiple power sharing channels (for a total of up to 8 channels/transponders).

ASNMC equipment shall meet the environmental conditions that apply for operations involving land or maritime deployments. The INFOSEC function and the control messages exchanged between control entities over the air (i.e., between the Network Controller and controlled terminals) shall be secured in accordance with NATO Security Policy.

ASNMC shall support operations where users are all in the same coverage; such as Land, Maritime, NATO and where operations are spread under coverages that do not overlap and are cross strapped on board the satellite.

ASNMC shall support the following capabilities:

- Control and Management capabilities
- Satellite Engineering Order Wire including Secure Voice order Wire
- Spectrum Monitoring System Capabilities
- Message and information routing component

Deliverables of the ASNMC capabilities are further spread in two Steps. By Step 1, a limited number of terminals shall be fitted with at least Centralized Power Management Capabilities

Spectrum Monitoring System and Centralized Terminal Administration are currently planned for Step 2, as well as fitting all NSP2k ground terminals with ASNMC capabilities as appropriate.

ASNMC Main Components

ASNMC capabilities are distributed amongst the following components: Centralized Management Control Platforms (CMCP), Local Control Agents (LCA), Satellite Engineering Order Wire (EOW) platform, and Spectrum Management System (SMS)

Centralized Management Control Platform (CMCP): A CMCP is hosted in each NATO SATCOM control center; SACC (active) and SBCC (back up). CMCP functions encompass:

- Network definition, configuration, and monitoring
- Link Power Control (LPC)
- Spectrum Monitoring System

- SNMP Administration
- Decision Support Capability

Local Control Agent (LCA): An LCA supports the function of control capability (typically unmanned) hosted in any Satellite Ground Terminal

Satellite Engineering Order Wire (EOW): An EOW platform supports the ASNMC Interaction Channels (IC). The controlling functions of any EOW platform are performed by the LCA located in the terminal in which the EOW resides. An EOW platform contains Control Channels (CC), mounted in a rack assembly. Associated with each EOW platform is a secure IP phone handset capability.

Spectrum Monitoring System (SMS): Spectrum acquisition and digital processing shall be undertaken at anchor terminals by SMS equipment, called SMS Digital Signal Processor (DSP). An SMS workstation, associated to the SMS DSP, shall enable the display of the Spectrum derived from its associated SMS DSP. This information shall be transferred to the CMCP, through the use of reliable communications protocol (File Transfer Protocol) via NGCS, to support Spectrum Monitoring functions including SMS data analysis and signal characterization at SACC/SBCC.

ASNMC Deliverables

The scope of the work encompasses the delivery of equipment within three contract slices, the first being firm, the others optional. An additional fourth slice is to be potentially used as a baseline between the selected bidder and any NATO nation.

Specifically, the contractor shall:

Execute the systems engineering, project management, quality assurance and configuration management requirements of the contract

Adapt an existing control and monitoring system design to the requirements of the technical specifications of this contract

Put such a design into production

Deliver the ASNMC capability in accordance with the Contract Schedule and ensure the preparation activities are completed in accordance with the installation requirements of the delivered ASNMC System. This in general involves test and evaluation of all the subassemblies, assemblies, components and parts, system integration and in particular involves:

- Ensuring that the delivered ASNMC capability is evaluated and approved by the - National Cryptographic Security Agency of the selected contractor and selected by SECAN
- Assisting the Purchaser in installing the ASNMC capabilities in two NATO Transportable SATCOM Ground Terminals (TSGTs)
- Installing the required central ASNMC capabilities at two Anchor terminals, called Static Satellite Ground Stations (SGS) and interfacing those capabilities with the SACC and SBCC
- Installing Reference Configurations at NC3A (The Hague, Netherlands) to support interoperability trials and testing
- Ensuring that the site installation/site preparation activities are completed in accordance with the installation requirements of the delivered ASNMC System
- Fully documenting the design, operation, installation, and maintenance of the ASNMC by providing the required manuals, supporting technical data, computer software and drawings required by the contract

- Carrying out an Integrated Logistic Support (ILS) Program
- Training Purchaser personnel in the operation and maintenance of the ASNMC
- Demonstrating that the ASNMC Systems meet the Reliability, Maintainability, and Availability (RMA) requirements of the contract
- Implementing and executing the warranty procedures required under the contract

The contractor shall provide all necessary resources to include services, personnel, materials, components, equipment, data and documentation needed to fulfill all contract provisions.

The contractor shall support and maintain the ASNMC in the Operational Evaluation period from Provisional System Acceptance until Final Systems Acceptance of ASNMC.

The contractor shall warrant the ASNMC and contractor-developed software after the date of Final Systems Acceptance.

Following successful completion of the ASNMC Warranty provisions of the contract, if the option(s) for Contractor Logistics Support is/are exercised, the contractor shall provide such support under the terms of the contract to be set forth.

BIDDING PROCEDURE

The U.S. Department of Commerce does not serve as the Host Nation for NATO projects. Its role is to approve for bidding those firms of NATO-member nations with a facility located within the United States. Only firms approved by the U.S. Department of Commerce will be allowed to bid. Please visit the following website for instructions on applying for approval to bid on NATO projects:

<http://www.bis.doc.gov/defenseindustrialbaseprograms/OSIES/NATOprograms/index.htm>

A firm that has been approved for bidding on NATO projects must request that the U.S. Department of Commerce issue a Declaration of Eligibility (DOE) for each project on which the firm wishes to bid. The DOE is used to nominate the firm to the Bidders List for a particular project. The U.S. Department of Commerce forwards the DOE to the U.S. Embassy, which in turn forwards it to the Host Nation. The Host Nation will not accept requests for nomination received directly from firms.

Firms that the U.S. Embassy nominates to the Bidders List will be contacted directly by the Host Nation when the Invitation for International Bidding (IFB) has been issued.

