

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

ARISTO VOJDANI and
IMMUNOSCIENCES LAB, INC.,

ORDER

Plaintiffs,

10-cv-37-bbc

v.

GOTTFRIED KELLERMANN, MIEKE KELLERMANN,
PHARMASAN LABS, INC. and NEUROSCIENCE, INC.,

Defendants.

Plaintiffs have filed a motion for reconsideration of a portion of the order dated December 15, 2010, in which I granted defendants' motion for summary judgment with respect to plaintiffs' claim that defendants misappropriated trade secrets in the form of testing methods. Relying on IDX Systems Corp. v. Epic Systems Corp., 285 F.3d 581, 583-84 (7th Cir. 2002), I concluded that plaintiffs had failed to meet their burden to show that any aspect of the testing methods "derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use," as required by Wis. Stat. § 134.90, Wisconsin's trade secrets statute. Dkt. #105 at 15-16.

In their motion, plaintiffs argue that I overlooked 3M v. Pribyl, 259 F.3d 587, 595-96 (7th Cir. 2001), in which the court stated that a “trade secret can exist in a combination of characteristics and components, each of which, by itself, is in the public domain, but the unified process, design and operation of which, in unique combination, affords a competitive advantage and is a protectable secret.” Thus, plaintiffs say that they were not required to identify any particular aspects of their methods that are secret because “the *combination* of components that made up the methodologies themselves” are entitled to protection. Plts.’ Br., dkt. #140, at 1 (emphasis in original).

The problem with plaintiffs’ argument is that they still fail to identify what is “protectable” about their methods. Even under 3M plaintiffs must still point to something about their methods, in whole or in part, that make them different from those that are publicly available. Plaintiffs cannot escape their burden of proof with a conclusory statement that “everything” is a trade secret. Hall v. Bodine Elec. Co., 276 F.3d 345, 354 (7th Cir. 2002) (“It is well-settled that conclusory allegations . . . do not create a triable issue of fact.”). As they did in their summary judgment brief, plaintiffs attempt to shift the burden by saying that “[d]efendants failed to produce any evidence that showed that these written methodologies were available in the public domain or otherwise not secret.” Plts.’ Br., dkt. #140, at 2. However, this is *plaintiffs’* claim, not defendants’, and plaintiffs have the burden at summary judgment to adduce sufficient evidence to allow a reasonable jury to rule in their

favor on each element of their claim. Kampmier v. Emeritus Corp., 472 F.3d 930, 936 (7th Cir. 2007) (citing Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986)) ("To survive summary judgment, the nonmoving party must make a sufficient showing of evidence for each essential element of its case on which it bears the burden at trial.").

For all defendants and this court knows, plaintiffs copied their methods in full from publicly available sources or made insignificant changes without any value. Plaintiffs insist in their motion that their testing methods are unique, but simply saying it does not make it so. They were required to come forward with specific evidence to demonstrate this. Drake v. Minnesota Mining & Manufacturing Co., 134 F.3d 878, 887 (7th Cir. 1998) ("Rule 56 demands something more specific than the bald assertion of the general truth of a particular matter[;] rather it requires affidavits that cite specific concrete facts establishing the existence of the truth of the matter asserted.").

ORDER

IT IS ORDERED that the motion for reconsideration filed by plaintiffs Aristo

Vojdani and Immunosciences Lab, Inc., dkt. #139, is DENIED.

Entered this 12th day of January, 2011.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge