UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 11-62591-CIV-MARRA

ACR ELECTRONICS, INC.,
a Florida Corporation,

Plaintiff,

v.

DME Corporation, a Florida corporation,
CCK ELECTRONICS LLC,
a Florida limited liability company,
CHUNG T. TONG,
CLAUDIO CASSINA, and
KAIYU WU,

Defendants.

ORDER GRANTING PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION

This matter came before the Court upon the Motion for a Preliminary Injunction [DE] filed by Plaintiff, ACR Electronics, Inc. ("ACR") against Defendants DME Corporation ("DME"), CCK Electronics LLC ("CCK"), Chung T. Tong ("Tong"), Claudio Cassina ("Cassina") and Kaiyu Wu ("WU").[1] The parties submitted declarations from their witnesses as the witnesses' direct testimony. The witnesses were then cross-examined before the Court. The parties also presented deposition testimony and numerous exhibits. After considering the evidence presented, and having considered the argument and submissions of the parties, it is HEREBY ORDERED AND ADJUDGED as follows:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Background.

[1] Tong, Cassina and Wu will also collectively be referred to as the "Individual Defendants."

1. ACR designs and develops sophisticated safety and survival products for the aviation and marine industries, as well as to the United States military. Wilkerson PI Decl., ¶ 1. One product designed and manufactured by ACR is a 406 MHz Personal Locator Beacon ("PLB") that transmits a distress signal to search and rescue ("SAR") organizations to aid them in tracking and locating ships or individuals in jeopardy as rapidly as possible. Wilkerson PI Decl., ¶ 2.

2. ACR has developed and sold a variety of PBLs over the years, including the PLB-300, the AquaLink PLB-350, and the ResQLink PLB-375. ACR had 10-12 engineers working on the development of its PLB-375 product, who collectively devoted approximately 17,785 hours to create the product. Pack PI Decl., ¶ 18 and Ex. D.

3. Until late July 2010, Defendants Tong, Cassina, and Wu were employed by ACR. Horn PI Decl., ¶¶ 2-4 and Exs. A-C. They all were involved in the development of several of ACR's PLBs, including its PLB-300, AquaLink PLB-350, and the ResQLink PLB-375, except Mr. Wu was not involved in the development of the PLB-300. PI Testimony at 430:12-16, 455:1-20, 512:5-12, 589:8-10, 690:7-10; Pack PI Decl., ¶ 9, Exs. C and D. ACR's PLB-375 was still under development at the time the Individual Defendants left ACR in July 2010. PI Testimony at 171:4-18.

4. Defendant DME is in the business of providing safety equipment to the aviation and marine industries, and is a direct competitor with ACR. Within a month of their departure from ACR, DME was in discussions with the Individual Defendants to develop a product that would directly compete with the PLB-375. Zelek PI Dec., Ex. D, Cassandra Dep., 19-20, 25-26; Zelek PI Dec., Ex. A, Tong Dep., 42, 131; Horn PI Decl., ¶¶ 2-4 and Exs. A-C; PI Testimony at 384:2-25; Tong's PI Decl., ¶ 13. DME had not previously sold personal locator beacons. PI

Testimony at 402:7-9. In October 2011, DME publicly announced the SATRO, a product that would compete directly with the PLB-375.[2] Wilkerson PI Decl., ¶ 5; PI Testimony at 387:7-10.

5. Defendant CCK Electronics LLC is in the business of beacon technology and is a direct competitor with ACR. CCK and Individual Defendants' Answer (Dkt. No. 36), ¶ 4.

6. While employed at ACR, and for the purpose of fulfilling their job duties at ACR, the Individual Defendants had access to ACR's confidential and trade secret source code and documents, as well as ACR's secured computer servers, which contained ACR's confidential documents, and trade secrets -- including but not limited to source code, customer lists, marketing strategies, and pending projects, including the PLB-375 development work, research strategies, engineering data, technological data, and schematics ("confidential information"). Pack PI Decl., ¶ 14. The Individual Defendants were given access to this valuable trade secret information only to enable them to further ACR's interests as ACR employees. Horn PI Decl., ¶ 8. ACR took precautions to prevent unauthorized access to this confidential information by requiring a user name and password to access ACR's computer servers and file structures and prohibiting unauthorized copying, distribution, and use of its protected and confidential documents, software, and technical drawings and schematics. Horn PI Decl., ¶ 8.

7. On July 19, 2010, just three days after Wu left his employment at ACR, and while Tong and Cassina were still ACR employees, the Individual Defendants registered CCK as a limited liability company with the Florida Secretary of State and listed all Individual Defendants

[2] As of the hearing on ACR's motion for preliminary injunction, the SATRO had not yet been submitted to the FCC for approval. PI Testimony at 794:7-795:1. FCC approval is required for the product to be sold or leased in the United States. *See* 47 C.F.R. §2.803, Pack PI Ex. 8; *see also*, FCC Letter to Nexus Engineering Corp., DA 92:473, 1992 WL 695421 * (F.C.C. Apr. 13, 1992) (radio frequency device may not be made available for sale, offered for sale or lease, or sold or leased until the approval of the FCC has been obtained). Since the hearing, DME has represented to the Court that FCC approval has been obtained. [DE 154]

as officers. Pack PI Decl., ¶ 24; PI Ex. Cassina #2. Although Tong admitted at the hearing that he and Cassina discussed forming a company together, he denied any knowledge that CCK had already been formed before his last day of work at ACR. PI Testimony at 675:16-676:4.[3]

8. A team of ACR employees – at great investment and expense to ACR and over an extended period of time – developed the trade secrets at issue, including its source code for the PLB-375, its source code specifications, its various circuit designs individually and combined, certain of its component selections individually and as combined, and the extensive research, development, and testing efforts. Pack PI Decl., ¶ 17. All of these items are confidential and valuable tools to enable the design and manufacture of PLBs. ACR's Director of New Product Development, Thomas Pack ("Pack"), testified that if ACR's competitors had ACR's trade secrets and knew of ACR's confidential information, it would provide them with an unfair competitive advantage because it would save them tens of thousands of dollars in equipment and development costs and dramatically shorten the time it would take them to develop, test, certify, and launch a PLB device, and would place ACR at an unfair competitive disadvantage. Pack PI Decl., ¶ 25.

9. ACR acted reasonably to try to protect its trade secrets. ACR tried to prevent defendants from using, copying, and benefiting from ACR's confidential and proprietary information and trade secrets. Horn PI Decl., ¶ 11. Less than two months after the Individual Defendants' resignations, on September 15, 2010, ACR sent letters via certified mail to each of the Individual Defendants enclosing copies of the "Employee Confidential Information & Assignment of Invention Agreement" and reminding them of their contractual obligations. Horn

[3] Mr. Tong testified at his deposition that he, Mr. Cassina and Mr. Wu each owned of "33.3 percent" when the company was formed. PI Testimony at 676:9-12. In fact, when Mr. Tong email ACR confidential documents to his personal email account he owned a controlling interest of 34 percent, and the others each owned 33 percent. PI Testimony at 470:19-22, 676:5-24.

