

(ENDORSED)
FILED
OCT 9 2002

KIRI TORRE
Chief Executive Officer
Superior Court of CA County of Santa Clara
BY _____ DEPUTY

THE SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA

SILVACO DATA SYSTEMS, INC.,

Plaintiff,

v.

ALIAKSANDR VIACHESLAVOVICH
ANTONAU, et al.,

Defendants.

Case No.: CV790196

ORDER RE: MOTION FOR
SUMMARY ADJUDICATION,
MOTIONS TO SEAL, MOTIONS
TO STRIKE & MOTIONS FOR
SANCTIONS

The motion for summary adjudication and motions to seal by defendants Aliaksandr Viacheslavovich Antonau, Nikolay Rubanov and Circuit Semantics, Inc., and the motions to seal, motions to strike and motions for sanctions by plaintiff Silvaco Data Systems, Inc., came on for hearing before the Honorable William J. Elfving on October 8, 2002 at 9.00 a.m. in Department 2. The matter having been submitted, the Court orders as follows:

The Court declines to render formal rulings on evidentiary objections but has disregarded all inadmissible and incompetent evidence in ruling. (Biljac Associates v. First Interstate Bank (1990) 218 Cal.App.3d 1410.)

The motions to seal by plaintiff and defendants are GRANTED. The overriding interest of the protection of the parties' proprietary information overcomes the right of public access to

1 the record and supports sealing the record. Also, a substantial probability exists that the
2 overriding interest will be prejudiced if the record is not sealed. Further, the proposed sealing is
3 narrowly tailored and no less restrictive means exist to achieve the overriding interest.

4 Plaintiff's motion to strike the declaration and supplemental declaration of Laurence W.
5 Nagel is DENIED. Plaintiff fails to establish that a motion to strike on this ground is proper.
6 (See C.C.P. §§ 435, 436, 437.)

7 Plaintiff's motion to strike new "undisputed facts" in support of defendants' reply is
8 DENIED. Plaintiff fails to establish that a motion to strike on this ground is proper.
9 (See C.C.P. §§ 435, 436, 437.)

10 Defendants' motion for summary adjudication to the fifth cause of action for trade secret
11 misappropriation is DENIED, for the reasons set forth below.

12 As to defendants' argument that there is an absence of evidence to support plaintiff's
13 claim, defendants fails to proffer sufficient evidence to meet their initial burden of establishing
14 that plaintiff does not possess and cannot reasonably obtain evidence to support this claim. (See
15 Aguilar v. Atlantic Richfield Co. (2001) 25 Cal.4th 826, 854.)

16 Defendants also present affirmative evidence and argue that elements of plaintiff's claim
17 cannot be established. Defendants claim that they did not misappropriate trade secrets nos. 1-22
18 because they do not develop LVS software. (See e.g., defendants' undisputed material facts nos.
19 130, 131.) While trade secrets nos. 1-22 may relate to LVS software, plaintiff identifies the
20 algorithms, designs, methods, techniques, implementations, etc. as the trade secrets. (See Exh. 5,
21 plaintiff's trade secret designation, attached to Decl. of Laurence W. Nagel.) Defendants
22 therefore fail to meet their initial burden of showing that they did not misappropriate these trade
23 secrets. Moreover, plaintiff creates a triable issue of material fact as to this issue. (See e.g.,
24 plaintiff's disputed material fact no. 130.)

25 Defendants also argue that defendants Aliksandr Viacheslavovich Antonau and Nikolay
26 Rubanov did not misappropriate trade secrets nos. 1-22. As to this issue, defendants present
27 sufficient evidence to meet their initial burden of proof. (See e.g., defendants' undisputed
28 material facts nos. 133-210.) Plaintiff however, creates triable issues of material fact as to

1 whether these defendants misappropriated these trade secrets prior to leaving employment with
2 plaintiff and whether any of the documents containing the trade secrets were previously in these
3 defendants' possession or are in their custody or control. (See e.g., plaintiff's additional facts
4 nos. 223-226, 228, 231-234.)

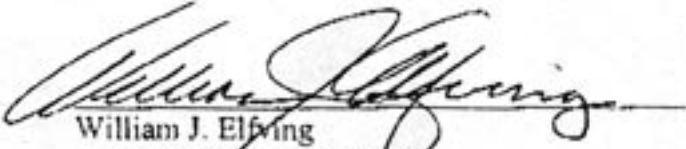
5 Defendants also have not met their initial burden of establishing that nos. 23-26 are not
6 trade secrets. Defendants' expert states that some of this information that is not publicly
7 available are trivial changes that may be implemented in less than half a day or are bug fixes, and
8 therefore they are not trade secrets. (See e.g., defendants' undisputed material facts nos. 17, 20,
9 24, 25, 29, 31, 41, 42, 46, 50, 60, 62, 67, 71, 72, 84, 89, 92.) Defendants fail to establish
10 however, that such trivial changes or bug fixes do not have any independent economic value.
11 (See Civil Code § 3426.1(d).) As such, defendants have not established that this information
12 does not constitute trade secrets.

13 Lastly, defendants assert that even if nos. 23-26 are trade secrets, defendants have not
14 misappropriated these trade secrets. Defendants proffer adequate evidence to meet their initial
15 burden on this issue. (See e.g., defendants' undisputed material facts nos. 128, 211; Decl. of
16 Laurence Nagel ¶¶ 14-30.) In opposition however, plaintiff creates a triable issue of material
17 fact as to whether defendants misappropriated any of these trade secrets. (See e.g., plaintiff's
18 additional material facts nos. 245-258; Decl. of Martin Walker ¶¶ 37.)

19 In a separate motion, plaintiff moves for a continuance as to defendants' motion for
20 summary adjudication, requests sanctions pursuant to C.C.P. section 437c(h), and moves to
21 strike the declarations of Haroon Chaudhri, Aliaksandr Antenu, Nikolay Rubanov and Laurence
22 W. Nagel. Based on the above, plaintiff's motion for a continuance is MOOT. The motion for
23 sanctions is DENIED. The motion to strike is also DENIED. (See C.C.P. §§ 435, 436, 437.)

24 Plaintiff's motion for sanctions pursuant to C.C.P. section 128.7 is DENIED.
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26
27 Dated: 10/8/02

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William J. Elfving
Judge of the Superior Court