

United States District Court
For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

)	Case No. C 13-2965 SC
)	
SYNOPSYS, INC.)	ORDER GRANTING IN PART AND
)	DENYING IN PART DEFENDANT'S
Plaintiff,)	<u>MOTION TO DISMISS</u>
)	
v.)	
)	
ATOPTECH, INC.)	
)	
Defendant.)	
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I. INTRODUCTION

Now before the Court is Defendant ATopTech, Inc.'s ("Defendant") motion to dismiss Plaintiff Synopsys, Inc.'s ("Plaintiff") complaint. ECF Nos. 1 ("Compl."), 9 ("MTD"). Defendant moves in the alternative for a more definite statement. The motion is fully briefed, ECF Nos. 24 ("Opp'n"), 32 ("Reply"), and appropriate for decision without oral argument, Civ. L.R. 7-1(b). As explained below, the Court GRANTS Defendant's motion to dismiss.

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1 **II. BACKGROUND**

2 Plaintiff is an electronic design automation ("EDA") company.
3 Compl. ¶ 2. It creates, manufactures, sells, and licenses products
4 and services that enable circuit designers to create, model, and
5 verify complex integrated circuit designs "from concept to
6 silicon." Id. Among Plaintiff's products are a "static timing
7 analysis tool" called "PrimeTime" and a piece of software called
8 "IC Compiler." Id. ¶¶ 2, 16, 17, 39. PrimeTime "computes the
9 expected timing of a digital circuit without requiring simulation."
10 Id. ¶ 17. It includes "hundreds of . . . input formats and output
11 formats" that "are proprietary to [Plaintiff] and are not part of
12 any open format or standard." Id. ¶ 18. Plaintiff also owns an
13 EDA company called Extreme DA Corporation ("Extreme DA"), the
14 developer of a static timing analysis tool called "GoldTime." Id.
15 ¶¶ 4, 20. GoldTime is similar to (and incorporates parts of)
16 PrimeTime. Id. Plaintiff calls GoldTime and PrimeTime's software
17 and documentation collectively the "Copyrighted Software," but does
18 not make clear whether IC Compiler is included in that group. See
19 id. ¶ 48.

20 The input formats, which Plaintiff sometimes calls a "command
21 set," are used within larger "scripts" executed by PrimeTime. Id.
22 ¶ 18. PrimeTime provides feedback to the user via output formats.
23 Id. PrimeTime also supports a set of open-source commands
24 ("Synopsys Design Constraints" or "SDC") that is separate from the
25 compilation of Plaintiff-proprietary input formats and are used to
26 provide a standard interface that developers can use to create
27 products that are interoperable with PrimeTime or other SDC-
28 compliant EDA tools. Id. ¶ 19. SDC is available under a free,

1 open-source license. Id.

2 Plaintiff asserts that its input and output formats, scripts,
3 and technical product documentation for the products described
4 above are all confidential, proprietary trade secrets. Id. ¶ 21.
5 According to Plaintiff, for example, its software and documentation
6 contain proprietary rights notices, and users of Plaintiff's
7 software and documentation are governed by end-user license
8 agreements ("EULAs") that restrict the users' access to and use of
9 Plaintiff's materials. Id. ¶¶ 21-22. Plaintiff also uses a
10 variety of physical and electronic security systems to protect its
11 facilities, websites, computers, and communications systems. Id. ¶
12 22. These protective measures include "access cards, password
13 protection systems, encrypted communications technology and vendor,
14 customer and employee non-disclosure agreements." Id.

15 Plaintiff owns all rights to, and has obtained federal
16 copyright registration for, the PrimeTime and GoldTime software and
17 user documentation. Id. ¶¶ 23-24; Compl. Exs. 1-5 ("Copyright
18 Registrations"). Plaintiff also possesses several patents on
19 technologies and techniques related to integrated circuit design.
20 Id. ¶ 24; Exs. 6 ("'348 Patent"), 7 ("'941 Patent"), 8 ("'127
21 Patent"), 9 ("'967 Patent") (collectively the "Patents-in-Suit").