PI Decl., ¶ 11. ACR further put the Individual Defendants on notice that if ACR became aware of a violation of their agreements, ACR would seek all remedies available. Horn PI Decl., ¶ 11.

10. No one from DME ever told Wu not to use ACR proprietary information in the development of the SATRO. No one from DME ever asked Wu whether the source code he had written was all original. PI Testimony at 656:17-19. No one from DME reviewed Wu's work, and Wu did not document his software development process. PI Testimony at 620:9-16.

11. DME was aware that Cassina relied on some of his work from ACR, but did not do anything about it. Cassandra Dep. at 85-86.

12. Dr. Stephen B. Heppe ("Heppe"), ACR's expert, opined that the development schedule proposed by CCK was unrealistically short given the size of the development team (4 men working out of their homes) and the absence of an existing product portfolio on which CCK could properly rely for their development work. Heppe Decl., ¶ 51. The Court finds this testimony to be credible and reasonable in view of all of the evidence presented in this case.

13. Although ACR discovered in early August 2010 that Tong sent e-mails containing ACR's confidential information from his ACR e-mail account to his personal e-mail account and to Cassina and Wu's ACR e-mail accounts, ACR did not have reason to believe that Tong, Cassina, Wu and CCK misappropriated its trade secrets until Pack was able to review sales brochures and a press release regarding the SATRO on October 24, 2011. PI Testimony at 230:4-232:24.

14. The Individual Defendants intentionally concealed their plan to form CCK and to compete directly with ACR. The Individual Defendants did not tell Pack or any other ACR manager that they were planning to work together or form their own competing company. To the contrary, Tong informed Pack that he was resigning because he was stressed, that he planned

to go back to Vietnam, and he did not know what he was going to do. PI Testimony at 216:3-13. Cassina told Pack he was going to take a trip to Argentina. PI Testimony at 228:14-22; *see also* PI Testimony 472:1-6. Wu told Pack that he did not have another job lined up and that he planned to rest after leaving ACR's employment due to his physical condition. PI Testimony at 216:14-19.

15. Cassina arranged for CCK to be created while still employed at ACR. PI Testimony at 467:12-468:7. He and Wu discussed leaving ACR at least one month prior to their departure, and they discussed forming a company when they resigned. PI Testimony at 467:4-11.

16. In the Spring of 2011, Tong contacted ACR Director of Sales Ron Crowder, and expressed interest in doing some work for ACR. PI Testimony at 677:23-678:1. To facilitate their discussions, Pack sent a non-disclosure agreement ("NDA") for Mr. Tong to sign. Thereafter, Pack met with Tong for lunch in June 2011, at which time Cassina joined them. PI Testimony at 218:7-19. At the beginning of their lunch meeting, Pack asked Tong to sign the NDA but he refused. PI Testimony at 182:15-19. At no time did Tong or Cassina mention that they or CCK were working with DME on the development of a personal locator beacon, PI Testimony at 216:23-217:7, and Pack was not aware of any business relationship they had with DME. PI Testimony at 219:14-18, 220:1-12. The Court concludes that Cassina and Tong withheld this information from ACR because it might lead ACR to suspect possible wrongdoing. Tong and Cassina's failure to disclose their involvement with DME lengthened the time ACR could reasonably have learned of Defendants' wrongful conduct.

17. On October 24, 2011, Mr. Pack reviewed a press release and brochures announcing DME's intention to launch the SATRO in December 2011, which was ***the first time*** that ACR discovered that:

- CCK and the Individual Defendants were working on DME's personal locator beacon product (SATRO);
- The SATRO design has similarities with ACR's proprietary design in its PLB-375 device which first became available for sale to the public in July 2011, including the fact that it has three batteries and those batteries were two-thirds A (assuming they are lithium) like ACR's PLB-375; the GPS antenna is of a size and nature that is very similar to the GPS module ACR used and had to test extensively in the design and development of the PLB-375; the antenna is a wraparound, lock-in, deployable-type antenna; and the microcontroller appeared to be the same as or similar to the one ACR used in its PLB-300 and PLB-350, for which Defendant Kaiyu Wu wrote some of the source code; and
- According to DME's press release, the SATRO would be launched in December 2011, which means that the device was conceptualized, designed, and developed within one year of the Individual Defendants' departure from ACR – a highly unlikely scenario without defendants' misappropriation and use of ACR's proprietary information and trade secrets.

Wilkerson PI Decl., ¶ 5; Pack PI Decl., ¶ 6.

18. In the Fall of 2011 and in light of DME's press release and sales brochure, ACR conducted a second review of the Individual Defendants' e-mail accounts at ACR, carefully assessed the impact of their acts, and consulted with legal counsel before filing this lawsuit a mere 43 days later, on December 6, 2011.

19. Fifteen days later, on December 21, 2011, ACR filed an Amended Complaint and Motion for Preliminary Injunction with supporting evidence. Under all of the circumstances, ACR acted in a timely fashion to seek injunctive relief in this case.

B. THE REQUIREMENTS FOR GRANTING A PRELIMINARY INJUNCTION

20. A district court may issue a preliminary injunction where the moving party demonstrates: (1) a substantial likelihood of success on the merits; (2) that irreparable injury will

be suffered unless the injunction is issued; (3) that the threatened injury to the movant outweighs whatever damage the proposed injunction may cause the opposing party; and (4) if issued, the injunction would not be adverse to the public interest. *Four Seasons Hotels and Resorts, B.V., v. Consorcio Barr, S.A.*, 320 F.3d 1205, 1210 (11th Cir. 2003).

21. "There is a need for immediate injunctive relief when employers are threatened by conduct of former employees that would irreversibly alter the status quo." *See Mech. Servs., Inc. v. Brody*, No. 8:08-CV-1151-T-30EAJ, 2008 WL 4613046, at *15 (M.D. Fla. Oct. 15, 2008) (internal quotations and citation omitted). That is the case here.

C. ACR IS LIKELY TO SUCCEED ON THE MERITS OF ITS CLAIM FOR TRADE SECRET MISAPPROPRIATION.

22. Based on the evidence presented, the Court finds that ACR is likely to succeed on the merits of its claim that Defendants misappropriated ACR's trade secrets. ACR took steps to maintain the claimed trade secrets as confidential. Additionally, the Individual Defendants were obligated to maintain ACR's trade secrets confidential and to use them only in connection with their work for ACR. CCK and Individual Defendants' Answer (Dkt No. 36), at ¶¶ 16, 18-20, 23.