IMPORTANT DEADLINES

1. Final date for the U.S. Department of Commerce to submit a Declaration of Eligibility on your behalf: 27 June 2006
2. Anticipated date that the Host Nation will forward the Invitation for International Bidding (IFB) to those on the Bidders List: July 2006 (pending the availability of an Interface Design Document addressing the interface between the EMS project and the ASNMC project. The document is not available for the issue of this NOI.)
3. Anticipated closing date for receipt of bids: October 2006
4. Anticipated contract award date: January 2007

Point of Contact

Lee Ann Carpenter, Trade and Industry Analyst, Phone 202-482-2583, Fax 202-482-5650, Email Lcarpent@bis.doc.gov - David Newsom, Trade & Industry Analyst - NATO Company Certification, Phone 202-482-7417, Fax 202-482-5650, Email dnewsom@bis.doc.gov

[Register to Receive Notification](#)

Government-wide Numbered Notes

You may return to Business Opportunities at:

- DOC BIS listed by [[Posted Date](#)]
- DOC Agencywide listed by [[Posted Date](#)]

[\[Home\]](#) [\[SEARCH synopses\]](#) [\[Procurement Reference Library\]](#)

Northrop Grumman Corporation v. ITT Corporation

Opposition No. 91172796

Applicant's Response to Opposer's Motion for Summary Judgment

ITT Appendix 1, Exhibit D

WWSS PERFORMANCE WORK STATEMENT (PWS)
Spectrum Management System (SMS)
DATE: 5 December 2006
DWT-DO-0007

1.0 SCOPE

1.1 GENERAL

The Wideband Control Program Office of PM DCATS has an immediate requirement for hardware to perform spectrum management of the first Wideband Gapfiller Satellite (WGS) that is scheduled for launch on 29 June 2007. The equipment must be in-place for operation at that time and to also support post-launch testing for an approximate window of four to six months after launch. This hardware is required to be fully operational at two of the Wideband SATCOM Operations Centers (WSOC). The Contractor shall deliver two packages consisting of identical hardware, services, and data to the Government at the locations listed in paragraph 1.6 below. The Contractor shall price hardware, services, and data for each location as two separate and complete packages.

1.2 APPLICABILITY

This individual Request for Task Execution Plan (RTEP) and Task PWS is In Accordance With (IAW) Paragraphs 3.3.2 of the World-Wide Satellite Systems (WWSS) Performance Work Statement (PWS).

1.3 TASK EXECUTION PLAN (TEP)

In response to this RTEP and PWS, The Contractor shall provide a Task Execution Plan (TEP) in accordance with DI-MGMT-80004, Management Plan, CDRL A of the basic WWSS PWS. The Contractor shall provide in the TEP, a detailed description of how the requirements described in this RTEP shall be accomplished. The Contractor shall identify any applicable technical, safety or Information Assurance (IA) risks that may be associated with the equipment being proposed for the SMS and the deployment of that equipment and materials in its intended operational environment. The Contractor shall describe the mitigation approach to be implemented in view of any technical, safety or IA risks identified. The Contractor shall provide a complete description of the hardware proposed, its nomenclature and technical performance specifications, and how the hardware shall be integrated to meet the requirements. The Contractor shall provide detailed test plan and test procedures IAW DI-NDTI-80566A, Test Plan/Procedures, CDRL B0001 to describe how the acceptance testing requirements defined herein will be accomplished. The Contractor shall provide a Gantt chart in MS PROJECT format in addition to the TEP and Cost Data. The Gantt shall include the projected material delivery schedule, installation, and training dates. The Contractor shall fully describe how hardware installation and training shall be conducted and what training materials

and manuals shall be provided. All goods and services to be provided shall be Firm Fixed Price (FFP).

1.4 BASIS FOR CONTRACTOR SELECTION

See Attachment 2, Source Selection Criteria for the Basis of Contractor Selection.

1.5 PERIOD OF PERFORMANCE / PLACE OF PERFORMANCE

The period of performance shall be 12 months from date of award.

Performance shall take place at Contractor's Facilities and at the Government Operating installations.

1.6 INSPECTION AND ACCEPTANCE

The Contractor shall deliver all products to the Government locations as specified in this Delivery Order. All products delivered shall be accepted by authorized Government personnel via DD Form 250. Unless otherwise specified, inspection, testing, acceptance, and FOB point shall be at Destination.

One package shall be shipped to each of the locations listed below:

The first package shall be provided to Camp Roberts CA

Ship to address is: D Company, 1st SATCON BN
W62NOF
18012 Perimeter Road
Camp Roberts, CA 93451
ATTN: Steve Wikoff
Comm: 805-238-7840

The second package shall be provided to Camp Foster, Okinawa (Japan)

Ship to address is: CDR, 14th Maintenance, 58th Signal BN
WT6HH2,
ATTN: Project Support Activity
Camp Foster, Bldg 5836, 6th Marine Drive, Okinawa, Japan
POC: Julian Antonio or Vincent Yacono,
DSN 315-641-0273, DSN 315-641-3720
Comm: 011-81-611-741-0273/3720

1.7 CONTRACT MANAGEMENT

The Contractor shall submit progress on this task IAW Contractor's Progress Status and Management Report, DI-MGMT-80227 and CDRL C as found in the basic WWSS PWS.

1.8 GOVERNMENT FURNISHED EQUIPMENT, INFORMATION, FACILITIES, MATERIALS.

None.

1.9 SECURITY

Contractor personnel that provide installation, training, and on-site technical support shall have Secret security clearances in order to obtain access to the Government facilities.

1.10 GOVERNMENT TASK LEADER

Dennis Peras
PM DCATS, Bldg 209
ATTN: SFAE-PS-TS-WCT
Fort Monmouth, NJ 07703-5509
Comm: 732-532-2049
Email: Dennis.Peras@us.army.mil

2.0 APPLICABLE DOCUMENTS

The following documents are referenced for the performance of this effort:

Request For Information (RFI) Sources Sought For Spectrum Management Subsystem (SMS), 1 Sep 2006.

