

Ms. AnnMarie O'Neill
Clerk of Appellate Courts
305 Minnesota Judicial Center
25 Rev. Dr. Martin Luther King, Jr. Blvd.
St. Paul, MN 55155

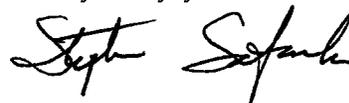
Re: Rotary Systems, Inc. v. TomoTherapy Inc., and
Dynamic Sealing Technologies, Inc.
Anoka County District Court File No. 02-CV-11-3560
Appellate Court File No. _____

Dear Ms. O'Neill:

I enclose for filing with the Court the original and two copies of Appellant Rotary Systems, Inc.'s Notice of Appeal; the original and two copies of Appellant's Statement of the Case; a check in the amount of \$550 for the filing fee; certified copies of the Order Granting Summary Judgment dated December 2, 2013, which was certified by the court administrator as the Judgment dated December 3, 2013, and the Order Granting in Part Defendants' Motions to Dismiss (dated August 29, 2011).

By copy of this letter, I am serving the same on all counsel of record and providing a copy to the trial judges. Also by copy of this letter, I am filing with the Anoka County District Court Administrator a check for \$500 in lieu of cost bond and a copy of Appellant's Notice of Appeal. Proof of Service and Filing is enclosed.

Very truly yours,



Stephen P. Safranski

/kd
Enclosures

cc: R.J. Azyed, Esq.
Tara C. Norgard, Esq.
Alexandra J. Olson, Esq.
Michael D. Hutchens, Esq.
John E. Radmer, Esq.
Patrick W. Michenfelder, Esq.
Frederick M. Young, Esq.
Anoka County Court Administrator
Honorable Sean C. Gibbs
Honorable Daniel A. O'Fallon

84520185.1

893460



93-455-929

ROBINS, KAPLAN, MILLER & CIRESI L.L.P.

2800 LaSALLE PLAZA
800 LaSALLE AVENUE
MINNEAPOLIS, MN 55402-2015

DATE 01/29/14

PAY FIVE HUNDRED FIFTY AND 00/100 DOLLARS

AMOUNT \$ **550.00*****

2 SIGNATURES REQUIRED FOR AMOUNTS \$1000.00 AND OVER

TO THE ORDER OF CLERK OF APPELLATE COURT

Steven A. Schmitt
AUTHORIZED SIGNATURE MANAGING PARTNER

*Details on back.

ROBINS, KAPLAN, MILLER & CIRESI L.L.P.

893460

VENDOR #: 30313

893460

REF. #	INVOICE #	DATE	INVOICE AMOUNT	INVOICE DESCRIPTION	AMOUNT PAID
1263956	cler012914	01-29-14	550.00	notice for appeal	550.00
					893460

893461



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DATE 01/29/14

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AMOUNT \$ **500.00*****

2 SIGNATURES REQUIRED FOR AMOUNTS \$1000.00 AND OVER

TO
THE
ORDER
OF

ANOKA COUNTY COURT ADMINISTRATOR
325 EAST MAIN ST
ANOKA, MN 55303

John A. Schmitt
AUTHORIZED SIGNATURE MANAGING PARTNER

Details on back.

ROBINS, KAPLAN, MILLER & CIRESI L.L.P.

893461

VENDOR #: 58486

REF. #	INVOICE #	DATE	INVOICE AMOUNT	INVOICE DESCRIPTION	AMOUNT PAID
1263957	anoka012914	01-29-14	500.00	deposit fee (in lieu of cost bond)	500.00

893461

893461

AFFIDAVIT OF FILING BY U.S. MAIL

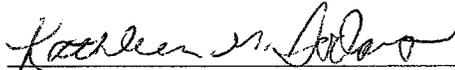
STATE OF MINNESOTA)
 (ss
COUNTY OF HENNEPIN)

Anoka County District Court
File No. 02-CV-11-3560
Appeal No. _____

Kathleen M. Dodaro, City of Prior Lake, County of Scott, being first duly sworn, deposes and states that on the 29th day of January, 2014, she caused to be filed by U.S. Mail, Appellant's Notice of Appeal with:

Anoka County Court Administrator
Anoka County Courthouse
325 East Main Street
Anoka, MN 55303-2489

She also deposited a check in lieu of cost bond in the amount of \$500 thereof in the United States mail, postage prepared to the Court Administrator at the above address.



Kathleen M. Dodaro

Subscribed and sworn to before me
this 29th day of January, 2014.



Notary Public



AFFIDAVIT OF SERVICE BY U.S. MAIL

STATE OF MINNESOTA)
) ss
COUNTY OF HENNEPIN)

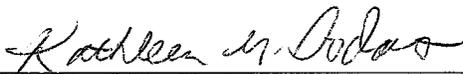
Appeal No. _____
Anoka County District Court
File No. 02-CV-11-3560

Kathleen M. Dodaro, County of Scott, State of Minnesota, says that on the 29th day of January, 2014, she made service of the attached Appellant Rotary Systems, Inc.'s Notice of Appeal; Appellant's Statement of the Case; and copies of the Order Granting Summary judgment (December 2, 2013); the Order for Judgment (December 3, 2013); and the Order (August 29, 2011) re: motions to dismiss and to amend complaint by U.S. Mail by mailing a true and correct copy thereof to, first class, postage paid:

R.J. Zayed, Esq.
Dorsey & Whitney, L.L.P.
50 South Sixth Street, Suite 1500
Minneapolis, MN 55402-1498

Michael D. Hutchens, Esq.
John E. Radmer, Esq.
Meagher & Geer P.L.L.P.
33 South Sixth Street, Suite 4400
Minneapolis, MN 555402

Tara C. Norgard, Esq.
Alexandra J. Olson, Esq.
Carlson, Caspers, Vandenburg,
Lindquist & Schuman, P.A.
Capella Tower, Suite 4200
225 South Sixth Street
Minneapolis, MN 55402

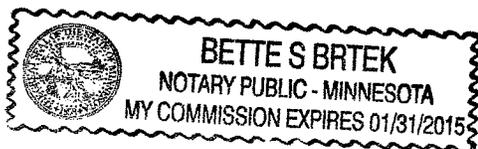


Kathleen M. Dodaro

Subscribed and sworn to
before me this 29th day of January, 2014.



Notary Public



STATE OF MINNESOTA
COUNTY OF ANOKA

DISTRICT COURT
TENTH JUDICIAL DISTRICT

Rotary Systems, Inc.

Plaintiff,

TomoTherapy Inc., and
Dynamic Sealing Technologies, Inc.,

Defendants.

Court File No. 02-CV-11-3560
Judge Sean C. Gibbs
Judgment Entered: Dec. 3, 2013

**NOTICE OF APPEAL
TO COURT OF APPEALS**

TO: Clerk of the Appellate Courts, Minnesota Judicial Center, 25 Rev. Dr.
Martin Luther King Jr. Boulevard, St. Paul, MN 55155-6102.

PLEASE TAKE NOTICE that Plaintiff Rotary Systems, Inc. appeals to the Court of Appeals of the State of Minnesota from the Judgment entered on December 3, 2013, as well as from all orders previously entered in the case affecting the Judgment, including but not limited to: (1) the Order dated August 29, 2011, granting in part Defendants' Motions to Dismiss; and (2) the Order dated December 2, 2013, granting Defendants' motions for summary judgment.

PLAINTIFF
ROTARY SYSTEMS, INC.'s
COUNSEL:

Eric J. Magnuson (#66412)
Stephen P. Safranski (#331326)
Mahesha P. Subbaraman (#392486)
ROBINS KAPLAN MILLER & CIRESI L.L.P.
2800 LaSalle Plaza
800 LaSalle Avenue
Minneapolis, MN 55402-2015
(612) 349-8500

Patrick W. Michenfelder (#24207X)
Frederick M. Young (#352937)

GRIES & LENHARDT P.L.L.P.
12725 43rd Street NE, Suite 201
St. Michael, MN 55376
(763) 497-3099

DEFENDANT
TOMOTHERAPY INC.'s
COUNSEL:

R.J. Zayed (#309849)
DORSEY & WHITNEY, L.L.P.
50 South Sixth Street, Suite 1500
Minneapolis, MN 55402-1498
(612) 340-2600

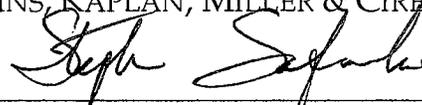
Tara C. Norgard (#307683)
Alexandra J. Olson (#390145)
CARLSON, CASPERS, VANDENBURGH,
LINDQUIST & SCHUMAN, P.A.
Capella Tower, Suite 4200
225 South Sixth Street
Minneapolis, MN 55402
(612) 436-9600

DEFENDANT
DYNAMIC SEALING
TECHNOLOGIES, INC.'s
COUNSEL:

Michael D. Hutchens (#167812)
John E. Radmer (#386973)
MEAGHER & GEER P.L.L.P.
33 South Sixth Street, Suite 4400
Minneapolis, MN 55402
(612) 338-0661

Dated: January 29, 2014

ROBINS, KAPLAN, MILLER & CIRESI L.L.P.

By 

Eric J. Magnuson (#66412)
Stephen P. Safranski (#331326)
Mahesha P. Subbaraman (#392486)
2800 LaSalle Plaza
800 LaSalle Avenue
Minneapolis, MN 55402-2015
(612) 349-8500

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GRIES & LENHARDT, P.L.L.P.
12725 43rd Street NE, Suite 201
St. Michael, MN 55376
(763) 497-3099

*Attorneys for Plaintiff-Appellant Rotary
Systems, Inc.*

No. _____

STATE OF MINNESOTA
IN COURT OF APPEALS

Rotary Systems, Inc.

Plaintiff,

TomoTherapy Inc., and
Dynamic Sealing Technologies, Inc.,

Defendants.

Trial Court File No. 02-CV-11-3560
Judge Sean C. Gibbs
Judgment Entered: Dec. 3, 2013

STATEMENT OF THE CASE OF APPELLANT ROTARY SYSTEMS, INC.

- 1. Court or agency of case origination and name of presiding judge or hearing officer.**

District Court for the Tenth Judicial District, Anoka County.

Hon. Sean C. Gibbs, presiding [issued Orders dated November 15, 2011, May 21, 2012, and December 2, 2013].

Hon. Daniel A. O'Fallon, presiding [issued Order dated August 29, 2011].