1. ACR's Source Code[4]

23. The evidence established that the source code that operates ACR's PLB-350 product is proprietary and a valuable trade secret of ACR.[5] PI Testimony at 112:15-25, 355:13-356:16; Pack PI Decl., ¶ 12.

[4] The Court does not purport to have a full and complete understanding of the engineering significance of the facts which form the basis for its findings. However, the Court believes it has developed a sufficient understanding to recognize that copying and misappropriation of ACR's proprietary trade secret information has occurred.

24. Wu, in violation of his contractual and legal obligations to ACR, had ACR's trade secret code at the time he was working on source code for the SATRO. Wu Dep., at pp. 69, 77 and 78; PI Testimony at 596:21-597:2; and Wu Decl., ¶ 21. Wu did not delete the ACR code files until after he started work on the code for the SATRO. PI Testimony at 597:14-16.

25. The Court finds that Wu used ACR's source code for the PLB-350 to assist in the development of the source code for the SATRO. While the ultimate source code for the SATRO is different than the source code for the PLB-350, both the similarities between the two source codes, and the accelerated timeframe within which Defendants developed the SATRO, cannot credibly be explained except by the wrongful appropriation and use of ACR's source code. The Court finds Heppe's testimony in this regard to be credible. The Court will set forth some of the evidence upon which it relies for this conclusion.

26. While Wu claimed that changes to the COSPAS-SARSAT standards required substantial changes to the code used for the PLB-350 (PI Testimony at 608:14-20), both ACR and DME's experts agreed that the changes impacted "only a very small amount of the code." PI Testimony at 352:21-353:1 (harris); and 768:21-769:20 (Heppe). Wu admitted that the COSPAS-SARSAT standards only provide the required functions, but do not specify how to write the code: "Based on the function, I have to figure out, you know, how to write the software code." PI Testimony at 608:3-8; *see also* PI Testimony at 637:14-22, 638:7-17 (stating that the standards do not tell you how to write the comments or dictate the order of the functions within the code or the variables). Although Wu said that the code was based on data sheets (e.g., Wu Decl., ¶¶ 28, 34-36, 38, 44), he admitted that none of the data sheets provided the C

[5] Computer programs are initially written in source code, which is a symbolic language often using English words and common symbols, such as the "C" programming language. The source code is translated through a mechanical process known as compilation or assembly into object code or machine readable code (a series of 1s and 0s that is readable by a computer). Heppe Decl., ¶ 27.

programming language or dictated how the source code was written. PI Testimony at 594:13-25 ("data sheet wouldn't tell you what the comments you're gonna write the code for"); 611:10-13 (you have some flexibility in how you create the code); 611:24-613:3 (data sheet attached to declaration only has low-level assembly code, which has different syntax and "can't be the same" as the C-language of the SATRO code); *see also* PI Testimony at 614:1-22, 615:3-18, 620:21-621:24, 622:5-12, 622:22-25, 626:12-19, 628:13-629:9. Thus, the COSPAS-SARSAT standards and component data sheets do not account for the identical and substantially similar code identified by Heppe.

27. Additionally, the ACR and the SATRO source codes are divided into files, depending on the function of the code. Heppe found identical and very similar code in the "Initialize," "ReadEE," "WriteEE," "rwspi," "ProgramPLL," and "send_signal" function files; the "selftest.h" and "testmode.h" files; the "c400.h" and "plb350.h" files; and in the "interrupt" routines files. *See* Heppe First Affidavit, dated Jan, 20, 2011, at pp. 25-37 (the affidavit is attached as Ex. D to the Kelkenberg Decl.); PI Ex. Wu #1.

28. Other evidence of copying is found in the "test_mode" file from the CCK code. That file includes code for a function called "stuck," just as in the ACR code. However, this code in the CCK file does not operate that function anymore. Rather, the operative "stuck" function in the CCK code is now in the interrupt file. PI Testimony at 631:15-633:23, 634:7-18.

29. Heppe also found examples of code that is either identical or very similar in nearly all of the code files. PI Exs. Wu #1 and Wu #2; Heppe Decl., ¶¶ 27-45 and Ex. D. The identical and similar code included both executable code (that which operates the device) and the comments found in source code that have value to the programmers and people managing the business. PI Testimony at 358:17-360:8 (Heppe). In the source code at issue here, including with respect to the roughly 350-

400 lines of identical or substantially similar code shown as examples of copying in Dr. Heppe's comparisons, the comments and executable code were mixed and were often on the same line. PI Testimony at 60:23-61:3, 360:22-362:15.

30. Among the files analyzed by Dr. Heppe were the "c400.h" file in the source code that DME produced and ACR's trade secret "plb350.h" file. Heppe Decl., ¶¶ 37-40 and Ex. D; PI Ex. Wu #2 at pp. 10-18. These files contain "#define statements" that are important and contribute to the overall performance of the system, but could have been written in many other ways. PI Testimony at 365:12-366:25; Heppe Decl., ¶ 37. As stated by Pack, the source code with the "#define statement" in ACR's code "were mostly written by people other than Kaiyu [Wu]. In fact, these parts of the source code had been written before Kaiyu started working on ACR's source code." Pack PI Decl., ¶ 12.

31. Heppe also found near identity in the listing of these "#define statements." Even accounting for 26 logical groupings, Heppe opined that:

> the probability that these unrelated items will appear in exactly the same order, by pure chance, is less than 10^{-26}. ***This is less than one chance in a trillion trillion.***"

Heppe Decl., ¶ 37.

32. Heppe further testified that:

> The pound define statements are essentially a fingerprint. The fact that there are 26 blocks of code that occur in the same order in both sets of code is absolutely clear indication that the code was copied. Beyond this block of code, you've quickly flipped through 10 other pages … showing substantial identical – some are identical letter for letter. Others are similar, substantially similar in naming convention, function, style, comment lines. All of this is indicative of copying.
>
> PI Testimony at 376:22-377:8.

33. The "morse_code.c" file produced by CCK included the exact same typographical error as the equivalent ACR file. Heppe testified these files include three identical lines (including their use of an unnecessary exclamation point) and then both incorrectly state that

they are "morse_code.h" files – when they are actually "morse_code.c" files. Heppe Decl., ¶ 35; PI Testimony at 364:2-8. Similar errors include "acess" instead of "access," "maximun" instead of "maximum," and "minimun" instead of "minimum." Heppe Decl., ¶ 35.

34. Heppe also noted duplication of the comment: "kw add remove latter," which not only duplicates the misspelling of "later," but it was also inserted by Wu into the code he was writing for the SATRO product. Heppe Decl., ¶ 36; PI Ex. Wu #2 at p. 22.