22 Defendant is an EDA company that develops tools for the
23 physical design of integrated circuits at sixty-five nanometers and
24 below. Id. ¶ 3. Among these tools are Defendant's "Aprisa" "place
25 and route" tool and the "Apogee" "floor-planning" tool. Id.
26 Defendant entered two license agreements with Plaintiff: (1) a
27 Connections Program License Agreement (the "CPLA"), and (2) a
28 license agreement related to a method for parametric on-chip

1 variation (the "POCV License") (collectively the "License
2 Agreements"). Id. ¶ 4.

3 Defendant had originally entered the CPLA with Extreme DA,
4 for use of GoldTime, but Plaintiff acquired Extreme DA -- along
5 with all of its intellectual property and rights under the CPLA --
6 in June 2010. Id. ¶ 31. The CPLA expired on February 15, 2013.
7 Id. Under the CPLA, Defendant gained access to copies of GoldTime
8 and its documentation (and, by extension, the parts of the
9 PrimeTime software and documentation that were incorporated into
10 GoldTime). Id. According to Plaintiff, the CPLA gave Defendant
11 only a limited license to use GoldTime for "specific
12 interoperability purposes." Id. ¶ 33. Under the CPLA, Defendant
13 was forbidden from incorporating GoldTime into other software
14 products, reverse-engineering GoldTime, copying GoldTime (including
15 the input and output formats), and disclosing any confidential
16 information provided under the CPLA. Id.

17 Under the POCV License, Defendant gained a limited, non-
18 exclusive license to Extreme DA's proprietary POCV technology,
19 which included the '640 Patent. Id. ¶ 34. Defendant used this
20 technology to test timing effects resulting from manufacturing-
21 related variations in chips (e.g., variations related to process,
22 voltage, or temperature effects during manufacturing). Id. As
23 with the CPLA, Plaintiff obtained all of Extreme DA's rights to the
24 POCV technology, including all of the rights under the POCV
25 License. Id.

26 Plaintiff alleges that while Defendant was receiving and using
27 Plaintiff's confidential information pursuant to the License
28 Agreements, Defendant "copied portions of the PrimeTime and

1 GoldTime software and documentation into Aprisa user documentation
2 and software." Id. ¶ 35. Plaintiff claims to possess "a small
3 portion of Aprisa documentation -- provided by [Defendant] --
4 revealing that Aprisa includes proprietary PrimeTime and GoldTime
5 input and output formats." Id. According to Plaintiff, "[t]his
6 copying likely is widespread," as evidenced by Defendant's
7 statements that Aprisa has "excellent correlation with sign-off
8 timing" and "tight correlation" with Plaintiff's PrimeTime
9 software. Id. ¶ 36. Plaintiff contends that "such correlation is
10 not possible without copying significant portions of the PrimeTime
11 software." Id.

12 Plaintiff also claims that Defendant "improperly accessed and
13 stole other . . . proprietary documentation, by downloading such
14 materials from [Plaintiff's] 'SolvNet' secure website without
15 permission." Id. ¶ 37. SolvNet is a password-protected support
16 website on which Plaintiff "hosts software, user guides, support
17 documentation, and other materials for customers and partners with
18 valid user IDs." Id. ¶ 38. Users who register for SolvNet
19 passwords must abide by various agreements signed by their
20 companies "regarding the confidential nature of all SolvNet
21 content." Id. Plaintiff states that it discovered in 2013 that
22 Defendant had accessed SolvNet and "engaged in unauthorized access
23 to and downloading of articles, FAQs, and other documentation
24 related to PrimeTime and [IC Compiler]." Id. ¶ 39. Plaintiff
25 asserts that such access, downloading, and other use exceeded the
26 scope of Defendant's licenses. Id. Plaintiff alleges that all of
27 Defendant's activity here was undertaken for commercial gain and
28 competitive advantage. Id. ¶ 40.