- 2. Jurisdictional statement.**

- (A) Appeal from district court.**

Statute, rule or other authority authorizing appeal:

Minn. R. Civ. App. P. 103.03(a)

Date of entry of judgment or date of service of notice of filing of order from which appeal is taken:

On September 1, 2011, Plaintiff-Appellant was served notice of an Order dated and filed August 29, 2011, in which the district court

dismissed six (of seven) counts of Plaintiff/ Appellant's Complaint as displaced under the Minnesota Uniform Trade Secrets Act ("MUTSA"), Minn. Stat. § 325.C07(a).

Subsequently, on December 2, 2013, the district court issued an Order in which the district court granted summary judgment to Defendants-Respondents on the single remaining count of Appellant's Complaint (Appellant's MUTSA claim) and dismissing Appellant's Complaint with prejudice.

On December 3, 2013, the district court entered its Judgment against Plaintiff-Appellant. This is the final judgment in this action.

Authority fixing time limit for filing notice of appeal (specify applicable rule or statute):

Minn. R. Civ. App. P. 104.01, subd. 1.

Date of filing any motion that tolls appeal time:

Not applicable.

Date of filing of order deciding tolling motion and date of service of notice of filing:

Not applicable.

- (B) **Certiorari appeal.** Not applicable.
- (C) **Other appellate proceedings.** Not applicable.
- (D) **Finality of order or judgment.**

Does the judgment or order to be reviewed dispose of all claims by and against all parties, including attorney fees?

Yes (XXX) No ()

If no: Not Applicable.

Did the district court order entry of a final partial judgment for immediate appeal pursuant to Minn. R. Civ. App. P. 104.01?

Yes () No () Not Applicable.

If yes, provide date of order:

Not Applicable.

If no, is the order or judgment appealed from reviewable under any exception to the finality rule?

Yes () No () Not Applicable.

If yes, cite rule, statute, or other authority authorizing appeal:

Not Applicable.

(E) **Criminal only:** Not Applicable.

3. State type of litigation and designate any statutes at issue.

Litigation for misappropriation of Appellant's designs, specifications, and prints, with Appellant asserting claims against Respondent/Defendants Dynamic Sealing Technologies, Inc. and TomoTherapy Inc. for:

- (1) violation of the Minnesota Uniform Trade Secrets Act ("MUTSA");
- (2) conversion;
- (3) unfair competition: tortious interference with prospective business relationship [asserted only against Defendant Dynamic Sealing Technologies, Inc.];
- (4) unjust enrichment;
- (5) negligence [asserted only against Defendant TomoTherapy Inc.];
- (6) accounting; and
- (7) conspiracy.

Minnesota Uniform Trade Secrets Act, Minn. Stat. § 325C, *et seq.*

4. Brief description of claims, defenses, issues litigated and result below. For criminal cases, specify whether conviction was for a misdemeanor, gross misdemeanor, or felony offense.

This action concerns the misappropriation of secret designs, specifications, and prints (“design prints”) for a custom rotary union developed by Plaintiff-Appellant Rotary Systems, Inc. (“Rotary”) for the exclusive benefit of Defendant TomoTherapy Inc. as part of a long-term business relationship between the parties spanning back to 2001. The custom rotary union component at issue constitutes an important and groundbreaking part of medical devices that are built and sold by TomoTherapy.

In January 2005, Rotary provided secret design prints for the rotary union component to TomoTherapy at TomoTherapy’s request. Rotary took these actions based on the parties’ joint, express understanding that Rotary’s trade secrets related to the custom unions were confidential and proprietary in nature and would be held in confidence by TomoTherapy. Rotary took other measures to preserve the secrecy of this information, including stamping its design prints with a conspicuous confidentiality legend, not disclosing them to third parties without an understanding of confidentiality, maintaining the design prints in a segregated, secure storage room, restricting computer access with user names and passwords, requiring departing employees to return employee records, among others.

But after obtaining the confidential design prints for the rotary union, TomoTherapy ended its relationship with Rotary and began purchasing rotary unions from Rotary’s competitor, Defendant Dynamic Sealing Technologies, Inc. In January 2010, Rotary discovered that Dynamic was manufacturing and selling rotary unions that were virtually identical to the rotary unions that it had developed for TomoTherapy.

On April 27, 2011, Rotary filed suit against TomoTherapy and Dynamic, alleging that Dynamic and TomoTherapy had conspired to use Rotary’s confidential design information to develop a competing, infringing rotary union component. Rotary asserted raising seven claims for relief: (1) violation of the Minnesota Uniform Trade Secrets Act (“MUTSA”); (2) conversion; (3) unfair competition [Dynamic only]; (4) unjust enrichment; (5) negligence [TomoTherapy only]; (6) accounting, and (7) conspiracy.

On August 29, 2011, the district court dismissed Rotary's common-law claims with prejudice (i.e., claims 2 through 7 above), concluding that they were displaced by MUTSA. The district court did not consider, however, whether these claims would be displaced if the court determined that Rotary's design prints for the rotary union did not constitute trade secrets, or whether Rotary should have been permitted to plead both MUTSA and tort theories in the alternative under Minn. R. Civ. P. 8.05.

On October 31, 2011, Dynamic and TomoTherapy each filed motions to compel discovery from Rotary. Through these motions, Dynamic and TomoTherapy sought an order compelling Rotary to disclose the specific trade secrets alleged to have been misappropriated. On November 15, 2011, the district court issued two orders granting both of these motions. In these orders, the district court effectively required Rotary to provide Dynamic and TomoTherapy with a "detailed description of each specific trade secret" at issue with "sufficient specificity to determine whether the alleged trade secret qualifies as a trade secret" under MUTSA. On December 15, 2011, Rotary supplemented its discovery responses to Dynamic and TomoTherapy in compliance with this order.

On January 20, 2012, Rotary moved to compel the deposition of Dynamic, under Minn. R. Civ. P. 30.02(f). Shortly thereafter, on February 8, 2012, Dynamic and TomoTherapy filed motions for discovery sanctions against Rotary, arguing that Rotary's supplemented discovery responses did not sufficiently detail the trade secrets raised by the rotary union component. On May 21, 2012, the district court issued an order deciding all three motions. The court denied Rotary's motion to compel and granted in part Dynamic and Rotary's respective motions for sanctions. The district court held in particular that Rotary had failed to "identify with specificity and particularity the trade secrets that Dynamic and Tomo are alleged to have misappropriated" insofar as Rotary cited the "project file" for the rotary union component. The district court thus required Rotary to narrow its identification of the trade secrets to discrete items, and stayed Rotary's right to seek any discovery from Dynamic until Rotary provided the narrowed trade-secret identification ordered by the court.

On July 19, 2012, Rotary provided Dynamic and TomoTherapy with supplemental discovery responses narrowing Rotary's trade secret claim to the rotary union designs and specifications set forth on specifically identified design prints and describing in detail six distinct and unique

aspects of the rotary union component at issue.. Thereafter, on September 6, 2012, Dynamic and TomoTherapy filed a new round of motions for discovery sanctions against Rotary, arguing that Rotary's July 19 supplementation still failed to provide the requisite trade-secret specificity previously ordered by the court.

On December 17, 2012, the district court issued an order denying Dynamic and TomoTherapy's respective motions for discovery sanctions. The court specifically found that Rotary's narrowing of its trade secret claims was sufficient "for defendants to begin to fashion a defense in the litigation." Accordingly, the district court vacated the stay of discovery that it had imposed in its May 21, 2012 Order and permitted Rotary to finally begin taking discovery from Dynamic.

Rotary thereafter renewed its efforts to schedule the Rule 30.02(f) deposition of Dynamic and the individual depositions of Dynamic employees admitted by Dynamic to possess information relevant to Rotary's trade secret claim. Dynamic, however, refused to cooperate. Thus, on July 15, 2013, Rotary filed a motion to compel discovery from Dynamic. This motion sought an order compelling, *inter alia*, Dynamic's Rule 30.02(f) deposition as well as Dynamic's cooperation in scheduling the deposition of five Dynamic employees possessing facts highly material to Rotary's claim—some of whom later swore affidavits in support of TomoTherapy and Dynamic's respective motions for summary judgment.

On August 14, 2013, TomoTherapy and Dynamic each filed motions for summary judgment.

Thereafter, on December 2, 2013, the district court granted both of these motions, dismissing Rotary's remaining MUTSA claim with prejudice on the grounds that Rotary failed to take reasonable steps to preserve the secrecy of the design prints. In doing so, the district court weighed competing and disputed affidavits and other evidence concerning what measures Rotary actually took to preserve the secrecy of its confidential design information, and proceeded to resolve the factual issue of whether those measures were reasonable under the circumstances. The district court thereby concluded that "Rotary took minimal efforts, both internal and external, on its own behalf to preserve the secrecy" of the secrets at issue. The district court never addressed Rotary's motion to compel deposition testimony or Rotary's request for a continuance under Minn. R.

56.06. Nor did the court address Rotary's argument that if Rotary's confidential design information was determined not to be a trade secret, then, as a matter of law, Rotary should be permitted to pursue its common law claims against Dynamic and TomoTherapy.

On December 3, 2013, final judgment was entered against Rotary.

5. List specific issues proposed to be raised on appeal.

- (1) Did the district court err in granting summary judgment to the Defendants on Plaintiff's claim under the Minnesota Uniform Trade Secrets Act because the court held – based on its own weighing of the evidence – that Rotary failed to use reasonable efforts to maintain the secrecy of Rotary's trade secrets?
- (2) Did the district court err in granting summary judgment without compelling Defendants' compliance with Plaintiff's outstanding requests for deposition discovery or granting a continuance to permit Plaintiff to take deposition discovery?
- (3) Does the Minnesota Uniform Trade Secrets Act ("MUTSA") displace common law claims that are based, in part, on misappropriation of information that is determined not to be a trade secret?
- (4) Did the district court err in dismissing Plaintiff's common-law claims for conversion, unfair competition, unjust enrichment, negligence, accounting, and conspiracy as displaced by the MUTSA, when Rotary had pled these claims as alternatives to Rotary's MUTSA claim?
- (5) Did the district court err by failing to permit Rotary Systems to define its trade secrets as it chose to define them, and by forcing Rotary Systems to narrow its claimed trade secrets significantly at the early pleading stage of the litigation?
- (6) Such other issues as are presented by the nature of the appeal and the record below.