35. Heppe also identified segments of code where groups of individual variables were combined into a "struct" (data structure) in the CCK source code, with variables listed in the same order, although they could have been written in different ways, Heppe Decl., ¶ 44, and he found identical and substantially similar code in both ".c" files, as well as ".h" files. PI Ex. Wu #2 at pages 1-4, 19-31 (".c" files) and pages 5-18 (".h" files).

36. In view of all of this evidence, the Court finds that the similarities between the ACR source code and the code for the SATRO were of a type and quantity that cannot be explained solely by the fact that the same person wrote some or all of the code. The Court also finds that ACR's C language source code could not be readily ascertained from the PLB-350. PI Testimony at 108:12-110:14, 134:2-138:14; Heppe Decl., ¶ 49d. Consistent with the opinion of Heppe, the Court finds that "the entirety of the code was copied and then modified." PI Testimony at 362:17-364:19; 369:25-370:10.

2. ACR's Source Code Specifications

37. Source code specifications are, effectively, the graphical and textual roadmap that is used by a computer programmer to guide the writing of the code. Pack PI Decl., ¶ 13; PI Testimony at 78:25-80:4 and 105:4-16; Harris Dep. at pp. 182-83. The specifications would be valuable to a competitor. PI Testimony at 107:2-7; Pack PI Decl., ¶ 13.

38. ACR's source code specifications were maintained as confidential. Pack PI Decl., ¶ 13, *see* PI Testimony at 106:18-107:11

39. Wu copied flow charts from ACR's trade secret specifications to create the source code specifications that were provided to DME. PI Testimony at 646:17-24 and 648:2-25; *see also* Wu Dep. at 66-67. Also, a comparison of an ACR specification (Pack PI Decl., Ex. F) to the specification that CCK provided to DME (Zelek PI Decl., Ex. H at bates pp. 1022-33) shows copying, including copying of various grammatical mistakes. Heppe Decl., ¶¶ 46-47, Ex. E. Wu had an ACR source code specification document in his possession when he was writing the specification provided to DME. PI Testimony at 655:6-17.

40. CCK provided to DME a "Design Review" document for a meeting on February 16, 2011, which included source code specifications. Zelek PI Decl., Ex. H; PI Testimony at 644:4-21; Cassandra Dep. at 54-55, 72-74, 158, 167. Wu presented the specifications to DME at the February 2011 Design Review meeting, describing how the source code would be written, evidencing the value of such specifications. Cassandra Dep. at pp. 54-55; PI Testimony at 673:11-15. DME reviewed source code specifications and its General Manager understood that DME was signing off on them before work commenced on coding for the SATRO. Cassandra Dep. at p. 72 and p. 73.

41. During the initial stages of the design process for the SATRO, DME approved specifications that were copied from ACR's source code specifications. Cassandra Dep. at p. 73.

42. In view of these facts, the Court finds that Defendants wrongfully used ACR's protected source code specifications in the design of the SATRO.

3. ACR's Trade Secret Schematics, Design, Selection of Components and Circuits, and Testing

43. Much of ACR's schematics for its various personal locator beacons and much of its design and development efforts, including the selection and design of certain circuits, the selection of certain components, and the results of some testing and experimentation, are trade secrets. Pack PI Decl., ¶¶ 4, 7, 8, 25. Much of this information is confidential and would be valuable to competitors. Pack PI Decl., ¶¶ 4, 7, 8, 25. As detailed below, the Court finds that Defendants used some of ACR's schematics and the results of some of its confidential design and development work, including test results, in connection with development of the SATRO. *See, e.g.*, PI Testimony at 131:13-133:8; Heppe Decl., ¶¶ 23-26.

44. Cassina admitted that he knew ACR's proprietary schematic for its PLB-300 from memory. (Cassina Dep. at p. 165; PI Testimony at 435:15-17). Cassina worked on the PLB-350 and had access to the schematic on his computer. PI Testimony at 455:5-456:5; Cassina Decl., ¶ 29 (describing similarity between schematics for the PLB-300 and PLB-350). Tong also knew the ACR beacons well enough that he did not need to reverse engineer them to know their design. Tong Dep. at 164; Tong Decl., ¶¶ 8, 9.

45. Heppe testified as to similarities between the schematic for the SATRO and the schematics for ACR's PLB-350 and its PLB-375. Heppe Decl., ¶¶ 23-26 and Ex. C; PI Testimony at 123:22-130:4. [6]

46. The Court accepts the testimony and other evidence presented by ACR which demonstrates that although many of the circuits included in the ACR and the SATRO schematics, such as filters, phase lock loops, power supplies and power amplifiers, are known to those skilled in

[6] The fact that the SATRO uses a different number of printed circuit boards than the PLB-375 does not demonstrate that Defendants did not use ACR's proprietary information and designs.

this field, there are various way to accomplish the desired result. PI Testimony at 36:15-37:6. However, a particular means of achieving the desired result in a particular device is not generally known. PI Testimony at 36:15-37:6, 46:23-47:5, *see also* PI Testimony at 123:22-127:17 ; 125:20-22; 128:5-12.

47. The data sheets for the components identified on Heppe's List of Similarities did not dictate the circuitry used by ACR or CCK. PI Testimony at 125:23-126:24; Heppe Decl., ¶ 26f.

48. Notwithstanding that fact, a significant majority of the components used in the SATRO were the same or similar to those used in the ACR beacons. Heppe Decl., ¶ 25. The similarities identified by Heppe were not dictated by standards or functional limitations of the products, and are both qualitatively and quantitatively significant. Heppe Decl., ¶¶ 25, 50. Further, there were design alternatives available. Heppe Decl., ¶ 25. The Court finds that the significant degree of similarity did not occur by chance, but was based in great part on Defendants' wrongful appropriation of ACR's proprietary information. Examples of ACR's designs or selections that the Court concludes found their way into the SATRO based upon Defendants' misappropriation of ACR's proprietary information include:

(A) The choice of the GlobalTop PA6B receiver. Although the manufacturer of the GlobalTop PA6B receiver advertised its suitability for the use to which both ACR and DME put it, the Court finds that but for Defendants' knowledge of ACR's choice of that component, and Defendants' knowledge of and access to the results of ACR's testing of this component for the intended use, there is little likelihood DME would have independently arrived at the same decision to choose this product.

(B) The Phase Lock Loop design. As with the GlobalTop PA6B receiver, the design of the Phase Lock Loop in the SATRO, as compared to Phase Lock Loop design in ACR's PLB-

350 and PLB-375, is so similar that the Court finds Defendants could not have independently designed such a circuit without the wrongful use of ACR's proprietary information. The Court accepts the opinion testimony of Heppe to this effect. The Court also rejects Cassina's explanation as to how he independently arrived at the design achieved for the SATRO.