3.0 REQUIREMENTS

3.1 GENERAL REQUIREMENTS

- a) All vendor warranties shall be passed on to the Government. The Contractor shall specify the exact contents and conditions of each such warranty.
- b) The Government will incur no licensing fees.
- c) The Government will have unlimited software rights.

3.2 HARDWARE

The spectrum management equipment shall be Digital Signal Processing (DSP) based to provide the following key capabilities:

- a) an operational instantaneous bandwidth of not less than 72MHz,
- b) spectrum and carrier characterization measurements on military X-Band and Ka-Band frequencies,
- c) sync receiver capability in order to synchronize with the WGS sync signal and capture WGS segments,
- d) capability to reconstruct chunks of WGS bandwidth segments into coherent carrier-frequency display for the operator,
- e) capability to detect in-band interference in order to help determine the presence of unauthorized access,
- f) an indicator of transponder saturation,
- g) an operator friendly method to acquire the satellite area network plan that provides details of the DSCS and WGS links and terminals to be deployed (the plan data shall not require transcribing, or manual manipulation by the operator prior to it being input to the SMS),
- h) an operator friendly method to acquire the time varying spectrum monitoring plan from the Gapfiller Satellite Configuration and Control Element (GSCCE),
- i) an operator interface device,
- j) remote access for management viewing and oversight as in providing an integrated User Defined Operating Picture (UDOP) of performance data via utilization of open standards based methods such as SNMP, SQL, or ODBC transfers,
- k) an implementation suitable for use in fixed facility deployment environments,
- l) transportable by air, land, or sea to staging area during deployments.

3.3 SERVICES

a) The Contractor shall assemble, integrate, configure, administer to, and deliver the hardware, software, and other materials necessary to provide the capabilities of the SMS as described herein. The Contractor shall provide equipment installation at the specified locations.

b) Before WGS launch, the system shall be fully exercised through Contractor-conducted requirements verification testing in-plant conducted with Contractor-produced, Government-approved test procedures. The test procedures shall be delivered IAW DI-NDTI-80566A, Test Plan/Procedures CDRL B0001.

c) After delivery to each operational site, the Contractor shall conduct on-site acceptance testing IAW Contractor-produced, Government-approved on-site acceptance test procedures. These test procedures shall be delivered IAW DI-NDTI-80566A, Test Plan/Procedures CDRL B0001.

d) The Contractor shall provide one operator level training class at each location for up to 12 military students at each site. The class length shall not exceed 5 days. The outcome of the training shall be that the equipment installed can be operated by experienced SATCOM operators with no additional MOS training. Training shall also include troubleshooting.

1) The Contractor shall provide a stay-behind set of all training materials. The materials shall be constituted from the available COTS materials provided by the equipment manufacturers supplemented, where necessary, to provide information needed to perform mission-specific operational tasks.

e) The Contractor shall provide the technical information on assembly, installation, operation, parts and maintenance of the commercial equipment to be furnished under this delivery order IAW DI-TMSS-80527B, COTS Manuals and Associated Supplemental Data, CDRL B0002. These materials shall be constituted from the available Commercial-Off-the-Shelf (COTS) materials provided by the equipment manufacturers supplemented, where necessary, to provide information needed to perform mission-specific operational tasks.

f) The Contractor shall provide on-site technical support as part of each package. The technical support shall be provided for six months from the date of the WGS launch, not to exceed 160 hours. Technical support shall include system administration, system troubleshooting, supply, and repair support.

4.0 DELIVERABLES

CONTRACT DATA REQUIREMENTS LIST (1 Data Item)					Form Approved OMB No. 0704-0188			
A. CONTRACT LINE ITEM NO.		B. EXHIBIT B0001	C. CATEGORY:					
D. SYSTEM/ITEM WWSS: WGS Spectrum Management		E. CONTRACT/PR NO. W15P7T-07-R-L411		F. CONTRACTOR				
1. DATA ITEM NO.	2. TITLE OF DATA ITEM Test Plan / Procedures			3. SUBTITLE Test Plan / Procedures				
4. AUTHORITY (Data Acquisition Document No.) DI-NDTI-80566A		5. CONTRACT REFERENCE RTEP		6. REQUIRING OFFICE SFAE-PS-TS-DWT				
7. DD 250 REQ DD	9. DIST STATEMENT REQUIRED	10. FREQUENCY SEE ITEM 16	12. DATE OF FIRST SUBMISSION SEE ITEM 16	14. DISTRIBUTION				
8. APP CODE A		11. AS OF DATE	13. DATE OF SUBSEQUENT SUBMISSION SEE ITEM 16	a. ADDRESSEE		b. COPIES		
					Draft	Final		
						Reg	Repro	
16. Remarks: Draft due 45 days prior to in-plant system level testing. Draft shall contain appendix with overview of test procedures per paragraph 4.9.13 of DI-NDTI-80566A. Detailed step by step test procedures are not required. Test Procedures shall contain sufficient detail to insure repeatability. Test Procedures shall point out any procedures that may not apply to on-site testing due to differences in the test setup and/or environment. Final due 20 days prior to in-plant system level testing. Final shall contain appendices with complete test procedures. Test procedures shall be used to conduct Contractor in-plant testing. Revised Final due at time of on-site installation. Any changes resulting from Contractor in-plant testing shall be applied and submitted as the Revised Final. DD-250 required for (revised) final deliverable.				SFAE-PS-TS-WCT	1	1	0	
				15. TOTAL	1	1	0	
G. PREPARED BY				H. DATE		I. APPROVED BY		J. DATE