1 Finally, Plaintiff states that on November 28, 2012, it
2 invoked "its rights to verify compliance under both [L]icense
3 [A]greements, and thereafter diligently worked to commence and
4 complete the audit." Id. ¶ 41. Plaintiff did so out of an
5 apparent fear that Defendant "wrongfully copied, used, and
6 disclosed portions of the PrimeTime and GoldTime software, and
7 otherwise breached the CPLA and POCV License Agreements." Id.
8 Plaintiff contends that for months it attempted to work with
9 Defendant to establish compliance with the License Agreements, but
10 that Defendant "systematically frustrated and obstructed the audit
11 process." Id. ¶ 42. On May 8, 2013, Plaintiff served Defendant
12 with a notice of default under the POCV License, which Plaintiff
13 contends also put Defendant on notice of Plaintiff's belief that
14 Defendant had "copied proprietary PrimeTime and GoldTime command
15 sets into Aprisa, in violation of the CPLA agreement and
16 [Plaintiff's] valuable intellectual property rights, including
17 those covered by [Plaintiff's] PrimeTime and GoldTime federal
18 copyright registrations." Id. ¶¶ 43-44.

19 Plaintiff set a June 10 deadline for the completion of its
20 audit. Id. ¶ 45. The deadline passed, and one week later
21 Plaintiff gave Defendant another opportunity to demonstrate "that
22 it had not copied and was in compliance with the license
23 agreements." Id. ¶ 46. Defendant has not done so. Id.

24 On the basis of these facts, Plaintiff asserts the following
25 twelve causes of action against Defendant:

- 26 (1) copyright infringement under the Copyright Act, 17 U.S.C.
27 § 101 et seq.;
- 28 (2) trade secret misappropriation under the California

- 1 Uniform Trade Secrets Act, Cal. Civ. Code § 3426 et
2 seq.;
- 3 (3) four counts of patent infringement as to the '348, '941,
4 '127, and '967 Patents;
- 5 (4) violation of the Federal Computer Fraud and Abuse Act
6 ("CFAA"), 18 U.S.C. § 1030(a)(2)(C);
- 7 (5) violation of California Penal Code section 502(c)(2), the
8 California Comprehensive Data Access and Fraud Act
9 ("CDAFA");
- 10 (6) unfair and unlawful competition under California's Unfair
11 Competition Law, Cal. Bus. & Prof. Code § 17200 et
12 seq.;
- 13 (7) common law misappropriation;
- 14 (8) breach of the CPLA; and
- 15 (9) breach of the implied covenant of good faith and fair
16 dealing.

17 Defendant now moves to dismiss Plaintiff's complaint, arguing that
18 Plaintiff fails to state claims under any cause of action.

19

20 **III. LEGAL STANDARD**

21 A motion to dismiss under Federal Rule of Civil Procedure
22 12(b)(6) "tests the legal sufficiency of a claim." Navarro v.
23 Block, 250 F.3d 729, 732 (9th Cir. 2001). "Dismissal can be based
24 on the lack of a cognizable legal theory or the absence of
25 sufficient facts alleged under a cognizable legal theory."
26 Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir.
27 1988). "When there are well-pleaded factual allegations, a court
28 should assume their veracity and then determine whether they

1 plausibly give rise to an entitlement to relief." Ashcroft v.
2 Iqbal, 556 U.S. 662, 679 (2009). However, "the tenet that a court
3 must accept as true all of the allegations contained in a complaint
4 is inapplicable to legal conclusions. Threadbare recitals of the
5 elements of a cause of action, supported by mere conclusory
6 statements, do not suffice." Id. (citing Bell Atl. Corp. v.
7 Twombly, 550 U.S. 544, 555 (2007)). The allegations made in a
8 complaint must be both "sufficiently detailed to give fair notice
9 to the opposing party of the nature of the claim so that the party
10 may effectively defend against it" and "sufficiently plausible"
11 such that "it is not unfair to require the opposing party to be
12 subjected to the expense of discovery." Starr v. Baca, 652 F.3d
13 1202, 1216 (9th Cir. 2011).