(C) The Low-Pass Filter design. The SATRO also has the same 5-pole Chebyshev low-pass filter design as the ACR PLB-350 and 375. The schematics for the ACR and the SATRO products "all have exactly the same structure and component values for the low-pass filter." Heppe Decl., ¶ 26d. The Court once again finds that Defendants would not have independently determined to use the same low-pass filter design without wrongfully having made use of ACR's proprietary information. The Court rejects Cassina and Professor harris' explanations for Defendants' independent development of this design.

(D) The Phase Modulation and Output Power Divider Circuits. Both the phase modulation and output power divider circuits are identical in the SATRO schematic as compared to the ACR schematics. The Court concludes that the use of these identical circuits, that have the same values, could not have found their way into the SATRO without Defendants wrongful appropriation of ACR's proprietary information.

(E) The Power Amplifier. ACR designed a power amplifier for the PLB-375, the design of which was proprietary. Cassina saw schematics for the PLB-350 and PLB-375 power amplifiers as late as his last two weeks at ACR. PI Testimony at 457:23-25. Tong had emailed a copy of the PLB-350 and the PLB-375 power amplifiers, as well as flow chart depicting them, to Cassina on July 14, 2010, after both had submitted their resignations.[7] PI Testimony at 458:1-9, 459:4-22, and PI Ex. Pack #1. Cassina also had conversations about

[7] The Court finds Tong's testimony about why he sent the e-mail lacking in crediblity.

the power amplifier with Carlos Lizandro, the ACR engineer who designed the power amplifier for the PLB-375. 461:21-462:2. Lizandro reported to Tong and Cassina that he identified a new driver device that would save money, would allow them to eliminate the pre-driver and its surrounding components (which involves cost and space), and would work with the final device.[8] PI Ex. Cassina #1; Pack PI Decl., ¶ 8. This new component was selected by ACR for the PLB-375 after extensive research and testing, all of which was confidential and would be valuable to a competitor. Pack PI Decl., ¶ 8; PI Testimony at 129:7-22. The SATRO contains the same first stage amplifier component as the PLB-375. Additionally, the two-stage power amplifier of the SATRO is very similar to that of the PBL-375, with many components and their values being identical. The Court finds that the similarities between the power amplifiers in the two devices are the result of Defendants wrongful use ACR's proprietary information in designing the power amplifier they incorporated into the SATRO.[9]

49. To prove a violation of the Florida Uniform Trade Secrets Act ("FUTSA"), ACR must demonstrate that defendants misappropriated trade secret information from ACR and that ACR made reasonable efforts to maintain the secrecy.[10] *See* Fla. Stat. § 688.001 *et seq.*; *Lee v. Cercoa, Inc.*, 433 So.2d 1, 2 (Fla. 4th DCA 1983). Misappropriation of a trade secret occurs where a person who knows or has reason to know that the trade secret was acquired by improper means acquires the

[8] The Court also rejects Cassina's testimony that his selection of the amplifier was related to a Competitor product (PI Testimony at 465:4-10).

[9] The Court also finds that Defendants wrongfully used ACR's proprietary information in the design of the 121.5 MHz circuitry and three battery design for the SATRO. An engineer would not independently have come to design the circuitry with the resistors, capacitors and inductors and their values in the same way as ACR did, nor would an engineer independently have come to use three batteries, without knowledge of and use of ACR's testing results.

[10] The Court rejects DME's argument that ACR failed to act promptly to protect its trade secrets upon learning that Mr. Tong e-mailed certain confidential materials to his personal e-mail account.

trade secret of another or where a person who has obtained the trade secret by improper means discloses or uses the trade secret of another without express or implied consent. *See* Fla. Stat. at § 688.002(2); *Del Monte Fresh Produce Co. v. Dole Food Co.*, 136 F.Supp.2d 1271, 1291 (S.D. Fl. 2001).

50. ACR has identified numerous trade secrets, including its source code, its source code specifications, its various circuit designs individually and as combined, certain of its component selections individually and as combined for its various PLBs, and the extensive research, development, and testing efforts.

51. The Court rejects Defendants' assertion that ACR is not entitled to injunctive relief because they could have reverse engineered ACR's PLB-375. *Reingold v. Swiftships, Inc.*, 126 F.3d 645, 652 (5th Cir. 1997) (holding that "protection will be accorded to a trade secret holder against disclosure or unauthorized use gained by improper means, even if others might have discovered the trade secret by legitimate means"). "Theoretical independent development is not a defense." *Milgrim on Trade Secrets*, §7.02[1]][b]. First, there has been no showing of reverse engineering in this case. This is a case of outright misappropriation of the trade secrets and proprietary information of another for competitive advantage. Moreover, the Court agrees with the proposition that once any misappropriation is established, as is the case here, a defendant cannot claim "independent development." *Id.*; *see also Pioneer Hi-Bred Int'l v. Holden Found. Seeds*, 35 F.3d 1226, 1237 (8th Cir. 1994) (holding that the fact that one "could" have obtained a trade secret lawfully is not a defense if one does not actually use proper means to acquire the information); *see also La Calhene, Inc. v. Spolyar*, 938 F.Supp. 523 (W.D. Wis. 1996) (granting preliminary injunction and finding that plaintiff's engineering drawings, results of tests it ran on components, and information about

past mistakes all were protectable trade secrets, notwithstanding defendant's claim that many of plaintiff's products could be reverse engineered).

52. Even if certain components may be known in the industry, compilations of publicly known components can qualify as a trade secret. *See AvidAir Helicopter Supply, Inc. v. Rolls-Royce Corp.*, 663 F.3d 966, 971-74 (8th Cir. 2011) (discussing broad range of information entitled to trade secret protection, including compilations of publicly available information); *Harvey Barnett, Inc. v. Shidler*, 338 F.3d 1125, 1129-30 (10th Cir. 2003) (under UTSA, method for teaching babies to swim protectable as a trade secret even though components may be in the public domain and are known in the field); *see also E.I. duPont deNemours & Co., Inc. v. Christopher*, 431 F.2d 1012, 1014-16 (5th Cir. 1970) (applying Texas law and Restatement of Torts, plaintiff stated a claim for misappropriation based on defendant's acquisition of trade secret information even though the information was obtained from aerial photographs of plaintiff's plant).