6. Related appeals?

List all prior or pending appeals arising from the same action as this appeal. If none, so state.

None.

List any known pending appeals in separate actions raising similar issues to this appeal. If none are known, so state.

None are known.

7. Contents of record.

Is a transcript necessary to review the issues on appeal?

Yes (XXX) No ()

If yes, full (XXX) or partial () transcript?

Has the transcript already been delivered to the parties and filed with the trial court administrator?

Yes () No (XXX)

If not, has it been ordered from the court reporter?

Yes () No (XXX)

If a transcript is unavailable, is a statement of the proceedings under Rule 110.03 necessary?

Yes () No (XXX)

In lieu of the record as defined in Rule 110.01, have the parties agreed to prepare a statement of the record pursuant to Rule 110.04?

Yes () No (XXX)

8. Is oral argument requested?

Yes (XXX) No ()

If so, is argument requested at a location other than that provided in Rule 134.09, subd. 2?

Yes () No (XXX)

If yes, state where argument is requested:

Not Applicable.

9. Identify the type of brief to be filed.

- Formal brief under Rule 128.02. (XXX)
- Informal brief under Rule 128.01, subd. 1 (must be accompanied by motion to accept unless submitted by claimant for reemployment benefits). ()
- Trial memoranda, supplemented by a short letter argument, under Rule 128.01, subd. 2. ()

10. Names, addresses, zip codes and telephone numbers of attorney for appellant and respondent.

APPELLANT
ROTARY SYSTEMS, INC.'S
COUNSEL:

Eric J. Magnuson (#66412)
Stephen P. Safranski (#331326)
Mahesha P. Subbaraman (#392486)
ROBINS KAPLAN MILLER & CIRESI L.L.P.
2800 LaSalle Plaza
800 LaSalle Avenue
Minneapolis, MN 55402-2015
(612) 349-8500

Patrick W. Michenfelder (#24207X)
Frederick M. Young (#352937)
GRIES & LENHARDT P.L.L.P.
12725 43rd Street NE, Suite 201

RESPONDENT
TOMOTHERAPY INC.'S
COUNSEL:

St. Michael, MN 55376
(763) 497-3099

R.J. Zayed (#309849)
DORSEY & WHITNEY, L.L.P.
50 South Sixth Street, Suite 1500
Minneapolis, MN 55402-1498
(612) 340-2600

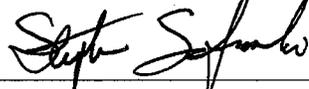
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CARLSON, CASPERS, VANDENBURGH,
LINDQUIST & SCHUMAN, P.A.
Capella Tower, Suite 4200
225 South Sixth Street
Minneapolis, MN 55402
(612) 436-9600

RESPONDENT
DYNAMIC SEALING
TECHNOLOGIES, INC.'S
COUNSEL:

Michael D. Hutchens (#167812)
John E. Radmer (#386973)
MEAGHER & GEER P.L.L.P.
33 South Sixth Street, Suite 4400
Minneapolis, MN 55402
(612) 338-0661

Dated: January 29, 2014

ROBINS, KAPLAN, MILLER & CIRESI L.L.P.

By 

Eric J. Magnuson (#66412)

Stephen P. Safranski (#331326)

Mahesha P. Subbaraman (#392486)

2800 LaSalle Plaza

800 LaSalle Avenue

Minneapolis, MN 55402-2015

(612) 349-8500

Patrick W. Michenfelder (#24207X)

Frederick M. Young (#352937)

GRIES & LENHARDT, P.L.L.P.

12725 43rd Street NE, Suite 201

St. Michael, MN 55376

(763) 497-3099

*Attorneys for Plaintiff-Appellant Rotary
Systems, Inc.*

FILED
Jennifer A Schlieper
Court Administrator

STATE OF MINNESOTA

DEC 02 2013

DISTRICT COURT

COUNTY OF ANOKA

Anoka County, MN

TENTH JUDICIAL DISTRICT

Rotary Systems, Inc.,

JAS
Deputy

Plaintiff,

vs.

Court File No. 02-CV-11-3560

TomoTherapy Incorporated, and
Dynamic Sealing Technologies, Inc.,

Defendants.

ORDER GRANTING SUMMARY JUDGMENT

The above entitled matter came on for hearing before the Honorable Sean C. Gibbs, Judge of District Court, Anoka County, on September 11, 2013 at the Anoka County Courthouse, 325 East Main Street, City of Anoka, County of Anoka, Minnesota. Patrick W. Michenfelder, Esq., and Frederick Young, Esq., appeared on behalf of Plaintiff Rotary Systems, Inc. Tara C. Norgard, Esq., and Alexandra J. Olson, Esq., appeared on behalf of Defendant TomoTherapy Incorporated. John E. Radmer, Esq., appeared on behalf of Defendant Dynamic Sealing Technologies, Inc.

The parties were before the Court pursuant to three motions:

- Defendant TomoTherapy Incorporated's Notice of Motion and Motion for Summary Judgment and Sanctions Under Minn. R. Civ. P. 37.04, dated August 14, 2013.
- Defendant Dynamic Sealing Technologies, Inc.'s Notice of Motion for Summary Judgment and Sanctions Under Minn. R. Civ. P. 37.04 and for Protective Order and Attorney's Fees, dated August 14, 2013.
- Plaintiff Rotary Systems, Inc.'s Notice of Motion and Motion to Compel Deposition Under Minn. R. Civ. P. 30.02(f), dated July 15, 2013.

NOW, THEREFORE, based upon all of the files, records and proceedings and upon the Court being fully advised in the premises, the Court makes the following:

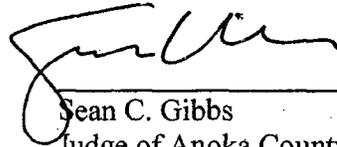
ORDER FOR JUDGMENT

1. Defendant TomoTherapy Incorporated's Motion for Summary Judgment is **GRANTED**.
2. Defendant Dynamic Sealing Technologies, Inc.'s Motion for Summary Judgment is **GRANTED**.
3. Plaintiff's Complain is **DISMISSED WITH PREJUDICE**.
4. The Attached Memorandum of Law is incorporated herein and fully made part of this Order.

LET JUDGMENT BE ENTERED ACCORDINGLY

BY THE COURT:

Dated: 12/2, 2013



Sean C. Gibbs
Judge of Anoka County District Court
Tenth Judicial District

JAN 15 2014

Jennifer A. Schlieper, Court Administrator

By: 

Deputy

MEMORANDUM OF LAW
ROTARY SYSTEMS, INC. V. TOMOTHERAPY INCORPORATED AND DYNAMIC
SEALING TECHNOLOGIES, INC.
COURT FILE NO. 02-CV-11-3560

I. FACTUAL BACKGROUND FOR SUMMARY JUDGMENT MOTIONS

This is an action under Minnesota Statutes Chapter 325C, Minnesota's version of the Uniform Trade Secrets Act. Plaintiff Rotary Systems, Inc. ("Rotary") and Defendant Dynamic Sealing Technologies, Inc. ("Dynamic") each manufacture rotary union devices¹. Defendant TomoTherapy Incorporated ("Tomo") purchases rotary unions from Dynamic. The relevant facts of this matter pertinent to the various motions to compel discovery are set out in this Court's May 21, 2012 and December 17, 2012 Memoranda of Law.

A. DYNAMIC'S FOUNDING AND 2002 LITIGATION

Dynamic was founded in 2002 by Jeff Meister ("Meister"), a former Rotary employee that was terminated in January 2002 by Rotary founder and CEO Jerry Szykulski ("Szykulski"). Meister began working for Rotary in 1996 and was involved in the development of the DO112 rotary union device ("Union") that Rotary developed and designed for Tomo. Meister sued Szykulski and Rotary in March 2002, seeking damages and equitable relief relating to the terms and conditions of his employment and association with Rotary. Rotary counterclaimed for misappropriation of trade secrets, alleging that Meister took Rotary's confidential and proprietary information with him to Dynamic. Among the information that Rotary alleged Meister took were "designs and specifications." Later in the case, Rotary added a claim for misappropriation of trade secrets against Dynamic, where Rotary once again claimed that Meister had improperly taken "design drawings and specifications."

¹A rotary union is a device used to transfer liquid or gas between stationary component of an application and a rotating component of that same application.

Rotary, Szykulski, Dynamic, and Meister settled all claims in the 2002 litigation by executing a Settlement and Mutual Release Agreement (“Settlement”).² The Settlement contained mutual releases of all claims, including Rotary’s trade secret claims against Meister and Dynamic. The Settlement contains the following release provision pertinent to this litigation:

b. Release of Meister and DSTI and Rotary – Szykulski and Rotary agree to and hereby to release and discharge Meister and DSTI, DSTI’s shareholders, directors, officers, employees, agents, subsidiaries, and affiliated companies (“the Meister Parties Released”) from and all claims that they have or may have against the Meister Parties Released or any of them which may have occurred prior to the date of this Agreement. Szykulski and Rotary specifically acknowledge that this release extinguishes all claims against the Meister Parties Released, whether past or present, known or unknown, foreseen or unforeseen, without regard to whether such claims are liquidated or contingent, accrued or unaccrued, or whether based upon contract, equity, tort, statutory violation, or rule of court, from the beginning of time to the date of this Agreement.

The Settlement further required Rotary to make a series of annual payments to Meister.

B. OPERATION OF THE DO112 ROTARY UNION DEVICE

Tomo purchased its first Union from Rotary in early 2001. Rotary admits that “Meister was involved with the development of the TomoTherapy Custom Rotary Union Component while he was employed by Rotary Systems and had access to the trade secret information related to it.” Meister was involved in the design of the Union through at least Revision A.2 in December 2001. Meister was never subject to any non-disclosure or confidentiality agreement while working for Rotary. In addition, Dynamic provides affidavits from John Knoll, Bret Vilella, and Scott Illstrup, all former employees of Rotary. In each of their respective affidavits, they state that they were never subject to non-disclosure or confidentiality agreements and never received any training from Rotary regarding the trade secret status of anything they worked on.

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Fred and I went to Rotary Systems on Tuesday and Wednesday to try and resolve the large number of recent failures in rotating unions. We reviewed manufacturing and inspection processes, toured the machine shop, discussed potential variables in the fabrication of the union, set up the test bed, had a conference call with Parker representatives and trained Rotary Systems personnel on our run-in and testing procedures.

