

STATE OF MICHIGAN

MACOMB COUNTY CIRCUIT COURT

JVIS-USA, LLC, a Michigan limited liability company and JVIS MANUFACTURING, LLC, a Michigan limited liability company, d/b/a, JVIS USA MANUFACTURING, LLC,

Plaintiffs,

vs.

Case No. 2013-2742-CB

NARTRON CORPORATION, n/k/a GEN X MICROSYSTEMS and a/k/a OLDNAR CORPORATION, a Michigan corporation and UUSI, LLC, d/b/a NARTRON, a Michigan limited liability company,

Defendants,

and

UUSI, LLC, d/b/a NARTON, a Michigan limited liability company,

Defendant/Counter and Third-Party Plaintiff

vs.

JVIS-USA, LLC, a Michigan limited liability company and JVIS MANUFACTURING, LLC, a Michigan limited liability company, d/b/a, JVIS USA MANUFACTURING, LLC

Counter-Defendants,

and

FUTABA CORPORATION OF AMERICA, a foreign corporation, THOMAS J. GRONSKI, RANDY GRIFFIN, and GINA TERRY,

Third-Party Defendants.

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CLERK OF COURT
MACOMB COUNTY

OPINION AND ORDER

Defendant UUSI, LLC d/b/a Nartron's ("Defendant") has filed a motion for reconsideration of the Court's February 29, 2016 Opinion and Order granting Plaintiffs' motion for summary disposition of Counts I and VIII of Defendant's counter/third-party complaint ("Counter-Complaint").

I. Factual and Procedural History

On June 14, 2016, the Court issued an Opinion and Order: (1) Vacating the portion of the February 29, 2016 Opinion and Order granting Plaintiffs summary disposition of the portion of Count VIII seeking a declaration that Defendant is the owner of the engineering, software and other supporting material within the PCBs, and (2) Denying the portion of Defendant's motion asserting that the parties had a confidential relationship. The remainder of Defendant's motion for reconsideration addresses whether Plaintiffs misappropriated Defendant's proposed trade secrets.

In the June 14, 2016 Opinion and Order, the Court held that the vast majority of Defendant's exhibits do not support a finding of misappropriation. Additionally, the Court observed that Exhibits P, T, X U and V were not filed with Defendant's original pleadings, thereby depriving Plaintiffs of an opportunity to respond to them. As a result, the Court granted Plaintiffs leave to file a response addressing those five exhibits. Plaintiffs subsequently filed a response and on July 6, 2016 the Court held a hearing in connection with this matter and took the matter under advisement.

II. Standard of Review

Motions for reconsideration must be filed within 21 days of the challenged decision. MCR 2.119(F)(1). The moving party must demonstrate a palpable error by

which the Court and the parties have been misled and show that a different disposition of the motion must result from correction of the error. MCR 2.119(F)(3). A motion for reconsideration which merely presents the same issue ruled upon by the Court, either expressly or by reasonable implication, will not be granted. *Id.* The grant or denial of a motion for reconsideration is a matter within the discretion of the trial court. *Cole v Ladbroke Racing Michigan, Inc*, 241 Mich App 1, 6-7; 614 NW2d 169 (2000).

III. Arguments and Analysis

The remaining portion of Defendant's motion deals with Defendant's contention that Plaintiffs misappropriated their gerber files and S19 software. Specifically, Defendant avers that Plaintiffs misappropriated the files and software by providing them to Futaba to assist it in reverse engineering the PCBs.

As a preliminary matter, in its original pleadings Defendant did not aver that the files and software alone constitute a trade secret under MUTSA; rather, Defendant's position was that the software and files, in conjunction with various other aspect incorporated within the PCB constitutes a trade secret. Consequently, even if Defendant were to establish that Plaintiffs improperly provided Futaba with the files and software it will have nevertheless failed to demonstrate that a genuine issue of material fact exists with respect to a necessary element of its misappropriation claim, i.e. that the files and software constitute a trade secret. Moreover, even if Defendant had established that the files and software in and of themselves constitute trade secrets, the evidence Defendant has presented fails to evidence that Plaintiffs misappropriated those materials.

In support of its position that Plaintiffs improperly provided the files and software to Futaba, Defendant relies on the minutes of an October 29, 2012 meeting between Plaintiffs and Futaba documenting that Futaba desired to obtain sample PCBs and recent gerber files for each of the PCBs Futaba was to reverse engineer (See Defendant's Exhibit P), an internal October 22, 2012 Futaba email that states that "the attached...gerber files and panel drawings are of an old version but will do for the quote" (See Defendant's Exhibit X), a change order in which Plaintiffs requested new "S19" files from Defendant (See Defendant's Exhibit T), Defendant's quote for the new files (See Defendant's Exhibit U), and an email which indicates that the S19 file was given to Futaba (See Defendant's Exhibit V).

With respect to Exhibit P, while the meeting minutes references an assumption that Plaintiffs would provide recent gerber files, the minutes do not evidence an actual agreement to provide the files, or that Plaintiffs ever actually provided the files, or that Futaba utilized the files if they were provided. Consequently, the Court is satisfied that Exhibit P does not support a finding of misappropriation.

Exhibit X is an email which references that Futaba was provided with an old version of the gerber files in order to allow Futaba to issue a quote. However, Mr. Wires has testified that those files were not useful to Futaba and were not used as part of the reverse engineering process. (See Plaintiffs' Exhibit 15, at ¶¶18, 29.) Defendant has not provided any evidence to contradict Mr. Wires' testimony. Consequently, the Court is convinced that Defendant has failed to establish that Exhibit X even creates a question of fact as to whether Plaintiffs' misappropriated Defendant's proposed trade secrets.

Exhibit T is a January 2013 Engineering Change request issued by one of Plaintiffs seeking updated S19 files from Defendant. Plaintiffs have provided evidence that they paid for the updated files. (See Plaintiffs' Exhibits 16-17.) Consequently, the Court is satisfied that Exhibit T does not create an issue of fact regarding whether the files were misappropriated.

Exhibit U is a May 21, 2013 price quote issued by Defendant. The quote does not indicate whether Plaintiffs ever followed through on having Defendant do the work anticipated by the quote. Consequently, U does not provide any evidence of misappropriation.

Finally, Exhibit V references that Futaba attempted to use Defendant's old gerber files but that they did not work for what Futaba needed. Further, the email references that Futaba had to use different gerber files produced by a third party, which is consistent with Mr. Wires testimony that Futaba did not rely on any of Defendant's parts, and that they paid the third party, L&T, Inc. \$175,000.00 to develop new software from scratch. (See Plaintiffs' Exhibits 15 and 18.) Consequently, Exhibit V does not support Defendant's position.

For the reasons discussed above, Defendant's new evidence, nor the evidence previously relied upon, supports Defendant's position that Plaintiff and/or Futaba misappropriated the proposed trade secrets. Consequently, Defendant's motion for reconsideration must be denied.

IV. Conclusion

For the reasons set forth above, the portion of Defendant's motion for reconsideration of the Court's February 29, 2016 Opinion and Order not ruled upon in

the June 14, 2016 Opinion and Order is DENIED.

In compliance with MCR 2.602(A)(3), the Court states this Opinion and Order neither resolves the last claim nor closes the case.

IT IS SO ORDERED.

Date: JUL 28 2018

Kathryn A. Viviano
Hon. Kathryn A. Viviano, Circuit Court Judge