53. Additionally, the fact that ACR's trade secrets or proprietary information could be designed by someone with reasonable skill is not controlling. *See Kewanee Oil Co. v. Bicron Corp.*, 416 US 470, 476 (1974) (holding "[n]ovelty, in the patent law sense, is not required for a trade secret.") (citing *W. R. Grace & Co. v. Hargadine*, 392 F. 2d, 9,14 (6th Cir. 1968); *Cataphote Corp. v. Hudson*, 422 F.2d 1290, 1293-94 (5th Cir. 1970) (discussing the difference between trade secret and patent protection and holding novelty and invention are not requisite for a trade secret as they are for patentability); *Forest Lab., Inc. v. The Pillsbury Co.*, 452 F.2d 621, 624 (7th Cir. 1971) (holding that "[a]s distinguished from a patent, a trade secret need not be essentially new, novel or unique").

54. Although ACR may not prevent Defendants from using their general knowledge and skills, the law prohibits Defendants from misappropriating the specific circuit designs, research data, test results and source code at issue here.

55. Defendants' use of ACR's trade secrets is prohibited even if they use them with modifications or improvements based on their own efforts, as long as the substance of the designs used by them "is derived from" an ACR trade secret. *Real-Time Lab., Inc. v. Predator Sys.*, 757 So. 2d 634, 637 (Fla. Dist. Ct. App. 2000) (citing *Forest Labs., Inc. v. Pillsbury Co.*, 452 F.2d 621, 625 (7th Cir. 1971)); *see also Mangren Research & Dev. Corp. v. Nat'l Chem. Co.*, 87 F.3d 937, 944 (7th Cir. 1996) (holding that " if trade secret law were not flexible enough to encompass modified or even new products that are substantially derived from the trade secret of another, the protections that law provides would be hollow indeed"); *Cataphote Corp. v. Hudson*, 422 F.2d 1290, 1294-95 (5th Cir. 1970) (defendant may be liable for misappropriation even if he modifies or improves on the trade secret, and even if the changes required skill and knowledge); *Reingold v. Swiftships, Inc.*, 126 F.3d 645, 653-55 (5th Cir. 1997) (the user of another's trade secret is liable even if he uses it with modifications or improvements, so long as the substance of the process used by the actor is derived from the other's secret); *Nilssen v. Motorola, Inc.*, 963 F. Supp. 664, 683 (N.D. Ill. 1997) (for a trade secret claim, it is not necessary that defendant copied plaintiff's ballast design exactly; liability possible even if the defendant used the plaintiff's trade secrets "only to demonstrate what pitfalls to avoid").

56. ACR's source code, including the comments in the code, constitutes a protectable trade secret. *See Telex Corp. & Telex Computer Prods. Inc. v. Int'l Bus. Machs., Corp.*, 367 F. Supp. 258, 325-26 (N.D. Okla. 1973) (finding that Telex misappropriated IBM's trade secret source code and comments); *JustMed, Inc. v. Byce*, 600 F.3d 1118, 1123 (9th Cir. 2010) (describing the role of

comments in source code and finding the source code as a whole, to be a trade secret); *see also Jamison Bus. Sys. v. Unique Software Support Corp.*, 2005 U.S. Dist. LEXIS 45480, *31 (E.D.N.Y. 2005) (in copyright case, court considered the comments and the fact that the comments were similar was a factor in finding substantial similarity between the source code).

57. The Court finds that the source code that operates ACR's PLB-350 product is proprietary and a valuable trade secret of ACR. PI Testimony at 112:15-25, 355:13-356:16 (Heppe); Pack PI Decl., ¶ 12.

58. Finally, it is no defense in this case that the Individual Defendants were the ones who initiated the misappropriation of ACR's trade secrets and proprietary information, not DME. Under the facts of this case, DME, at the very least, should have known of the misappropriation and cannot benefit from the wrongful use of ACR's protected data by those it retained. *See Computer Assocs. Int'l v. Altai Inc*., 982 F.2d 693, 718-20 (2d Cir. 1992) (employer on inquiry should have known of possession and possible use of trade secrets); *Carter Prods. Inc. v. Colgate-Palmolive Co.*, 130 F.Supp. 557 (D.Md. 1955) (defendant should have known of the misappropriation); *Milgrim on Trade Secrets*, §7.02[2][c] (one cannot insulate against liability by studiously achieved ignorance). The Court concludes, however, that DME must have known of the wrongful misappropriation. Prior to its development of the SATRO, DME had never previously developed a PLB. DME could not have developed its first highly sophisticated PLB in such a short period of time without having made use of ACR's proprietary and trade secret information. DME's management must have known this to be the case.

B. ACR IS LIKELY TO PREVAIL ON ITS CLAI M AGAINST THE INDIVIDUAL DEFENDANTS FOR VIOLATION OF THE NON-DISCLOSURE PORVISIONS OF THEIR EMPLOYMENT CONTRACTS

59. The Individual Defendants were aware of their obligations concerning ACR's confidential or trade secret information. Horn PI Decl., ¶ 6 and Ex. G; ¶ 8.

60. Tong, Cassina and Wu also signed an agreement with ACR regarding non-disclosure and assignment of inventions at the beginning of their employment on December 8, 2004, July 5, 2005, and Nov. 6, 2006, respectively. Horn PI Decl., ¶ 5 and Exs. D-F.

61. Paragraph 1 of the non-disclosure agreements signed by each of the Individual Defendants states:

> I will not disclose to anyone outside of the Company, or use in other than Company business, any confidential information or material relating to the business of the Company, whether owned by the Company or someone else, either during or after my employment, except with the Company's written permission.

In addition, ACR's Employee Conduct and Work Rules policy provided to each of the Individual Defendants at the beginning of their employment with ACR, strictly prohibits:

- Theft or inappropriate removal or possession of Company property, equipment, materials, products, documents or records.
- Unauthorized use of telephones, mail system, or other Company-owned equipment.
- Unauthorized disclosure of business "secrets" or confidential information.

Horn PI Decl., ¶ 7.

62. In addition, each of the Individual Defendants acknowledged, in writing, his assignment of all right, title and interest in any invention, discovery, improvement or idea, patentable or not, in Paragraph 4 of his non-disclosure and assignment of invention agreement signed at the beginning of his employment. Horn PI Decl., at ¶ 11.

63. Paragraph 1 of the non-disclosure agreements signed by each of the Individual Defendants states:

> I will not disclose to anyone outside of the Company, or use in other than Company business, any confidential information or material relating to the business of the Company, whether owned by the Company or someone else, either during or after my employment, except with the Company's written permission.

Furthermore, ACR's Employee Conduct and Work Rules policy provided to each of the Individual Defendants at the beginning of their employment with ACR, strictly prohibits:

- Theft or inappropriate removal or possession of Company property, equipment, materials, products, documents or records.
- Unauthorized use of telephones, mail system, or other Company-owned equipment.
- Unauthorized disclosure of business "secrets" or confidential information.

Horn PI Decl., ¶ 7.