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Attached to the email is an itinerary of Tomo's tour of Rotary's facility. It contains several items of sensitive information regarding the Union. Similarly, the itinerary of Tomo's August 2004 trip to Rotary's facility contains sensitive information concerning the Union. Due to Rotary's failure to solve the continuing problems with the Unions, Tomo moved to Analogic, a new rotary union vendor, in 2007, and eventually began purchasing rotary unions from Dynamic in 2010.

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specifications about the Union and stating the information was proprietary and that a non-disclosure agreement would be required. This was the first time in the Rotary/Tomo relationship that Rotary made any mention of a non-disclosure agreement. Dumitrascu replied by stating that she was under the assumption that Rotary and Tomo had a valid non-disclosure agreement but that she would sign one as required by Szykulski. Szykulski never required Dumitrascu to sign a non-disclosure agreement, even after Dumitrascu followed up in another email to Szykulski. Rotary continued to provide information and specifications about the Union to Dumitrascu and other Tomo employees without restriction.

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This is an action under Minnesota Statutes Chapter 325C, the Uniform Trade Secrets Act ("UTSA"), for misappropriation of the Union, which according to Rotary has six specific components that combine to create the Union: 1) the 35 inch thru bore shaft, 2) the housing, 3) the ball bearing method, which includes four ball bearings per race, eight total, 4) the seals, 5) the grease, and 6) the connection points, using Tri-Clover fittings.

Pursuant to Minn. Stat. § 325C.01, subd. 5, a "trade secret" is

information, including a formula, pattern, compilation, program, device, method, technique, or process, that:

- (i) 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, and
- (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

Furthermore,

The existence of a trade secret is not negated merely because an employee or other person has acquired the trade secret without express or specific notice that it is a trade secret if, under all the circumstances, the employee or other person knows or has reason to know that the owner intends or expects the secrecy of the type of information comprising the trade secret to be maintained.

Minn. Stat. § 325C.01, subd. 5. The UTSA allows for damages and injunctive relief for "misappropriation." The definition of "misappropriation" is not germane to this motion.

II. SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate where the "pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact" and as a result, the moving party is entitled to judgment "as a matter of law." Minn. R. Civ. P. 56.03; Britton v. Koep, 470 N.W.2d 518, 524 (Minn. 1991). Where there are no material facts in dispute, summary judgment is an appropriate method for the determination of pure legal issues. Burns v. Sands, 570 N.W.2d 17, 19 (Minn. App. 1997).

To prevail, the party seeking summary judgment must show there is an absence of any issue of material fact. Fabio v. Bellomo, 504 N.W.2d 758, 761 (Minn. 1993). The non-moving party, on the other hand, "must present specific facts which give rise to a genuine issue of material fact for trial." W.J.L. v. Bugge, 573 N.W.2d 677, 680 (Minn. 1998). In making its decision, "the court must view the evidence in the light most favorable to the nonmoving party." State by Beaulieu v. City of Mounds View, 518 N.W.2d 567, 571 (Minn. 1994). The court must do so because summary judgment is a 'blunt instrument,' which should be employed only where

it is perfectly clear that no issue of fact is involved. Donnay v. Boulware, 144 N.W.2d 711, 716 (Minn. 1966).

“Upon a motion for summary judgment . . . the adverse party cannot preserve his right to a trial on the merits merely by referring to unverified and conclusionary allegations in his pleading or by postulating evidence which might be developed at trial.” Rosvall v. Provost, 155 N.W.2d 900, 904 (Minn. 1968). A party opposing a motion for summary judgment cannot rely on the mere averments in its pleadings and unsupported allegations, it must present affirmative evidence sufficient to raise an issue of material fact. Naegele Outdoor Advertising Co. of Minneapolis v. City of Lakeville, 532 N.W.2d 249, 252 (Minn. App. 1995), review denied (Minn. July 20, 1995); Minn. R. Civ. P. 56.05. A “genuine issue” for trial “must be established by substantial evidence.” DHL, Inc. v. Russ, 566 N.W.2d 60, 69-70 (Minn. 1997) (quoting Murphy v. Country House, Inc., 240 N.W.2d 507, 512 (Minn. 1976)).

II. SUMMARY JUDGMENT MOTIONS BY DYNAMIC AND TOMO

Common to the summary judgment motions of Dynamic and Tomo is the argument that Rotary’s claims should be dismissed because Rotary failed to use reasonable efforts to maintain the secrecy of its alleged trade secret.

A plaintiff asserting a trade secret claim under the UTSA must demonstrate that it took some effort to keep the information secret. Electro-Craft Corp. v. Controlled Motion, Inc., 332 N.W.2d 890, 901 (Minn. 1983). The UTSA does not require the maintenance of absolute confidentiality. Id. By its own terms, the UTSA does not require the implementation of specific measures, but efforts that are “reasonable under the circumstances.” Minn. Stat. § 325C.01, subd. 5. “These efforts may extend both to internal secrecy, keeping the information in-house,

and to external secrecy, keeping the information from those outside in the general trade or industry.” Jostens, Inc. v. National Computer Systems, Inc., 318 N.W.2d 691, 700 (Minn. 1982).

Typical internal measures taken to protect the secrecy of a trade secret are: (1) Limiting access to the area containing the trade secret; (2) putting employees on notice of the trade secret status of matters on which they are working, typically by the use of confidentiality or non-disclosure agreements; (3) restricting visitors to sensitive areas of a plan or manufacturing facility; (4) Separating sensitive areas or processes from other areas of a facility; (5) keeping secret documents in locked files; and (6) distributing secret materials on a strictly “need-to-know” basis. Surgidev Corp. v. Eye Tech, Inc., 648 F.Supp. 661, 693-94 (D. Minn. 1986).

In the 2002 litigation between Rotary and Meister, Rotary moved for a temporary restraining order preventing Meister from using any of Rotary’s alleged trade secrets. In his Order denying the motion for the temporary restraining order, the Honorable Lawrence Johnson, Judge of District Court, Anoka County, found that Rotary was not likely to prevail on the merits of the matter due to the failure to maintain the secrecy of its alleged trade secrets:

While the Court realizes that Rotary Systems is a small company and its employees need access to the information at issue in order to do their jobs, it nevertheless must show more than a mere intent to keep this information secret in order to be afforded trade secret protection. Examining the record, the Court finds that Rotary Systems failed to sufficiently do this and its mere allegation that it maintained sufficient secrecy, without more, is not enough to warrant trade secret protection.

During the time of Meister’s employment, Rotary Systems did not require most of its employees, including Meister, to execute a non-compete or confidentiality agreement; it did not utilize any type of internal security system or restrict access to areas containing confidential design information; there was no password protection for computer software containing design drawings, CNC data and customer information; the customer information board was not always covered or removed, leaving it in plain view of unauthorized people; there was no employment handbook or written policy outlining confidential information; and tours were given to customers without warnings as to confidential information...

Rotary systems has not shown that it made reasonable efforts to treat its product design, manufacturing and customer information secret during Meister's employment and therefore ha[d] not met its burden of establishing the existence of a protectable trade secret or misappropriation of such under the Uniform Trade Secret Act.

While this Court is not bound by Judge Johnson's finding in the 2002 litigation, it bears noting that Rotary had sufficient notice that its internal and external security measures were likely inadequate to survive scrutiny if it made further claims under the UTSA.

In support of its opposition to defendants' summary judgment motions, Rotary supplied an affidavit from Szykulski that references the measures Rotary took to keep information regarding the Union secret. In the affidavit, Szykulski states that Rotary took the following steps to keep information regarding the Union secret:

Not disclosing them to third parties unless that party agrees to maintain their confidentiality; requiring its employees to sign a handbook, utilizing a document shredding company; controlling visitors to the facility and limiting access to its facility; requiring employees to wear clothing bearing the Rotary Systems name; use of faux security cameras; maintaining the DO112 Custom Rotary Union Component design prints in storage file cabinets and a segregated records storage room; restricting access to them on a need-to-know basis; restricting access to its computers and electronic information to those with approved user names and passwords; requiring departing employees to return company materials; and by screening and pre-approving all information publicly disclosed at trade shows and on its website and other advertising.

This is all Rotary provides in support of its contention that it took reasonable efforts to maintain the secrecy of the Union. Rotary provides no documentary support or affidavits of current or former employees to provide support for Szykulski's claims.³ Nothing supports the claims made by Szykulski in his affidavit. This is hardly the affirmative evidence needed to establish a genuine issue of material fact for trial in order to survive a motion for summary judgment.

³ The Court notes that Szykulski's list of the efforts Rotary took to keep the Union secret were very similar to the list in Surgediv and somewhat mirror Judge Johnson's list of Rotary's failures in 2002.

The record presents the following with regard to Rotary's efforts to maintain the secrecy of the Union:

- **Confidentiality or Non-Disclosure Agreements.** Rotary did not have a non-disclosure or confidentiality agreement with Meister, Tomo, or any of Tomo's individual employees. Dynamic provided the affidavits of three other former Rotary employees who each stated that they were not bound by such an agreement and did not receive training regarding the trade secret status of anything they worked on. Rotary did not provide an affidavit from any current or former employee stating that they were bound by such an agreement. Furthermore, Rotary did not provide any evidence supporting its claim that its employees were required to sign a handbook. Rotary makes much of the fact that Szykulski broached the topic of requiring Tomo's Mary Dumitrascu to sign a non-disclosure agreement. However, when Dumitrascu agreed to sign such a document, Szykulski did not follow up and require her or anyone at Tomo to do so. He simply continued to provide information regarding the Union.
- **Tomo Toured Rotary's Facility at Least Twice.** In June 2004 and August 2004, Tomo representatives visited Rotary's facility and were able to gather information regarding the dimensions, materials, and operation of the Union. Tomo representatives were able to take extensive notes during these visits, which were included by each defendant in support of their instant motions. There is no evidence that Tomo's representatives were instructed that what they viewed at Rotary's facility was a trade secret and they were prohibited from disclosing what they saw or learned there.
- **Disclosures were Made to Tomo Before and After January 2005.** Rotary made several disclosures by email to Tomo before and after January 2005.
- **Rotary Supplied Information on the Union to Third Parties.** Rotary supplied drawings and other information on the Union to several third parties from 2002 to 2005. Rotary did execute non-disclosure agreements with Checker Machine and Parker Hannifin, two suppliers of parts for the Union, in 2002. However, it disclosed information regarding the shaft and seals to Parker Hannifin prior to its execution of the agreement with Parker Hannifin and disclosed drawings to Checker Machine after the deadline by which it was to make all disclosures under the agreement with Checker Machine.
- **Internal Security Measures.** As stated, Szykulski catalogs the internal efforts he states Rotary took to keep the Union secret but fails to provide any documentation to support his claims.
- **Rotary's Drawings and Prints.** Rotary's drawings and prints contained a boilerplate statement that the drawing contained proprietary information and that the recipient agrees not to disclose the drawing or use its contents in any way detrimental to Rotary's interest.

