IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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BONDPRO CORPORATION,

ORDER

Plaintiff,

04-C-26-C

v.

SIEMENS WESTINGHOUSE
POWER CORPORATION,

Defendant.

- -

Defendant Siemens Westinghouse Power Corporation has moved for reconsideration of the opinion and order denying its motion for summary judgment on plaintiff Bondpro Corporation's claim that defendant misappropriated plaintiff's trade secret in violation of Wis. Stat. § 134.90(2)(b)(2)(b). In that order, I denied both parties' motions for summary judgment on plaintiff's trade secret claim, reasoning in part that a jury could side with either party reasonably on the issue whether the bonding process at issue was a trade secret. In order to qualify as a trade secret, the relevant information must "derive[] 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 . . . [be] the subject of efforts to maintain its secrecy that are reasonable under the circumstances." Wis. Stat. § 134.90(1)(c). Defendant's challenge relates to the readily ascertainable portion of this standard.

In rejecting as conclusive defendant's argument that the process was readily ascertainable, I noted first that the two pieces of evidence on which defendant had based its argument, the deposition testimony of Scott Wang and the expert report of Professor Scott Beckwith, were not in the proposed findings of fact. Second, I noted that this testimony would not entitle defendant to judgment as a matter of law because it "stands only for the limited proposition that the process is readily ascertainable by a person who is familiar with aerospace component manufacturing." Finally, I reasoned that the sworn statement of Mark Miller in his patent application that the process was non-obvious was at odds with the testimony of Wang and Beckwith and created an issue of fact.

In seeking reconsideration, defendant asks the court to consider the contents of the website of Mechanical Dynamics and Analysis, LLC, http://www.mdaturbines.com, in conjunction with its readily ascertainable argument. Defendant referred to the website within its argument that the process was generally known, but with respect to the readily ascertainable issue, referred only to the testimony of Wang and Beckwith. See Dft.'s Br., dkt. #64, at 10-12. (In analyzing the parties' "generally known" arguments, I considered the full text of the MD&A website and held that it foreclosed judgment in favor of plaintiff

on that prong of the test.) As a general matter, motions for reconsideration are not the place to raise new arguments.

Even if I were to consider the content of the website within the readily ascertainable analysis, it is not clear that defendant is entitled to judgment as a matter of law. First, there is at least one obvious distinction: the MD&A website describes a process for bonding materials in an "L" shape while the plaintiff's claimed process involves a "U" shape. It may be that there is no meaningful difference in bonding flat surfaces and curved surfaces using this process, but that is not readily ascertainable from the website. Furthermore, the MD&A website does not contain many of the details, such as the types of layered materials used, that plaintiff claims to be part of its alleged secret.

Defendant argues that when the website is considered in conjunction with the Beckwith affidavit, it is apparent that the process was readily ascertainable. "[T]he theoretical possibility of reconstructing the secret from published materials containing scattered references to portions of the information or of extracting it from public materials unlikely to come to the attention of the appropriator will not preclude relief." Restatement (Third) of Unfair Competition § 39 cmt. (f) (1995). Furthermore, "'[r]eadily ascertainable should not apply to obscure publications.'" Id. (quoting Jager, Trade Secret Law § 5.04[3][a][ii]). Although defendant manufactured slot cell insulation and one of its scientists had been investigating new manufacturing methods as early as 1994, it was not

aware of the website until after this suit was initiated.[1] Determining the relative obscurity of this website, whether it needs to be combined with more detailed descriptions from literature on aerospace component manufacturing and how obvious and easy it would be look to these other publications are questions for the jury. Learning Curve Toys, Inc. v. PlayWood Toys, Inc., 342 F.3d 714, 723 (7th Cir. 2003) (existence of a trade secret is a question of fact).

Although defendant has a strong argument on this issue, I am not convinced that the evidence produced is sufficient to establish this question of fact as a matter of law. Defendant paid plaintiff to run trial productions, appeared to believe for a number of months that the process was intellectual property belonging to plaintiff and filed a patent application describing the process and attesting to its originality and non-obviousness. These facts counsel against concluding that the process had no value because defendant, or any other slot cell insulation manufacturer, could have readily learned about it elsewhere. Accordingly, I will deny defendant's motion for reconsideration.

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[1]A Google search of "slot cell insulation" (with quotation marks) yields 22 results, none of which is the MD&A website. Without using quotation marks, the search yields over 20,000 hits. A search of "slot armor" produces 1,500 results, of which the MD&A website is 27th. Searching "'slot cell' and autoclave" produces only one hit, the MD&A website, but to rely on this search would be to put the cart before the horse.

ORDER

IT IS ORDERED that defendant Siemens Westinghouse Power Corporation's motion for reconsideration of the denial of its motion for summary judgment on plaintiff BondPro Corporation's claim of trade secret misappropriation is DENIED.

Entered this 31st day of January, 2005.

BY THE COURT:

BARBARA B. CRABB
District Judge