64. Moreover, each of the Individual Defendants acknowledged, in writing, his assignment of all right, title and interest in any invention, discovery, improvement or idea, patentable or not, in Paragraph 4 of his non-disclosure and assignment of invention agreements signed at the beginning of his employment. Horn PI Decl., ¶ 11.

65. On July 6, 2010, Wu informed ACR that he was resigning his employment. Horn PI Decl., ¶ 3 and Ex. B; PI Testimony at 216:14-19. That same day, Cassina informed ACR for the first time that he also was resigning. Horn PI Decl., at ¶ 2 and Ex. A; PI Testimony at 228:14-22, 472:1-6. Three days later, on July 9, 2010, Tong informed ACR for the first time that he too was resigning. Horn PI Decl., at ¶ 4 and Ex. C; PI Testimony at 216:3-13. They each left ACR about fourteen days or less after turning in their letters of resignation. Horn PI Decl., Exs. A-C.

66. In the weeks immediately before the Individual Defendants formed CCK and left ACR's employment, Defendant Tong e-mailed certain ACR confidential documents to his personal e-mail account. Pack Decl., ¶ 15. For example:

- On June 9, 2010, Tong forwarded to his personal e-mail address (cttong9889@bellsouth.net) a list of customers for an ACR product under development, which he obtained from an ACR sales manager. This list included Bass Pro. Wilkerson PI Decl., ¶ 16a; Pack PI Decl., ¶ 15a. Tong admitted that he never interacted with customers and he did not need the list for his work. Tong Dep., at 228-29 and 230**; PI Testimony at 712:2-713:4.

- On June 30, 2010, Tong forwarded to his personal e-mail address an e-mail from ACR's vendor with an attached quotation for PLB components. Tong's e-mail contained sensitive information regarding ACR and Rakon's confidential supplier agreement(s). Wilkerson PI Decl., at ¶ 16e; Pack PI Decl., ¶ 15e. Tong admitted that specialized pricing information is confidential to ACR. Tong Dep. at 197-98.

- On July 19, 2010, the date CCK was created (PI Ex. Cassina #2 [Articles of Incorporation]) and while still employed by ACR, Tong sent an e-mail from his ACR e-mail account to his personal e-mail account an unauthorized copy of ACR's "Next Generation Beacon Core Technology and Product Development Plan." This highly confidential document describes ACR's collaborative development plan to produce a Core Beacon reference design and identified the features to be included in the PLB-375 design. Wilkerson PI Decl., ¶ 16h; Pack Decl.. ¶ 15h. Tong had no legitimate business reason to do so, and his actions violated ACR's policies. Pack's PI Decl., ¶ 17; PI Testimony at 711:14-712:1, 713:1-4. Tong admitted that he sent this document to himself because he might want to use it after he left the company. Tong Dep., at 215-19; PI Testimony at 736:22-737:14.

67. Tong admitted that he was not authorized to e-mail ACR's confidential and trade secret documents to his personal e-mail account. Tong Dep. at pp. 191, 197-98, 210, 216-17, 219, 232, 246; *see e.g.*, PI Testimony at 712:2-11. In his declaration filed with the Court, Tong admitted that e-mailing the aforementioned ACR confidential and proprietary documents to his personal e-mail was a "rash and stupid mistake." Dkt. No. 29-1, Tong Decl., ¶ 20. At the evidentiary hearing, Tong further admitted that he e-mailed the data because "he thought someday he might use that information." PI Testimony at 737:2-9. By doing so, Tong violated ACR's policies. Pack PI Decl., ¶ 17.

68. On July 14, 2010, Tong and Cassina announced their resignations. Less than two weeks before they left the company, Tong sent to Cassina a copy of the technical drawings for the power amplifier used in the PLB-375 and results of battery testing using the newly designed power amplification system (PI Ex. Pack #1; PI Ex. Tong #3). This information is relevant to

how power is used, how long the device works and the life of the battery. Wilkerson PI Decl., ¶ 16g; Pack PI Decl., ¶ 15g.

69. As an ACR employee, Tong was aware that ACR's review and analysis of the Competitor's power amplifier was ACR's confidential and proprietary information. PI Testimony at 687:10-21. DME learned that information from CCK. Cassandra Dep., 85:12-86:12. Mr. Cassandra also testified that he learned from the Individual Defendants that they had reverse engineered the Competitor product while employed at ACR. Cassandra Dep., 85:12-86:12.

70. To prevail on its claim for breach of contract, ACR must establish: (i) the existence of a contract; (ii) material breach; and (iii) damages resulting from the breach. *Vega v. T-Mobile USA, Inc.*, 564 F.3d 1256, 1272 (11th Cir. 2009). The Employee Confidential Information & Assignment of Invention Agreements signed by the Individual Defendants are valid and enforceable contracts, which the Individual Defendants materially breached by copying, distributing, and disclosing ACR's confidential information and trade secrets to CCK and DME and by using that information for the use and benefit of Defendants, thereby resulting in damage to ACR. Ex. 2 ¶¶ 18-19.

71. It is also well-established under Florida law that an employee owes a duty of loyalty to his or her employer. *See, e.g., Life Mktg. of Fla., Inc. v. A.I.G. Life Ins. Co.*, 588 So.2d 663, 665 (Fla. 5th DCA 1991); *McMurry*, 2008 WL 5381922 at *1. To meet the obligations of that duty, "an employee may not engage in disloyal acts in anticipation of his future competition, such as using confidential information acquired during the course of his employment or soliciting customers and other employees prior to the end of his employment." *Furmanite Am., Inc.*, 506 F. Supp.2d at 1149 (citations omitted); *Ins. Field Servs., Inc.*, 384 So.2d at 307-308;

Think Vacuums, Inc. v. March, No. 09-cv-61883, 2011 U.S. Dist. LEXIS 12558 at *6-7 (S.D. Fla. Feb. 9, 2011). Nor may an employee "carry on a rival business during his employment" or "engage in disloyal acts in anticipation of his future competition." *Id.* The Individual Defendants engaged in the types of disloyal acts prohibited under Florida law when they engaged in activities for their own self-interest and adverse to ACR, for CCK's benefit while still employed by ACR.

72. Where an employee uses confidential information gained during his employment in breach of his duty of loyalty, it is appropriate to preliminarily enjoin the employee from further use of that information. *Ins. Field Servs., Inc.*, 384 So.2d at 307-309 (affirming grant of injunction and award of damages where employees had breached duty of loyalty by competing with their former employer while still employed by the former employer); *McMurry*, 2008 WL 5381922 at *4 (finding that former employer would be irreparably harmed if former employee who took former employer's confidential client contact information were permitted to continue to solicit former clients while working for a competitor, and granting preliminary injunction to former employer). Therefore, ACR is likely to prevail on this claim.