Countless times during this litigation, Rotary's counsel referred to the Union as "one of a kind," "custom," and "revolutionary." In his affidavit, Szykulski calls the Union "absolutely unique" and states that Rotary incurred "tremendous expense" in creating and developing the Union. It

stands to reason that Rotary had incentive to use all means at its disposal to preserve the secret status of the Union. It did not do so, even after learning in the 2002 litigation that its efforts might not survive scrutiny under the UTSA. The Court finds that there is no genuine issue of material fact regarding Rotary's efforts to preserve the secrecy of the Union. They were not reasonable under the circumstances. It disclosed information to Tomo and third parties without restriction. Rotary built the Union for Tomo and never executed a non-disclosure agreement with Tomo. It instead executed non-disclosure agreements with two suppliers of parts for the Union. It relied on boilerplate language on its design prints to preserve the secrecy of the drawings' contents. There is no indication that Rotary ever pointed out or emphasized the language on the drawings to recipients. Rotary allowed Tomo representatives to view its manufacturing facility and take notes regarding the Union without restriction. Rotary did not execute non-disclosure or non-compete agreements with its own employees. The conclusory statements that Szykulksi makes in his affidavit about Rotary's internal efforts to keep the Union secret, without more, are not the affirmative evidence required to create a genuine issue of material fact for trial. Rotary makes much of the fact that Dumistrascu was under the impression that Tomo and Rotary had a valid non-disclosure agreement. However, this was six years into Rotary's relationship with Tomo and by that time Tomo had already received information about the Union without restriction and Rotary allowed Tomo representatives to tour Rotary's facility and gather information about the Union.

Mere intent to keep something secret is not enough under the UTSA. Electro-Craft, 332 N.W.2d at 901. That is what Rotary seeks in this matter, that this Court find that it made reasonable efforts to preserve the secrecy of the Union based on its intent and self-serving statements of its owner. Rotary took minimal affirmative efforts, both internal and external, on its own behalf to preserve the secrecy of the Union. Rotary created the Union for Tomo but

failed to take reasonable steps to preserve its secrecy by the use of non-disclosure agreements and by sharing information with Tomo and other third parties without restriction. Defendants' motions for summary judgment are granted. Having granted the motions for summary judgment on the merits, the Court does not address the remaining arguments of Tomo and Dynamic.

SCG

scg 12/2/13

FILED
Jennifer A Schlieper
Court Administrator

STATE OF MINNESOTA
COUNTY OF ANOKA

DEC 02 2013

Anoka County, MN

DISTRICT COURT
TENTH JUDICIAL DISTRICT

Rotary Systems, Inc.,

Plaintiff,

vs.

Court File No. 02-CV-11-3560

TomoTherapy Incorporated, and
Dynamic Sealing Technologies, Inc.,

Defendants.

ORDER GRANTING SUMMARY JUDGMENT

The above entitled matter came on for hearing before the Honorable Sean C. Gibbs, Judge of District Court, Anoka County, on September 11, 2013 at the Anoka County Courthouse, 325 East Main Street, City of Anoka, County of Anoka, Minnesota. Patrick W. Michenfelder, Esq., and Frederick Young, Esq., appeared on behalf of Plaintiff Rotary Systems, Inc. Tara C. Norgard, Esq., and Alexandra J. Olson, Esq., appeared on behalf of Defendant TomoTherapy Incorporated. John E. Radmer, Esq., appeared on behalf of Defendant Dynamic Sealing Technologies, Inc.

The parties were before the Court pursuant to three motions:

- Defendant TomoTherapy Incorporated's Notice of Motion and Motion for Summary Judgment and Sanctions Under Minn. R. Civ. P. 37.04, dated August 14, 2013.
- Defendant Dynamic Sealing Technologies, Inc.'s Notice of Motion for Summary Judgment and Sanctions Under Minn. R. Civ. P. 37.04 and for Protective Order and Attorney's Fees, dated August 14, 2013.
- Plaintiff Rotary Systems, Inc.'s Notice of Motion and Motion to Compel Deposition Under Minn. R. Civ. P. 30.02(f), dated July 15, 2013.

NOW, THEREFORE, based upon all of the files, records and proceedings and upon the Court being fully advised in the premises, the Court makes the following:

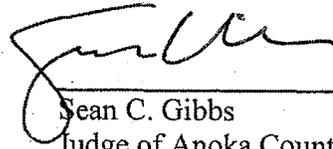
ORDER FOR JUDGMENT

1. Defendant TomoTherapy Incorporated's Motion for Summary Judgment is **GRANTED**.
2. Defendant Dynamic Sealing Technologies, Inc.'s Motion for Summary Judgment is **GRANTED**.
3. Plaintiff's Complain is **DISMISSED WITH PREJUDICE**.
4. The Attached Memorandum of Law is incorporated herein and fully made part of this Order.

LET JUDGMENT BE ENTERED ACCORDINGLY

BY THE COURT:

Dated: 12/2, 2013



Sean C. Gibbs
Judge of Anoka County District Court
Tenth Judicial District

JUDGMENT

The above Conclusions of Law and/or Order for Judgment constitute the Judgment of the Court.

Jennifer Schlieper, Court Administrator
Anoka County, MN

Date: 12-3-13 By: [Signature]
Deputy

JAN 15 2014

Jennifer A. Schlieper, Court Administrator

By: [Signature]
Deputy

MEMORANDUM OF LAW
ROTARY SYSTEMS, INC. V. TOMOTHERAPY INCORPORATED AND DYNAMIC
SEALING TECHNOLOGIES, INC.
COURT FILE NO. 02-CV-11-3560

I. FACTUAL BACKGROUND FOR SUMMARY JUDGMENT MOTIONS

This is an action under Minnesota Statutes Chapter 325C, Minnesota's version of the Uniform Trade Secrets Act. Plaintiff Rotary Systems, Inc. ("Rotary") and Defendant Dynamic Sealing Technologies, Inc. ("Dynamic") each manufacture rotary union devices¹. Defendant TomoTherapy Incorporated ("Tomo") purchases rotary unions from Dynamic. The relevant facts of this matter pertinent to the various motions to compel discovery are set out in this Court's May 21, 2012 and December 17, 2012 Memoranda of Law.

A. DYNAMIC'S FOUNDING AND 2002 LITIGATION

Dynamic was founded in 2002 by Jeff Meister ("Meister"), a former Rotary employee that was terminated in January 2002 by Rotary founder and CEO Jerry Szykulski ("Szykulski"). Meister began working for Rotary in 1996 and was involved in the development of the DO112 rotary union device ("Union") that Rotary developed and designed for Tomo. Meister sued Szykulski and Rotary in March 2002, seeking damages and equitable relief relating to the terms and conditions of his employment and association with Rotary. Rotary counterclaimed for misappropriation of trade secrets, alleging that Meister took Rotary's confidential and proprietary information with him to Dynamic. Among the information that Rotary alleged Meister took were "designs and specifications." Later in the case, Rotary added a claim for misappropriation of trade secrets against Dynamic, where Rotary once again claimed that Meister had improperly taken "design drawings and specifications."

¹A rotary union is a device used to transfer liquid or gas between stationary component of an application and a rotating component of that same application.

Rotary, Szykulski, Dynamic, and Meister settled all claims in the 2002 litigation by executing a Settlement and Mutual Release Agreement (“Settlement”).² The Settlement contained mutual releases of all claims, including Rotary’s trade secret claims against Meister and Dynamic. The Settlement contains the following release provision pertinent to this litigation:

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The Settlement further required Rotary to make a series of annual payments to Meister.

B. OPERATION OF THE DO112 ROTARY UNION DEVICE

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Pursuant to Minn. Stat. § 325C.01, subd. 5, a "trade secret" is

information, including a formula, pattern, compilation, program, device, method, technique, or process, that:

- (i) 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, and
- (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

Furthermore,

The existence of a trade secret is not negated merely because an employee or other person has acquired the trade secret without express or specific notice that it is a trade secret if, under all the circumstances, the employee or other person knows or has reason to know that the owner intends or expects the secrecy of the type of information comprising the trade secret to be maintained.

Minn. Stat. § 325C.01, subd. 5. The UTSA allows for damages and injunctive relief for "misappropriation." The definition of "misappropriation" is not germane to this motion.

II. SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate where the "pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact" and as a result, the moving party is entitled to judgment "as a matter of law." Minn. R. Civ. P. 56.03; Britton v. Koep, 470 N.W.2d 518, 524 (Minn. 1991). Where there are no material facts in dispute, summary judgment is an appropriate method for the determination of pure legal issues. Burns v. Sands, 570 N.W.2d 17, 19 (Minn. App. 1997).

To prevail, the party seeking summary judgment must show there is an absence of any issue of material fact. Fabio v. Bellomo, 504 N.W.2d 758, 761 (Minn. 1993). The non-moving party, on the other hand, "must present specific facts which give rise to a genuine issue of material fact for trial." W.J.L. v. Bugge, 573 N.W.2d 677, 680 (Minn. 1998). In making its decision, "the court must view the evidence in the light most favorable to the nonmoving party." State by Beaulieu v. City of Mounds View, 518 N.W.2d 567, 571 (Minn. 1994). The court must do so because summary judgment is a 'blunt instrument,' which should be employed only where

it is perfectly clear that no issue of fact is involved. Donnay v. Boulware, 144 N.W.2d 711, 716 (Minn. 1966).