Technical Manuals

CONTRACT DATA REQUIREMENTS LIST (1 Data Item)					Form Approved OMB No. 0704-0188		
A. CONTRACT LINE ITEM NO.		B. EXHIBIT B0002	C. CATEGORY:				
D. SYSTEM/ITEM WWSS: WGS Spectrum Management		E. CONTRACT/PR NO. W15P7T-07-R-L411		F. CONTRACTOR			
1. DATA ITEM NO.	2. TITLE OF DATA ITEM COTS Manuals and Associated Supplemental Data			3. SUBTITLE			
4. AUTHORITY (Data Acquisition Document No.) DI-TMSS-80527B		5. CONTRACT REFERENCE RTEP		6. REQUIRING OFFICE SFAE-PS-TS-DWT			
7. DD 250 REQ DD	9. DIST STATEMENT REQUIRED	10. FREQUENCY SEE ITEM 16	12. DATE OF FIRST SUBMISSION SEE ITEM 16	14. DISTRIBUTION			
8. APP CODE A		11. AS OF DATE	13. DATE OF SUBSEQUENT SUBMISSION SEE ITEM 16				
16. Remarks: Interactive Electronic technical manuals (IETMs) are not required. Change item 4 of the DID to say "Supplemental data shall prepared in the contractor's format. Delete item 7 of the DID. Drafts shall be delivered 45 days prior to the start of in-plant system level testing. The Government shall have 15 calendar days to review and approve the manuals and supplemental data. Finals shall be delivered with approved change pages 20 days prior to the start of system level testing.				SFAE-PS-TS-WCT	1	4	0
G. PREPARED BY		H. DATE	I. APPROVED BY		J. DATE		

ATTACHMENT 1: Hardware and Services List

CLIN	DESCRIPTION	QTY
0001AA	Glowlink Model 1000-1000-11011100000-21111100000 Model 1000 Satellite Spectrum Monitoring System (WGS-compliant) - Camp Roberts, California	1
0001AB	New Equipment Training - Camp Roberts, California	1
0001AC	Technical Support - Camp Roberts, California	1
0002AA	Glowlink Model 1000-1000-11011100000-21111100000 Model 1000 Satellite Spectrum Monitoring System (WGS-compliant) - Camp Foster, (Okinawa) Japan	1
0002AB	New Equipment Training - Camp Foster, (Okinawa) Japan	1
0002AC	Technical Support - Camp Foster, (Okinawa) Japan	1

Northrop Grumman Corporation v. ITT Corporation

Opposition No. 91172796

Applicant's Response to Opposer's Motion for Summary Judgment

ITT Appendix 2

ROBERT P. SEITTER
DIRECT DIAL: 610-993-4202
EMAIL: rpseitter@ratnerprestia.com

REX A. DONNELLY
DIRECT DIAL: 302-778-3460
EMAIL: radonnelly@ratnerprestia.com

MARLA L. TOCKER
DIRECT DIAL: 610-993-4226
EMAIL: mltocker@ratnerprestia.com

July 6, 2006

**Advance Copy via Facsimile/E-mail
Confirmation Copy via Certified Mail**

Roger Fujii, VP-Systems Engineering & Technology
Northrop Grumman
Defense Mission Systems
222 West Sixth Street
PO Box 471
San Pedro, CA 90733-0471

Christopher W. Plummer, Contracts Administrator
Northrop Grumman
Defense Mission Systems
12011 Sunset Hills Road
M/S VAR1-8B26
Reston, VA 20190

Re: Infringement of ITT Corporation's **IMPCS INTEGRATED MONITORING
AND POWER CONTROL SUBSYSTEM** trademarks and copyrighted works

Dear Mr. Fujii and Mr. Plummer:

This letter is being sent on behalf of ITT Corporation ("ITT"). It has come to ITT's attention that representatives of Northrop Grumman ("NG") recently distributed at the April 2006 Space Symposium in Colorado Springs the enclosed brochure titled Integrated Monitoring and Power Control Subsystem (IMPCS) ("the NG IMPCS brochure"). As NG is aware, the **Integrated Monitoring and Power Control Subsystem** project name and **IMPCS** acronym were created by ITT in conjunction with a government contract that was awarded to ITT in 2000 and from which ITT subcontracted certain work to NG in July of 2000. NG's involvement in this project concluded in November 2005.

Accordingly, ITT is the rightful owner of trademark / service mark rights in **IMPCS** and **INTEGRATED MONITORING AND POWER CONTROL SUBSYSTEM**, including U.S. Trademark Application Serial No. 78/803,273 for the mark **IMPCS** and U.S. Trademark Application Serial No. 78/803,296 for **IMPCS INTEGRATED**



MONITORING & POWER CONTROL SUBSYSTEM and design, both for "communications hardware and software for supporting a satellite communications network" in International Class 009, and "design and development for others of communications hardware and software for supporting a satellite communications network" in International Class 042.

NG's unauthorized use of the marks **IMPCS** and **Integrated Monitoring and Power Control Subsystem** in the NG brochure not only constitutes infringement of ITT's trademark rights in these marks, but also appears to be an attempt to pass off ITT's development and responsibility for the **IMPCS** project as the development and responsibility of NG.

The NG brochure not only infringes ITT's trademark **IMPCS** and **INTEGRATED MONITORING AND POWER CONTROL SUBSYSTEM** and passes off ITT's work as NG's, but it also bears a substantial and striking resemblance to the enclosed poster used by ITT (hereinafter "ITT's **IMPCS** poster") to which NG had access during the pendency of its sub-contract with ITT. In fact, the flowchart on page two of NG's advertising material actually incorporates thumbnail-size versions of what appears to be the same photograph of ITT employees working in front of the ITT system as is located in the lowermost photograph on the right hand side of the ITT **IMPCS** poster. Furthermore, the NG brochure, like the ITT **IMPCS** poster, similarly includes a graphical image of a satellite in orbit above the earth having three beams (arrows) directed from the satellite toward individual sub-frames containing photographic images of a fixed ground station antenna or earth terminal, a mobile or portable antenna or terminal, and one or more personnel operating computer hardware. The substantial similarity of the overall layout of the brochure as compared to the poster, coupled with the outright copying of one of ITT's photographs, constitutes an infringement of ITT's copyrights in these works. Infringement of another's copyrighted work is a violation of the Copyright Act of 1976 (17 U.S.C. § 101 *et seq.*).

NG's use of ITT's trademarks, photograph, and overall advertising layout not only infringes ITT's trademark and copyright rights, but it is also a breach of paragraph H.4 of NG's contract with ITT, which states:

No news or informational releases, including photographs and films, public announcements of confirmation of same, on any part of the subject matter of this Subcontract or any phase of any program hereunder shall be made without the prior written approval of the Buyer.

NG's unauthorized use of ITT's trademarks, **IMPCS** and **INTEGRATED MONITORING AND POWER CONTROL SUBSYSTEM**, as well as NG's copying in the NG **IMPCS** brochure of exact images and overall layout from ITT's **IMPCS** Poster, is likely to confuse consumers as to the source and origin of the satellite communications monitoring system described in NG's **IMPCS** brochure and misrepresents to consumers the nature of NG's involvement with the **IMPCS** project. Misrepresentation as to the origin of goods, as well as unauthorized use of another's trademarks that creates a likelihood of confusion, is a violation of the Trademark Act of 1946 (also known as the Lanham Act, 15 U.S.C. § 1051 *et seq.*).

ITT must, of course, protect its valuable intellectual property, and must take all reasonable steps to prevent any public confusion that may result from NG's unauthorized use of ITT's intellectual Property and NG's breach of its contract with ITT.



ITT would prefer to resolve this matter without the need for any formal proceedings. Therefore, ITT demands that NG immediately:

(1) cease and desist all use of ITT's trademarks **IMPCS** and **INTEGRATED MONITORING AND POWER CONTROL SUBSYSTEM**;

(2) destroy or turn over to ITT all copies of the NG brochure;

(3) cease and desist from any and all other uses of photographs, graphical images, or advertising layout that is the same or substantially similar to any of ITT's photographs, images, or advertising for the IMPCS project;

(4) undertake an investigation of NG's records and produce to ITT any and all materials relating to the IMPCS project for which NG was required to but failed to obtain ITT's written approval under paragraph H.4 of its contract with ITT; and

(5) provide assurances that NG will refrain from any activities in the future that infringe ITT's trademarks or copyrights, or that that unfairly characterize NG's past or present involvement in the IMPCS project.

Please provide us with written assurance no later than July 21, 2006, that NG will agree to comply with these demands. This letter is without prejudice to ITT's rights to seek full redress for any infringing use of their intellectual property, and contractual remedies, including damages, injunctive relief, and expenses in pursuing litigation, if necessary.