C. ACR WILL SUFFER IRREPARABLE HARM IF A PRELIMINARY INJUNCITON IS NOT ISSUED

73. Irreparable harm is presumed where there has been misappropriation of trade secrets. *Talk Fusion, Inc. v. Ulrich*, 2011 WL 2681677 * 5 (M.D. Fla. 2011); *Stoneworks, Inc. v. Empire Marble and Granite, Inc.*, 1998 WL 998962 * 6 (S.D. Fla. 1998); *Lovell Farms, Inc. v. Levy*, 641 So. 2d 103, 105 (Fla. 3d DCA 1994). Additionally, irreparable harm is presumed in cases of breach of non-compete agreements and confidentiality provisions where, as here, the employee revealed specific trade secrets to his new employer. *Southeastern Mechanical Service,*

Inc. v. Brody, 2008 WL 4613046 (M.D. Fla. 2008) (irreparable harm is presumed in trade secret cases). The Court finds that ACR has suffered irreparable harm by virtue of Defendant' wrongful use of ACR's proprietary and trade secret information in the past. The Court also finds that ACR will suffer irreparable harm in the future if Defendants are permitted to continue to make wrongful use of its proprietary and trade secret information.

74. By virtue of the wrongful use of ACR's proprietary and trade secret information, DME has obtained an unfair competitive advantage. Wilkerson PI Decl., ¶ 18; Pack PI Decl., ¶ 25.

75. Without the use and benefit of ACR's confidential and proprietary and trade secret information, DME would not, for a considerable period of time, be able to place a product on the market which could effectively compete with ACR's PLB-375. Allowing DME to enter the market at an accelerated pace with the SATRO based on its wrongful use of ACR's proprietary and trade secret information will irreparably harm ACR's business and its goodwill. Such damage cannot be adequately compensated with monetary damage. *Hatfield v. AutoNation, Inc.*, 939 So.2d 155, 157 (Fla. 4th DCA 2006) (where plaintiff could only speculate as to amount of damage from disclosure of secrets, this supported finding of irreparable harm to grant preliminary injunction); *Bimbo Bakeries USA, Inc.*, 613 F.3d 102, 118 (3d Cir. 2010) (threat of irreparable harm flowing from trade secret misappropriation justified enjoining competitor's employment of plaintiff's former employee); *McMurry*, 2008 WL 5381922 at *4 (granting injunction because of threat of irreparable harm from misappropriation of trade secrets); *Brake Parts, Inc. v. Lewis*, et al., No. 10:6531, 2011 U.S. App. LEXIS 16720, *15 (6th Cir. Aug. 11, 2011) ("…an injury is not fully compensable by money damages if the nature of the plaintiff's loss would make damages difficult to calculate"), *quoting Basicomputer Corp. v.*

Scott, 973 F.2d 507, 511 (6th Cir. 1992). *Brake Parts, Inc*. v. *Lewis et al*., 2011 U.S. App. LEXIS 16720 at *15 (finding loss of goodwill, loss of competitive advantage, and loss or research incentives to be sufficient evidence of irreparable injury); *see also*, *Berster Technologies, LLC v. Christmas*, No. 11-1541, 2012 U.S. Dist. LEXIS 1950 at *31 (E. D. Cal. Jan. 5, 2012) (finding that intangible injuries such as lost or damaged goodwill and other intangibles such as lost business, lost business opportunities, and lost economic value of protected previously confidential and proprietary information).

D. <u>The Injury to ACR Outweighs the Potential Harm to Defendants.</u>

76. Granting an injunction against Defendants will do no more than compel them to comply with their obligations under the law and their contracts. Such relief cannot be said to harm Defendants as it would simply restore the status quo. *Pharmerica, Inc. v. Arledge*, No. 8:07-cv-486, 2007 U.S. Dist. LEXIS 19992, *23 (M.D. Fla. Mar. 21, 2007). Defendants have no right to make use of ACR's trade secrets and proprietary information for their own benefit to unfairly compete with ACR. *Id.* ACR, on the other hand, has a statutorily protected right to preserve its confidential and proprietary information in a manner that shields ACR from damage that could be caused by someone acquiring or disclosing the information through improper means. Nor would the issuance of a preliminary injunction prohibit Defendants from selling any product that is not derived from the misappropriation and infringement of ACR's proprietary information and materials.

77. Moreover, the denial of a preliminary injunction would cause ACR to lose customers, business opportunities and trade secrets, which cannot be compensated adequately by an award of damages. This potential harm clearly and greatly outweighs the consequences of the preliminary injunction against Defendants.

E. Issuance of an Injunction Promotes The Public Interest.

78. Finally, the public interest weighs in favor of granting injunctive relief. The public interest is served by protecting the trade secrets, confidential and proprietary information of businesses which invest a great deal of resources in developing intellectual property. The public has an interest in protecting business from the misapproprition of confidential information such as what occurred here. *Pharmerica, Inc. v. Arledge*, No. 8:07-cv-486, 2007 U.S. Dist. LEXIS 19992, *23 (M.D. Fla. Mar. 21, 2007).

79. Granting equitable relief thus will serve, rather than hinder, the public interest and is appropriate here not only because it would help protect ACR from the harm that its competitors could inflict by granting an unfair advantage, but also because it protects the advancement of honest business practices.[11]

F. Conclusion.

Accordingly, Defendants, and anyone acting in concert with or on their behalf, are preliminary enjoined as follows:

(a) Defendants are hereby enjoined from use of the source code and schematics for the SATRO, including all design, development and testing work with respect to the SATRO product which the Court finds were derived from the wrongful use of ACR's trade secrets and proprietary information;

(b) Defendants are enjoined from making any copies or derivatives of the schematics for the SATRO, and enjoined from any further distribution of such schematics;

(c) Defendants are enjoined from promoting, marketing or selling the SATRO and

[11] The Court has made findings and conclusions on those issues it believes is sufficient to justify the granting of preliminary injunctive relief. The Court makes no findings or conclusions, and the parties should not draw any conclusions, regarding the merits of any of the claims not addressed in this order.

(d) Defendants are enjoined from disclosing the source code or the schematics for the SATRO, and they are enjoined from disclosing or using any trade secret ACR documents or information related to the design, development or testing of any ACR personal locator beacons.

(e) This preliminary injunction is conditioned on ACR posting a $1,000,000.00 bond to stand as security for any damage that may be incurred by Defendants if it is later determined that this injunction was wrongfully issued.[12]

Done and ordered in Chambers in West Palm Beach, Florida, this 31st day of October, 2012.

KENNETH A. MARRA
United States District Judge

[12] The Court's finding on the amount of the bond is without prejudice to either party seeking to either increase of reduce the bond, since the amount of an appropriate bond was not fully explored during the briefing or hearing on this motion.