“Upon a motion for summary judgment . . . the adverse party cannot preserve his right to a trial on the merits merely by referring to unverified and conclusionary allegations in his pleading or by postulating evidence which might be developed at trial.” Rosvall v. Provost, 155 N.W.2d 900, 904 (Minn. 1968). A party opposing a motion for summary judgment cannot rely on the mere averments in its pleadings and unsupported allegations, it must present affirmative evidence sufficient to raise an issue of material fact. Naegele Outdoor Advertising Co. of Minneapolis v. City of Lakeville, 532 N.W.2d 249, 252 (Minn. App. 1995), review denied (Minn. July 20, 1995); Minn. R. Civ. P. 56.05. A “genuine issue” for trial “must be established by substantial evidence.” DHL, Inc. v. Russ, 566 N.W.2d 60, 69-70 (Minn. 1997) (quoting Murphy v. Country House, Inc., 240 N.W.2d 507, 512 (Minn. 1976)).

II. SUMMARY JUDGMENT MOTIONS BY DYNAMIC AND TOMO

Common to the summary judgment motions of Dynamic and Tomo is the argument that Rotary’s claims should be dismissed because Rotary failed to use reasonable efforts to maintain the secrecy of its alleged trade secret.

A plaintiff asserting a trade secret claim under the UTSA must demonstrate that it took some effort to keep the information secret. Electro-Craft Corp. v. Controlled Motion, Inc., 332 N.W.2d 890, 901 (Minn. 1983). The UTSA does not require the maintenance of absolute confidentiality. Id. By its own terms, the UTSA does not require the implementation of specific measures, but efforts that are “reasonable under the circumstances.” Minn. Stat. § 325C.01, subd. 5. “These efforts may extend both to internal secrecy, keeping the information in-house,

and to external secrecy, keeping the information from those outside in the general trade or industry.” Jostens, Inc. v. National Computer Systems, Inc., 318 N.W.2d 691, 700 (Minn. 1982).

Typical internal measures taken to protect the secrecy of a trade secret are: (1) Limiting access to the area containing the trade secret; (2) putting employees on notice of the trade secret status of matters on which they are working, typically by the use of confidentiality or non-disclosure agreements; (3) restricting visitors to sensitive areas of a plan or manufacturing facility; (4) Separating sensitive areas or processes from other areas of a facility; (5) keeping secret documents in locked files; and (6) distributing secret materials on a strictly “need-to-know” basis. Surgidev Corp. v. Eye Tech, Inc., 648 F.Supp. 661, 693-94 (D. Minn. 1986).

In the 2002 litigation between Rotary and Meister, Rotary moved for a temporary restraining order preventing Meister from using any of Rotary’s alleged trade secrets. In his Order denying the motion for the temporary restraining order, the Honorable Lawrence Johnson, Judge of District Court, Anoka County, found that Rotary was not likely to prevail on the merits of the matter due to the failure to maintain the secrecy of its alleged trade secrets:

While the Court realizes that Rotary Systems is a small company and its employees need access to the information at issue in order to do their jobs, it nevertheless must show more than a mere intent to keep this information secret in order to be afforded trade secret protection. Examining the record, the Court finds that Rotary Systems failed to sufficiently do this and its mere allegation that it maintained sufficient secrecy, without more, is not enough to warrant trade secret protection.

During the time of Meister’s employment, Rotary Systems did not require most of its employees, including Meister, to execute a non-compete or confidentiality agreement; it did not utilize any type of internal security system or restrict access to areas containing confidential design information; there was no password protection for computer software containing design drawings, CNC data and customer information; the customer information board was not always covered or removed, leaving it in plain view of unauthorized people; there was no employment handbook or written policy outlining confidential information; and tours were given to customers without warnings as to confidential information...

Rotary systems has not shown that it made reasonable efforts to treat its product design, manufacturing and customer information secret during Meister's employment and therefore ha[d] not met its burden of establishing the existence of a protectable trade secret or misappropriation of such under the Uniform Trade Secret Act.

While this Court is not bound by Judge Johnson's finding in the 2002 litigation, it bears noting that Rotary had sufficient notice that its internal and external security measures were likely inadequate to survive scrutiny if it made further claims under the UTSA.

In support of its opposition to defendants' summary judgment motions, Rotary supplied an affidavit from Szykulski that references the measures Rotary took to keep information regarding the Union secret. In the affidavit, Szykulski states that Rotary took the following steps to keep information regarding the Union secret:

Not disclosing them to third parties unless that party agrees to maintain their confidentiality; requiring its employees to sign a handbook, utilizing a document shredding company; controlling visitors to the facility and limiting access to its facility; requiring employees to wear clothing bearing the Rotary Systems name; use of faux security cameras; maintaining the DO112 Custom Rotary Union Component design prints in storage file cabinets and a segregated records storage room; restricting access to them on a need-to-know basis; restricting access to its computers and electronic information to those with approved user names and passwords; requiring departing employees to return company materials; and by screening and pre-approving all information publicly disclosed at trade shows and on its website and other advertising.

This is all Rotary provides in support of its contention that it took reasonable efforts to maintain the secrecy of the Union. Rotary provides no documentary support or affidavits of current or former employees to provide support for Szykulski's claims.³ Nothing supports the claims made by Szykulski in his affidavit. This is hardly the affirmative evidence needed to establish a genuine issue of material fact for trial in order to survive a motion for summary judgment.

³ The Court notes that Szykulski's list of the efforts Rotary took to keep the Union secret were very similar to the list in Surgediv and somewhat mirror Judge Johnson's list of Rotary's failures in 2002.

The record presents the following with regard to Rotary's efforts to maintain the secrecy of the Union:

- **Confidentiality or Non-Disclosure Agreements.** Rotary did not have a non-disclosure or confidentiality agreement with Meister, Tomo, or any of Tomo's individual employees. Dynamic provided the affidavits of three other former Rotary employees who each stated that they were not bound by such an agreement and did not receive training regarding the trade secret status of anything they worked on. Rotary did not provide an affidavit from any current or former employee stating that they were bound by such an agreement. Furthermore, Rotary did not provide any evidence supporting its claim that its employees were required to sign a handbook. Rotary makes much of the fact that Szykulski broached the topic of requiring Tomo's Mary Dumitrascu to sign a non-disclosure agreement. However, when Dumitrascu agreed to sign such a document, Szykulski did not follow up and require her or anyone at Tomo to do so. He simply continued to provide information regarding the Union.
- **Tomo Toured Rotary's Facility at Least Twice.** In June 2004 and August 2004, Tomo representatives visited Rotary's facility and were able to gather information regarding the dimensions, materials, and operation of the Union. Tomo representatives were able to take extensive notes during these visits, which were included by each defendant in support of their instant motions. There is no evidence that Tomo's representatives were instructed that what they viewed at Rotary's facility was a trade secret and they were prohibited from disclosing what they saw or learned there.
- **Disclosures were Made to Tomo Before and After January 2005.** Rotary made several disclosures by email to Tomo before and after January 2005.
- **Rotary Supplied Information on the Union to Third Parties.** Rotary supplied drawings and other information on the Union to several third parties from 2002 to 2005. Rotary did execute non-disclosure agreements with Checker Machine and Parker Hannifin, two suppliers of parts for the Union, in 2002. However, it disclosed information regarding the shaft and seals to Parker Hannifin prior to its execution of the agreement with Parker Hannifin and disclosed drawings to Checker Machine after the deadline by which it was to make all disclosures under the agreement with Checker Machine.
- **Internal Security Measures.** As stated, Szykulski catalogs the internal efforts he states Rotary took to keep the Union secret but fails to provide any documentation to support his claims.
- **Rotary's Drawings and Prints.** Rotary's drawings and prints contained a boilerplate statement that the drawing contained proprietary information and that the recipient agrees not to disclose the drawing or use its contents in any way detrimental to Rotary's interest.

Countless times during this litigation, Rotary's counsel referred to the Union as "one of a kind," "custom," and "revolutionary." In his affidavit, Szykulski calls the Union "absolutely unique" and states that Rotary incurred "tremendous expense" in creating and developing the Union. It

stands to reason that Rotary had incentive to use all means at its disposal to preserve the secret status of the Union. It did not do so, even after learning in the 2002 litigation that its efforts might not survive scrutiny under the UTSA. The Court finds that there is no genuine issue of material fact regarding Rotary's efforts to preserve the secrecy of the Union. They were not reasonable under the circumstances. It disclosed information to Tomo and third parties without restriction. Rotary built the Union for Tomo and never executed a non-disclosure agreement with Tomo. It instead executed non-disclosure agreements with two suppliers of parts for the Union. It relied on boilerplate language on its design prints to preserve the secrecy of the drawings' contents. There is no indication that Rotary ever pointed out or emphasized the language on the drawings to recipients. Rotary allowed Tomo representatives to view its manufacturing facility and take notes regarding the Union without restriction. Rotary did not execute non-disclosure or non-compete agreements with its own employees. The conclusory statements that Szykulksi makes in his affidavit about Rotary's internal efforts to keep the Union secret, without more, are not the affirmative evidence required to create a genuine issue of material fact for trial. Rotary makes much of the fact that Dumistrascu was under the impression that Tomo and Rotary had a valid non-disclosure agreement. However, this was six years into Rotary's relationship with Tomo and by that time Tomo had already received information about the Union without restriction and Rotary allowed Tomo representatives to tour Rotary's facility and gather information about the Union.

Mere intent to keep something secret is not enough under the UTSA. Electro-Craft, 332 N.W.2d at 901. That is what Rotary seeks in this matter, that this Court find that it made reasonable efforts to preserve the secrecy of the Union based on its intent and self-serving statements of its owner. Rotary took minimal affirmative efforts, both internal and external, on its own behalf to preserve the secrecy of the Union. Rotary created the Union for Tomo but

failed to take reasonable steps to preserve its secrecy by the use of non-disclosure agreements and by sharing information with Tomo and other third parties without restriction. Defendants' motions for summary judgment are granted. Having granted the motions for summary judgment on the merits, the Court does not address the remaining arguments of Tomo and Dynamic.

SCG

Scg 12/2/13

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF ANOKA

TENTH JUDICIAL DISTRICT

Rotary Systems, Inc.,

Plaintiff,

vs.

TomoTherapy, Incorporated, and DYNAMIC
SEALING TECHNOLOGIES, INC.,

Defendants.

~~RECEIVED~~

FILED

AUG 29 2011

Court File No. CV-11-3560

Court Administration
Anoka County, MN
[Signature]
Deputy

ORDER

The above entitled matter came on for a hearing on June 17, 2011, 2010, before the Honorable Daniel A. O'Fallon, at the Anoka County Courthouse, in Anoka, Minnesota, pursuant to Defendant TomoTherapy, Incorporated's ("TomoTherapy") and Defendant Dynamic Sealing Technologies, Inc.'s ("DSTI") motions to dismiss, and Plaintiff Rotary Systems, Inc.'s ("Plaintiff") motion to amend its complaint.