Sincerely yours,

Rather Prestia

Robert P. Seitter
Rex A. Donnelly
Marla L. Tocker

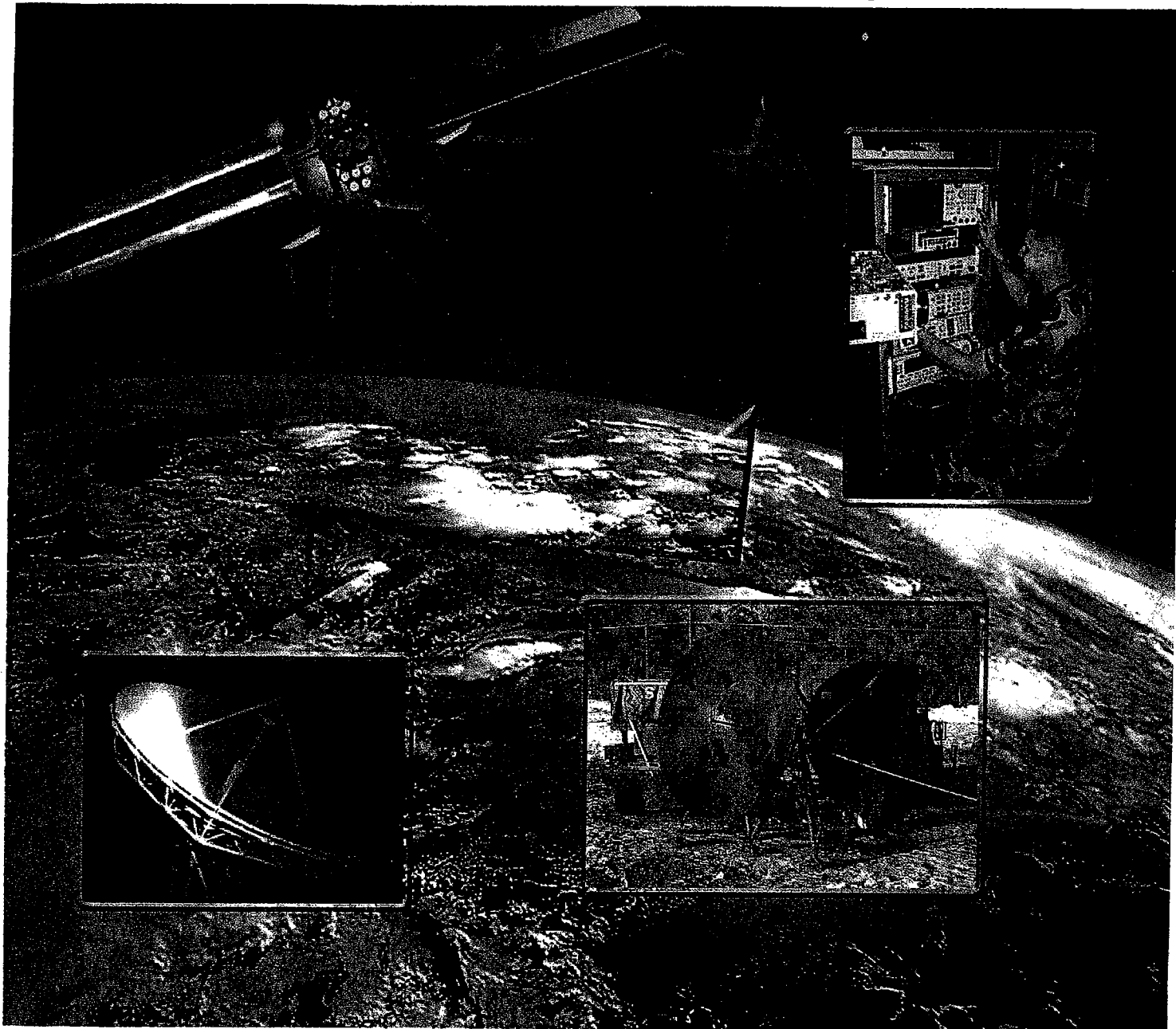
MLT/dmt

Enclosure: NG IMPCS brochure
ITT's IMPCS poster

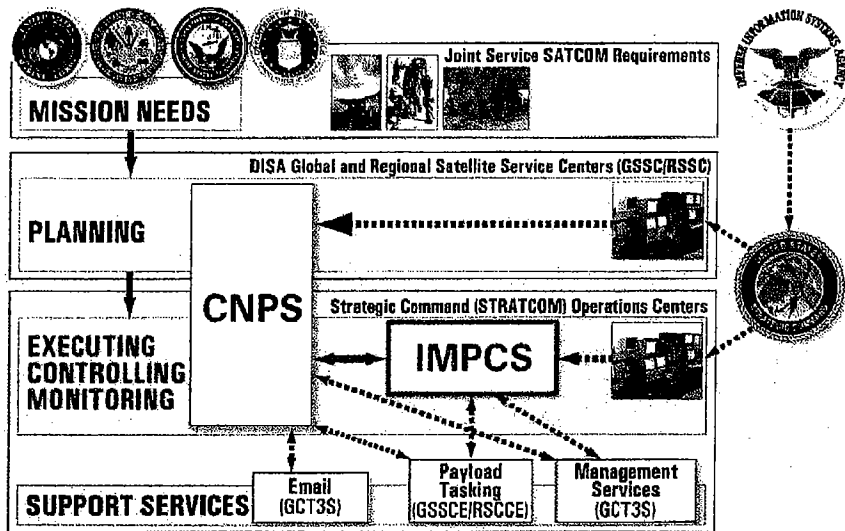
NORTHROP GRUMMAN

DEFINING THE FUTURE

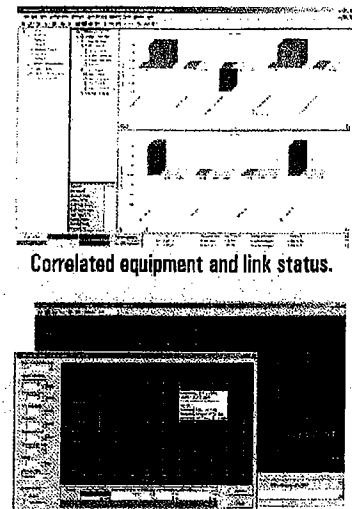
Integrated Monitoring and Power Control Subsystem (IMPCS)



Positive control, maximum resource utilization, quality of service maintenance, and advanced spectrum monitoring for military SATCOM networks.



IMPCS is a critical component to the DDOCS.



Correlated equipment and link status.

Multiple spectral views and unauthorized access detection.

Until now, no integrated system has been available to manage Wideband Gapfiller satellite networks. Today, Northrop Grumman's Integrated Monitoring and Power Control Subsystem (IMPCS) solution resides in strategic and tactical earth terminals, extending power control and monitoring capabilities closer to the warfighter.

IMPCS Features

- An intuitive, state-of-the-art graphical user interface that reduces operator workload while providing a common network operations picture for all IMPCS nodes
- Support for operations over all current and planned transponded satellite platforms including C, X, Ku and Ka band
- Service oriented architecture using extensible XML messaging system
- Adaptable interfaces to control and monitor current and future SATCOM equipment
- Spectral monitoring for transponded satellites, as well as specialized monitoring and reconstruction for Wideband Gapfiller System satellites

- Automatic link power control for all military Super High Frequency-Frequency Division Multiple Access (SHF-FDMA) communication links
- Remote management and control of SATCOM hardware
- Multiple Frequency-Time Division Multiple Access (MF-TDMA) waveform, IP-over-satellite control network infrastructure
- Red/black cross-domain security (DITSCAP/FIPS-140-2 certified)

IMPCS Core Functionality

- Earth terminal equipment control
 - ♦ Object-oriented design allows IMPCS to interface with legacy SATCOM terminal equipment and adapt to new terminal types without modification to existing software.
- Network and link establishment
 - ♦ By interacting with Objective Defense Operations Control System (ODOCS), IMPCS can automate the configuration of communications equipment to establish channels between nodes, often without operator intervention.
- Link power control
 - ♦ Through configurable custom algorithms, IMPCS can ensure the efficient use of transponder

power, maintain required quality of service and employ "smart" clamps to ensure the safety and longevity of ground and space resources.

- Spectrum monitoring and unauthorized access detection
 - ♦ Through fast data collection and analysis from the digital signal processor, IMPCS can alert operators to link performance or transponder health issues, configuration problems and unauthorized accesses.

By automating capabilities for link power control and network establishment, IMPCS provides a higher quality of service over satellite networks, while bringing lights-out terminal operation within grasp.

Northrop Grumman has extensive experience in network and link management, including CNPS planning.

For more information, please contact:

Northrop Grumman Mission Systems
 950 North Orlando Avenue, Suite 300
 Winter Park, FL 32789-2924
 407-629-6010

IMPCS

Integrated Monitoring and
Power Control Subsystem



IMPCS sets a new standard for the US Army's capability to monitor and control Frequency Division Multiple Access (FDMA) carriers on Defense Satellite Communications System (DSCS), Gapfiller, and Commercial satellites while minimizing use of valuable power and bandwidth resources in support of the US Army's strategic and tactical worldwide missions.



ITT Industries

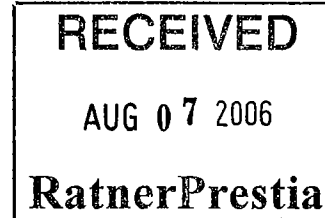
NORTHROP GRUMMAN

Law Department
12011 Sunset Hills Road
Reston, Virginia 20190

ATTORNEY-CLIENT PRIVILEGE
VIA FEDEX, FACSIMILE AND E-MAIL

August 4, 2006

Robert P. Seitter, Esq.
RatnerPrestia
1007 Orange Street, Suite 1100
Wilmington, DE 19899



Re: Letter to Northrop Grumman, dated July 6, 2006, regarding IMPCS Integrated Monitoring and Power Control Subsystem trademarks and copyrighted works.

Dear Mr. Seitter:

Your letter to Roger Fujii and Christopher Plummer has been forwarded to me for reply. In the spirit of cooperation, and without acknowledging any violations of contract or law, Northrop Grumman Defense Mission Systems, Inc. (NGDMS) agrees to take corrective action that should satisfy ITT's concerns.

We have reviewed the NGDMS brochure sent with your letter and have determined that ITT has raised legitimate questions regarding NGDMS's right to reproduce the photo shown in the brochure. As such, in accordance with your request, we have collected and destroyed all of these brochures. In addition, we have conducted an investigation of our other operations and have discovered that this same photo was used in a companion brochure for Common Network Planning Software (CNPS). We have collected and destroyed all these CNPS brochures, as well.

We have also reviewed the IMPCS brochure and understand ITT's concern that our depiction of IMPCS could potentially confuse customers as to NGDMS's capabilities. This is not our intent. To address this concern, any future marketing material will focus on NGDMS's specific areas of work as a subcontractor on the IMPCS program.

With respect to your allegation that use or disclosure of the information in NGDMS's brochure breaches paragraph H.4 of NGDMS's contract with ITT, NGDMS respectfully disagrees. It is a fundamental principle of contract interpretation that the subcontract must be interpreted in a manner that gives meaning to the document as a whole. There

Robert P. Seitter, Esq.
August 4, 2006
Page 2

are several provisions in the contract that specifically address the use or disclosure of information received or generated during subcontract performance, including H.25 (Proprietary Information of Buyer and Seller) and the clause at DFARS 252.227-7013. When read in concert with these proprietary information clauses, it is clear that H.4 applies specifically to media releases and not to the use of the information and data developed under the subcontract for NGDMS business purposes. H.4 cannot reasonably be interpreted as restricting all uses of subcontract-related information as you indicate. If this were so, there would be no need for the more specific clauses at H.25 and DFARS 252.227-7013, which permit use and disclosure of Proprietary Information developed or received by NGDMS in performance of the subcontract, unless that information is marked by ITT with an appropriate proprietary legend.

In addition, your interpretation of H.4 is strictly prohibited by the clause at DFARS 252.227-7013, which is included in the contract. This clause is the overriding data rights clause in the contract and, per Government regulations, trumps all other clauses with respect to rights in data and information. Per section (k)(2) of the clause at DFARS 252.227-7013, ITT must flow this clause down to its subcontractors **without modifications** and **may not** use any clause to enlarge or diminish ITT's rights in NGDMS's data. As specified by this clause, everything NGDMS develops under the subcontract is owned solely by NGDMS. NGDMS owns the copyright in and can use the data and the copyright for any purpose whatsoever, without restrictions from ITT. ITT may not limit NGDMS's rights to use this information. ITT's broad interpretation of the H.4 clause would give ITT additional rights in NGDMS's data that are in strict opposition to DFARS clause 252.227-7013. As such, ITT's interpretation cannot be correct.

Finally, ITT's interpretation ignores the fact that the subcontract term has ended and that the clause at H.4 does not survive expiration of the subcontract. As such, NGDMS no longer has any obligation to ITT to request approval of any news releases.

NGDMS also respectfully declines your request to stop using the phrase INTEGRATED MONITORING AND POWER CONTROL SUBSYSTEM and the letters IMPCS. NGDMS does not believe these are lawful trademarks. ITT claims to have a trademark for the phrase Integrated Monitoring and Power Control Subsystem; however, ITT's application, serial #78/803,296, does not support this claim. This application is for a design, plus words, letters and/or numbers logo. In particular, the trademark registration specifically states that your trademark is for:

Robert P. Seitter, Esq.
August 4, 2006
Page 3

Description of Mark “A circular design comprising a central illustration of the earth with orbiting satellites and orbit paths, the acronym "IMPCS" along the top inside the circle border, and the words "Integrated Monitoring & Power Control Subsystem" along the bottom inside the circle border.”

The disclaimer specifically states:

Disclaimer NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "INTEGRATED MONITORING & POWER CONTROL SUBSYSTEMS" APART FROM THE MARK AS SHOWN

NGDMS's brochure does not depict a circular design comprising a central illustration of the earth with orbiting satellites and orbit paths, the acronym "IMPCS" along the top inside the circle border, and the words "Integrated Monitoring & Power Control Subsystem" along the bottom inside the circle border. NGDMS is using the words "Integrated Monitoring and Power Control Subsystem" apart from the mark as shown in your trademark application. As such, NGDMS's use of these words is specifically allowed by your trademark application and does not constitute trademark infringement.

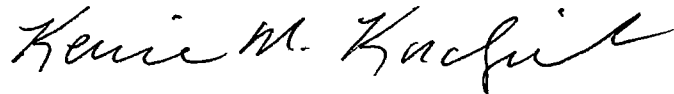
With respect to your claim to a trademark for the letters IMPCS under trademark application serial number 78/803,273, these letters are simply an acronym for Integrated Monitoring and Power Control Subsystem. NGDMS believes that this is improper subject matter for trademark registration as ITT cannot create a monopoly over the use of generic initials.

In summary, NGDMS has complied with your request to destroy all NGDMS brochures, with the sole exception being an archival copy maintained by the Law Department. We believe this corrective action adequately addresses the concerns ITT has raised. NGDMS will use the information and data we received and developed under this subcontract in accordance with the H.25 clause and the provisions of DFARS 252.227-7013. Any use of the IMPCS letters and the phrase Integrated Monitoring and Power Control Subsystems by NGDMS will be in strict compliance with trademark law. NGDMS will not use these words and letters in connection with your specific, trademarked satellite design.