Frederick Young, Esq., appeared on behalf of Plaintiff. Robert Zayed, Esq., appeared on behalf of Defendant TomoTherapy. Lee Lastovich, Esq., appeared on behalf of DSTI.

Based on review of the files, records and proceedings herein, the court now makes the following:

ORDER

1. Defendants' motions to dismiss are **GRANTED IN PART** and **DENIED IN PART** as follows:

- a. Plaintiff's common law claims against Defendants (Counts II - VII) are displaced as a matter of law by the Minnesota Uniform Trade Secrets Act and are hereby **DISMISSED WITH PREJUDICE**.
- b. Defendants' motion to dismiss Plaintiff's claim for misappropriation of trade secrets (Count I) is **DENIED**.

2. Plaintiff's motion to amend its complaint is **DENIED**.
3. Let the attached Memorandum be made part of this order.
4. The Anoka County Court Administrator shall serve a true and correct copy of this Order by U.S. Mail upon counsel for the above-named parties.

DATE: 8 / 29 / 2011

BY THE COURT



Daniel A. O'Fallon
Judge of District Court

STATE OF MINNESOTA, COUNTY OF ANOKA
Certified to be a true and correct copy of the
original on file and of record in my office.

JAN 16 2014

Jennifer A. Schlieper, Court Administrator

By: 

Memorandum

I. Factual Background

Plaintiff is a business that designs, manufactures, and sells custom rotary unions to companies throughout the United States. Plaintiff alleges that one of the custom rotary unions it has designed and manufactured for sale is a unique component of a magnetic resonance imaging ("MRI") machine that allows the MRI machine to simultaneously generate magnetic resonance images and deliver radiation and air supply to the internal machinery (hereafter, the "Rotary Union Component"). Plaintiff alleges that it custom designed and manufactured this Rotary Union Component at the request of Defendant TomoTherapy.

Plaintiff alleges that since it created this Rotary Union Component, the designs and specifications are not generally known or available to others in the industry or elsewhere, and not readily ascertainable by proper means. The designs and specifications for the machinery and parts that comprise the Rotary Union Component are reflected in documents created by Plaintiff and may be referred to as prints, sketches, and drawings (collectively, the "Prints"). Plaintiff alleges that it created and maintained its Rotary Union Component designs, specifications, and Prints through extensive research, cost, analysis, and effort over the years. Plaintiff owns all rights, title, and interests in the Rotary Union Component designs, specifications, and Prints.

Plaintiff alleges that it regards and treats these Rotary Union Component designs, specifications, and Prints as confidential and proprietary trade secrets belonging only to Plaintiff. The Rotary Union Component designs, specifications and Prints derive actual and potential independent economic value from not being generally known to, or readily ascertainable by, proper means by other persons who can obtain economic value from their use or disclosure. Plaintiff alleges that it has undertaken reasonable efforts under the circumstances to maintain the confidentiality of these Rotary Union Component designs, specifications and Prints.

Beginning in approximately January 2005, TomoTherapy requested that Plaintiff provide it with certain designs, specifications and Prints for the Rotary Union

Component. Plaintiff alleges that these certain designs, specifications and Prints constitute Plaintiff's trade secrets. Plaintiff alleges it provided TomoTherapy the requested designs, specifications and Prints for the Rotary Union Component: (1) believing TomoTherapy to be trustworthy; (2) having never disclosed nor distributed the Rotary Union Component designs, specifications and Prints to any third party other than a vendor of Plaintiff under a written confidentiality agreement; and (3) having informed TomoTherapy that the information regarding the designs, specifications and Prints were confidential and proprietary to Plaintiff. Plaintiff alleges that it further requested that TomoTherapy execute a written non-disclosure agreement.

Plaintiff alleges that TomoTherapy represented that it agreed that the designs, specifications and Prints of the Rotary Union Component were confidential and proprietary, and that TomoTherapy acknowledged its willingness to execute a written non-disclosure agreement if one was not already in existence. Plaintiff alleges that it continued to provide TomoTherapy certain designs, specifications and Prints of the Rotary Union Component in justifiable reliance on these representations.

On or about January 22, 2010, Plaintiff discovered information on a website of a competing manufacturer (Defendant DSTI), indicating that DSTI was engaged in the manufacture and sale of a certain rotary union component (hereafter, the alleged "Infringing Component") that appeared to Plaintiff to be identical or substantially similar to the Rotary Union Component that Plaintiff designs and manufactures. Upon information and belief, Plaintiff alleges that TomoTherapy and DSTI conspired to use Plaintiff's Rotary Union Component designs, specifications and Prints for DSTI's manufacture and sale of the Infringing Component. Plaintiff alleges that TomoTherapy had a duty to maintain the secrecy of Plaintiff's Rotary Union Component designs, specifications and Prints, and this duty included an obligation not to disclose the same to third parties, including DSTI. Plaintiff alleges that TomoTherapy disclosed the Rotary Union Component designs, specifications and Prints to DSTI, and that DSTI used this information to manufacture the Infringing Component. Plaintiff further

alleges that TomoTherapy then purchased numerous units of the Infringing Component from DSTI.

Plaintiff filed an April 27, 2011 seven-count complaint against both TomoTherapy and DSTI. Count I alleges misappropriation of its Rotary Union Component designs, specifications and Prints under the Minnesota Uniform Trade Secrets Act (“MUTSA”) against both defendants. In addition to this misappropriation claim under the MUTSA, Plaintiff asserts six common law claims in total—four of which include both defendants: Count II (conversion), Count IV (unjust enrichment), Count VI (accounting) and Count VII (conspiracy). Plaintiff asserts Count III (unfair competition; tortious interference with prospective business relationship) against DSTI only. Likewise, Plaintiff raises Count V (negligence) exclusively against TomoTherapy.

For the current motion, both defendants have brought separate motions to dismiss against Plaintiff. Both defendants argue that because all of Plaintiff’s common law claims arise from and depend upon the same premise, namely Plaintiff’s allegation of misappropriation, these common law claims should be dismissed as a matter of law because such claims are displaced by the MUTSA. In addition, the defendants argue that Plaintiff’s MUTSA claim is fatally flawed itself, and fails to state a claim pursuant to Minn. R. Civ. P. 12.02(e).

Plaintiff denies that its common law claims are barred by the MUTSA and asserts that it has sufficiently pled a claim for relief under the MUTSA. In the alternative, Plaintiff has filed a motion for leave to amend its complaint.

II. Analysis

1. Motion to Dismiss Standard

Under the Minnesota Rules of Civil Procedure, a pleading must “contain a short plain statement of the claim showing that the pleader is entitled to relief and a demand for judgment for the relief sought.” Minn. R. Civ. P. 8.01. “Minnesota is a notice-pleading state that does not require absolute specificity in pleading, but rather requires only information sufficient to fairly notify the opposing party of the claim against it.”

Donnelly Bros. Constr. Co., Inc. v. State Auto Property and Casualty Ins. Co., 759 N.W.2d 651, 660 (Minn. Ct. App. 2009). See also Minn. R. Gen. Pract. 507 (stating that the statement of a claim shall “contain a brief statement of the amount and nature of the claim...”). Motions for judgment on the pleadings are not favored in Minnesota and will not be sustained if a liberal construction of the pleading can be held sufficient. *Ryan v. Lodermeier*, 387 N.W.2d 652, 653 (Minn. Ct. App. 1986).

This court must “consider only the facts alleged in the complaint, accepting those facts as true, and must construe all reasonable inferences in favor of the non moving party.” *Hebert v. City of Fifty Lakes*, 744 N.W.2d 226, 229 (Minn. 2008). (citation omitted). The only question before this court is whether Plaintiff’s complaint sets forth legally sufficient claims for relief. *Id.* “A pleading will be dismissed only if it appears to a certainty that no facts, which could be introduced consistent with the pleading, exist which would support granting the relief demanded.” *Northern States Power Co. v. Franklin*, 122 N.W.2d 26, 29 (Minn. 1963).

2. Count I - Misappropriation Claims under MUTSA

Minn. Stat. § 325C, the Minnesota Uniform Trade Secrets Act (“MUTSA”), defines “misappropriation” as follows:

- (i) acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means; or
- (ii) disclosure or use of a trade secret of another without express or implied consent by a person who
 - (A) used improper means to acquire knowledge of the trade secret; or
 - (B) at the time of disclosure or use, knew or had reason to know that the discloser's or user's knowledge of the trade secret was
 - (I) derived from or through a person who had utilized improper means to acquire it;
 - (II) acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or
 - (III) derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or

(C) before a material change of the discloser's or user's position, knew or had reason to know that it was a trade secret and that knowledge of it had been acquired by accident or mistake.

Id. at § 325C.01, subd. 3. The Minnesota Uniform Trade Secrets Act further defines “improper means” to include: “theft, bribery, misrepresentation, breach or inducement of a breach of a duty to maintain secrecy, or espionage through electronic or other means.” *Id.* at subd. 2. Finally, the Minnesota Uniform Trade Secrets Act defines “trade secret” as:

information, including a formula, pattern, compilation, program, device, method, technique, or process, that:

(i) 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, and

(ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

The existence of a trade secret is not negated merely because an employee or other person has acquired the trade secret without express or specific notice that it is a trade secret if, under all the circumstances, the employee or other person knows or has reason to know that the owner intends or expects the secrecy of the type of information comprising the trade secret to be maintained.

Id. at subd. 5.

Plaintiff alleges that the defendant TomoTherapy came into possession of its trade secrets, namely the Rotary Unit Component, and its accompanying designs, specifications and Prints, and then provided the plans and specifications to defendant DSTI to build the Infringing Component. Under the liberal notice pleading rules in Minnesota, Plaintiff has sufficiently pled a claim for relief under the MUTSA.

Defendants both cite numerous federal district court opinions in an attempt to persuade this court to rely on the *Bell Atlantic Corp. v. Twombly*, 550 U.S. 554 (2007) and its progeny and conclude Plaintiff's pleading is insufficient. However, the Minnesota Supreme Court has recently reaffirmed that the test for state court claims in Minnesota

continues to be the same as it developed in *Northern States Power*---a pleading will be dismissed only if it appears to a certainty that no facts, which could be introduced consistent with the pleading, exist which would support granting the relief demanded. *Bahr v. Capella Univ.*, 788 N.W.2d 76, 80 (Minn. 2010). This court concludes that the heightened federal pleading standards of *Twombly* are inapplicable to the present case.