Robert P. Seitter, Esq.
August 4, 2006
Page 4

Please do not hesitate to contact me should you have any questions or require any additional information. Should ITT have any remaining concerns, we look forward to resolving them in an amiable fashion.

Sincerely,

A handwritten signature in cursive script that reads "Kevin M. Kordziel".

Kevin M. Kordziel
Senior Counsel
Northrop Grumman Corporation

cc: Connie Thousand, Esq.
Roger Fujii
Christopher Plummer

Rex A. Donnelly, Esq.
Maria L. Tocker, Esq.



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REX A. DONNELLY
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EMAIL: radonnelly@ratnerprestia.com

September 28, 2006

**VIA FEDERAL EXPRESS
ADVANCE COPY VIA FACSIMILE**

Kevin M. Kordziel, Esq.
Law Department
Northrup Grumman Corporation
12011 Sunset Hills Rd.
Reston, VA 20190

Re: Intellectual Property issues related to Grumman's use of IMPCS and
INTEGRATED MONITORING & POWER CONTROL SUBSYSTEM
Our ref: ITDE-AES901

Dear Mr. Kordziel:

This is in response your letter dated August 4, 2006 regarding the above-captioned matter. First of all, we appreciate the corrective actions that Northrup Grumman Defense Mission Systems, Inc. (Grumman) has represented that it has taken with respect to the Grumman brochure objected to in our letter to Roger Fujii and Christopher Plummer, as well as the companion brochure for Common Network Planning Software (CNPS), namely collecting and destroying all of such brochures containing ITT's copyrighted photograph. We also appreciate Grumman's agreement to focus on Grumman's specific areas of work as a subcontractor on the IMPCS program in any future marketing materials. We believe that the contract issues raised in our letter and answered in yours are moot, in light of the foregoing actions and agreement.

We must continue to object, however, to Grumman's use of the mark INTEGRATED MONITORING & POWER CONTROL SUBSYSTEM and IMPCS except as nominal fair use to refer to the ITT project on which Grumman previously worked. Such fair use should indicate that IMPCS and INTEGRATED MONITORING & POWER CONTROL SUBSYSTEM are trademarks of ITT. Caselaw has firmly established that a disclaimer of a term within a Federal Registration application has no effect on common law rights. Accordingly, ITT's disclaimer of INTEGRATED MONITORING & POWER CONTROL SUBSYSTEM in its Federal Registration application is viewed merely as a statement that for the purposes of the federal registration, ITT is not claiming protection for that portion of the mark. To the extent that ITT has used INTEGRATED MONITORING & POWER CONTROL SUBSYSTEM in commerce in connection with its goods and services, however, it has established common law rights and acquired distinctiveness and secondary meaning with respect to that mark in the minds of the relevant consumers, which has



allowed the mark to become an indicator of the source of those associated goods and services.

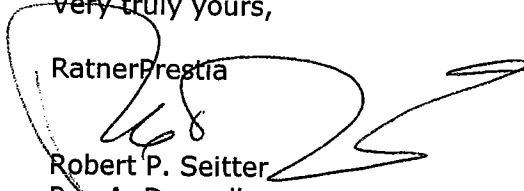
Your indication that Grumman intends to use IMPCS and INTEGRATED MONITORING & POWER CONTROL SUBSYSTEM "in strict compliance with trademark law" would be completely satisfactory to ITT, so long as Grumman affirms that its understanding of trademark law is consistent with ITT's. Grumman's characterization of the IMPCS mark as "generic initials" is inconsistent with such an understanding. Acronyms and other marks are not considered "generic" unless there is evidence that the acronym has become the commonly used term by others for a particular type of goods or services, such that the mark can no longer serve as an indicator of source. The uniqueness of the IMPCS project virtually prohibits that possibility. Grumman has set forth no evidence that any third party uses the terms IMPCS or INTEGRATED MONITORING & POWER CONTROL SUBSYSTEM in a descriptive or generic sense, apart from Grumman's improper use in the advertising to which ITT objected. Consequently, the marks IMPCS and INTEGRATED MONITORING & POWER CONTROL SUBSYSTEM are marks that are not only capable, but actually do, identify the source of the goods and services associated with the ITT project.

Thus, while ITT cannot prevent nominative fair use of these marks by Grumman, ITT can insist that proper attribution be given to ITT as the owner of these marks when they are mentioned in the context of Grumman's previous work, and ITT can insist that Grumman not use these marks generically or descriptively to refer to similar goods or services that are not associated with ITT in any way. There is no need for Grumman or third parties to use ITT's marks to refer to their own services, as each can very easily come up with its own mark, corresponding acronym, and legitimately descriptive or generic phrases to refer to any goods or services it provides relating to the control and monitoring of power in satellite networks.

Finally, we are aware of the opposition that has been filed by Grumman against ITT's application to register IMPCS and will file an answer, if necessary. We recognize, however, that the opposition may have been filed, at least in part, to retain leverage in this dispute in the absence of our reply to your letter before the end of the opposition period. Given that ITT has indicated in this letter that Grumman's resolution of most of the issues raised by ITT's earlier letter may be acceptable, and that Grumman intends only to use IMPCS and INTEGRATED MONITORING & POWER CONTROL SUBSYSTEM "in strict compliance with trademark law," we encourage Grumman to reconsider whether the opposition is still warranted, particularly in light of ITT's non-objection to proper nominal fair use of its marks. If Grumman insists upon infringing or using ITT's marks descriptively or generically, however, ITT will have no alternative but to fiercely contest the opposition and take whatever further action is warranted in light of Grumman's activities. We look forward to your response to this letter.

Very truly yours,

RatnerPrestia


Robert P. Seitter
Rex A. Donnelly