Defendant TomoTherapy also argues that Plaintiff cannot maintain its claim because it has not demonstrated the sufficient "reasonable efforts" under the circumstances to maintain the privacy of its Rotary Unit Component. First, the question of whether Plaintiff took reasonable efforts is almost necessarily a question of fact to be determined by the ultimate trier of fact. Second, TomoTherapy repeatedly cites to *Electro-Craft v. Controlled Motion, Inc.* 332 N.W.2d 890 (Minn. 1983) in arguing that Plaintiff must "show that it had manifested that intention by making some effort to keep the information secret." *Id.* at 901. This court notes that the *Electro-Craft* decision was an appeal after a full trial on the merits occurred in district court. *Id.* at 896. In the present case, TomoTherapy is requesting dismissal of Plaintiff's misappropriation claim at the pleading stage, before discovery is even completed. The request by TomoTherapy is premature.

Insomuch as defendant DSTI's arguments for dismissal of Plaintiff's MUTSA claim parallel those raised by TomoTherapy, this court also denies DSTI's motion. DSTI raises an additional argument for dismissal of the MUTSA claim in that Plaintiff's complaint is devoid of any factual allegations of specific misappropriation by DSTI itself. However, Plaintiff sets forth a claim that TomoTherapy misappropriated its designs, specifications, and Prints for the Custom Rotary Unit and that TomoTherapy provided the same to DSTI in order to manufacture the Infringing Component. The Minnesota Uniform Trade Secrets Act defines "misappropriation" as the "acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means." Minn. Stat. § 325C.01, subd. 3(i) (emphasis added). Therefore, after construing all reasonable inferences in favor of Plaintiff, this

court concludes that Plaintiff has alleged a sufficient MUTSA claim against defendant DSTI.

3. *Common Law Claims*

The MUTSA states that it “displace[s] conflicting tort, restitutionary, and other law of this state providing for civil remedies for misappropriation of a trade secret.” Minn. Stat. § 325C.07(a). The MUTSA does not, however, affect contractual remedies, other civil remedies not based on misappropriation of a trade secret, or criminal remedies. Minn. Stat. § 325C.07(b). The displacement provision has been interpreted to allow plaintiffs to maintain separate causes of action “to the extent that the causes of action have ‘more’ to their factual allegations than the mere misuse or misappropriation of trade secrets. *SL Montevideo Technology, Inc. v. Eaton Aerospace, LLC*, 292 F. Supp. 2d 1173, 1179 (D. Minn. 2003).

The court will address each of Plaintiff’s common law claims in turn below.

(i) *Count II - Conversion*

Applying the displacement provision of the MUTSA, the Minnesota federal court has held that a plaintiff’s claim for conversion is displaced. *Id.* at 1179-80. Specifically, the court found that an allegation that the defendants “converted [plaintiff’s] trade secrets and wrongfully used the trade secrets for their own gain” was displaced as the claim was essentially “nothing more than misappropriation of trade secrets.” *Id.* at 1180. In another case, the same court found a plaintiff’s claim for conversion was displaced by section 325C.07 where the claim was “nothing more than its claim for misappropriation of trade secrets.” *Lutheran Ass'n of Missionaries & Pilots, Inc. v. Lutheran Ass'n of Missionaries & Pilots, Inc.*, Civ. No. 03-6173, 2005 WL 629605, at *13, (D. Minn. Mar. 15, 2005).

In Count II, Plaintiff asserts a claim against both defendants for conversion. In support of its allegations, Plaintiff’s complaint states that “Defendants . . . have taken and retained Rotary Systems’ confidential, proprietary and trade secret information.”

As in *SL Montevideo*, this is nothing more than a restatement of Plaintiff's claim under the MUTSA. Because Plaintiff sets forth no new factual allegations in support of its conversion claim, this claim is displaced by section 325C.07. Therefore, Count II of the complaint shall be dismissed.

(ii) *Count III – Claims for Tortious Interference with Prospective Business Relationship and Unfair Competition against DSTI*

As with its conversion claim, Plaintiff's common law claims against DSTI are based on the same underlying facts as its claim for misappropriation of trade secrets. Plaintiff has admitted as much in its brief with respect to its unfair competition claim: "to the extent Plaintiff can establish the legal elements for its claim of misappropriation of trade secrets, its claim for unfair competition is similarly satisfied." Again, Plaintiff here fails to allege anything more that is different from its trade secret misappropriation claim. These are the exact type of claims that section 325C.07 was meant to preclude. See *SL Montevideo*, 292 F. Supp. 2d at 1179 (finding tortious interference with contract claim displaced by the MUTSA). Accordingly, Plaintiff's claims against DSTI in Count III of the complaint shall be dismissed.

(iii) *Count IV – Unjust Enrichment*

Minnesota federal district courts have also found that a claim for unjust enrichment is displaced by section 325C.07 of the MUTSA. See *Schlief v. Nu-Source, Inc.*, No. 10-4477, 2011 WL 1560672, at *8 (D. Minn. Apr. 15, 2011) (applying Minnesota law). In *Schlief*, the defendant asserted a counterclaim for unjust enrichment as well as a counterclaim for misappropriation of a trade secret. *Id.* at *7. The court dismissed the unjust enrichment counterclaim because it "assert[ed] nothing more than misappropriation of a trade secret and [is] consequently displaced by the [MUTSA]". *Id.* at *8.

Here, Plaintiff's claim for unjust enrichment against both defendants asserts nothing more than its MUTSA claim. In fact, Plaintiff again uses the exact same description for its trade secrets and the subject of its unjust enrichment claim.

Additionally, the same alleged wrongful conduct---use of Plaintiff's designs, specifications, and Prints---underlies both claims. As such, Count IV of the complaint shall be dismissed.

(iv) *Count V - Negligence Claim against TomoTherapy*

Plaintiff brings a negligence claim specifically against TomoTherapy, alleging that it breached a duty to maintain the secrecy of Plaintiff's designs, specifications, and Prints. While a claim for negligence has not been addressed under the MUTSA displacement provision, other state courts with similar provisions have found negligence claims displaced by the Uniform Trade Secret Act. *See, e.g., KCH Services, Inc. v. Vanaire, Inc.*, No. 05-777-C, 2009 U.S. Dist. LEXIS 62474, at *7 (W.D.Ky. July 9, 2009) (The plaintiff's negligence claim is a classic tort the [preemption] statute is designed to preclude."); *Calloway Golf Co. v. Dunlop Slazenger Group Americas, Inc.*, 318 F. Supp. 2d 216, 221 (D. Del. 2004) ("[B]ecause [counterclaim plaintiff] cannot show that its negligence claim is supported by facts unrelated to the misappropriation of the trade secret, its negligence claim is preempted." (citations omitted)).

As with the previous common law claims, Plaintiff's negligence claim against TomoTherapy is based entirely on the misappropriation claim. In support of its "duty" element, Plaintiff's complaint alleges that TomoTherapy "had a duty to maintain the secrecy of Rotary Systems' designs, specifications and Prints of the Rotary Union Component." This is the very same duty alleged in support of Plaintiff's MUTSA claim: "TomoTherapy owed a duty to Rotary Systems to maintain the secrecy of Rotary Systems' trade secrets, including Rotary Systems' designs, specifications and Prints for the Rotary Union Component." Similarly, Plaintiff's allegations in support of the "breach" in its negligence claim also form the basis of its claim for misappropriation of trade secrets---the disclosure of the designs, specifications and Prints to DSTI. Because Plaintiff has alleged nothing "more" in its claim for negligence than in its claim under the MUTSA against TomoTherapy, Count V of the complaint shall be dismissed.

(vi) *Count VI - Accounting*

In Minnesota “[t]here exists an equitable remedy known as accounting that compels the disclosure of money or property held or obtained by a particular party but which belongs to another.” *Nicholson v. Sawmill Golf Club, Inc.*, 2006 WL 3593032, *3 (Minn. Ct. App. 2006) (citing *Keough v. St. Paul Milk Co.*, 285 N.W. 809, 815 (1939)). However, the MUTSA specifically provides that it “displaces conflicting tort, restitutionary, and other law of this state providing civil remedies.” Minn. Stat. § 325C.07, subd. (a). To the extent that the remedies under the MUTSA coincide with the subject of Plaintiff’s accounting claim, this claim is duplicative and should be dismissed. Moreover, at least one other court interpreting a Uniform Trade Secrets Act preemption provision identical to Minnesota’s has found that a claim for accounting was preempted. *Coulter Corp. v. Leinert*, 869 F. Supp. 732, 734-35 (E.D. Mo. 1994) (concluding that, where allegations of trade secret misappropriation alone comprised the underlying wrong, a claim for accounting was barred by the Uniform Trade Secrets Act preemption provision). Here, Plaintiff’s claim for accounting is based solely on the underlying misappropriation claim. Thus, Count VI is dismissed.

(vii) *Count VII – Conspiracy*

Like the other common law claims, for Plaintiff’s conspiracy claim to survive, it must have “more” to its allegations than the regurgitation of the facts supporting the MUTSA claim. *SL Montevideo*, 292 F. Supp. 2d 1173, 1179 (D. Minn. 2003). Tellingly, Plaintiff’s complaint alleging conspiracy consists of two paragraphs total: one paragraph incorporating all of the preceding paragraphs; and the second paragraph alleging that the defendants “discussed and conspired to, among other things, misappropriate Rotary Systems’ trade secrets.” Again, this claim is precisely the reason the displacement provision exists in the MUTSA---Plaintiff has added nothing more to the factual allegations than the mere misappropriation of trade secrets. Count VII of the complaint shall be dismissed.

4. *Plaintiff’s Motion for Leave to Amend Complaint*

Plaintiff pleaded in the alternative that, "should the court share any of Defendant's concern regarding the need for additional detail in the allegations of the Complaint," Plaintiff requested the opportunity to amend its Complaint. Because this court has denied Defendants' motions to dismiss Plaintiff's MUTSA claim, and further found that Plaintiff's remaining common law claims were displaced by its surviving MUTSA claim, there is no reason to grant Plaintiff leave to amend its complaint. Accordingly, Plaintiff's request is denied.

D.A.O.