14

15 **IV. DISCUSSION**

16 As explained below, the Court dismisses Plaintiff's complaint
17 -- except portions of its copyright infringement and UCL claims --
18 with leave to amend. In general, Plaintiff's pleadings are
19 impermissibly vague and conclusory.

20 **A. Copyright Infringement**

21 A plaintiff claiming copyright infringement must plead: (1)
22 ownership of a valid copyright; and (2) that the defendant violated
23 the copyright owner's exclusive rights under the Copyright Act by
24 copying original elements of the work. 17 U.S.C. § 501(a) (2003);
25 Feist Pubs., Inc. v. Rural Tel. Serv. Co., 499 U.S. 340, 361
26 (1991); Wash. Shoe Co. v. A-Z Sporting Goods, Inc., 704 F.3d 668,
27 674 (9th Cir. 2012).

28 Defendant argues that Plaintiff fails to allege facts

1 indicating access to or copying of any portion of the massive
2 amount of source code and documentation of the Copyrighted
3 Software. MTD at 6. Further, Defendant contends that Plaintiff's
4 sole point of specificity as to what Defendant allegedly copied --
5 Plaintiff's input and output formats -- is insufficient not only
6 because Plaintiff does not specify which formats Defendant copied,
7 but also because copyright does not extend to executable software
8 methods, systems, or processes so long as the line-by-line source
9 code is different, though this is necessarily a fact-dependent
10 conclusion. Id. at 7-8 (citing Oracle Am., Inc. v. Google Inc.,
11 872 F. Supp. 2d 974, 1000 (N.D. Cal. 2012)). Finally, Defendant
12 claims that Plaintiff's allegations are mere speculation, since
13 Plaintiff pleads that "copying likely is widespread" due to
14 Defendant's advertisements that its software has, for example, a
15 "tight correlation" with Plaintiff's software. Id. at 8.

16 Plaintiff responds that all it must do to survive a motion to
17 dismiss its claim for copyright infringement is to allege ownership
18 and infringement. Opp'n at 3-4. Plaintiff asserts that it did so,
19 providing its copyright registrations and pleading that Defendant
20 had access to the Copyrighted Software and improperly incorporated
21 parts of it into its own software, Aprisa. Id. Plaintiff contends
22 that the "correlation" of Defendant's software with Plaintiff's
23 would not be possible without copying "significant portions" of
24 PrimeTime, and that this is not mere speculation. Id. Plaintiff
25 also claims that it need not plead with particularity either what
26 parts of its own software were copied, or what of Defendant's
27 software actually infringed. Id. Requiring such specificity,
28

1 according to Plaintiff, would raise factual issues not appropriate
2 for the pleading stage. Id. at 4-5.

3 The Court finds for Defendant on this point, except as to the
4 input and output formats that Plaintiff claims Defendant infringed
5 in the Aprisa software and documentation. Apart from those works,
6 discussed below, Plaintiff never makes clear what Defendant copied,
7 which makes it impossible for the Court to find Plaintiff's claim
8 plausible. Plaintiff alleges simply that Defendant had access to,
9 copied, and prepared derivative works based on the Copyrighted
10 Software, in contravention of the CPLA. Compl. ¶¶ 32-33, 38-39,
11 51. Plaintiff asserts that this pleading is enough, as is its
12 allegation that Defendant's quotations about correlation support an
13 inference of copying. See Opp'n at 3-4 (citing Compl. ¶ 36).
14 However, Plaintiff muddles this claim by also asserting that parts
15 of its software and documentation are open-source, which makes its
16 contention that essentially all of its materials are under
17 Plaintiff's copyright protection less plausible. Plaintiff further
18 hamstring its complaint by simply speculating on how widespread
19 the copying may be, without describing any acts or works that
20 infringe Plaintiff's Copyrighted Software. See Compl. ¶¶ 35-36,
21 47-55. Plaintiff need not reach any heightened level of
22 particularity for its copyright claims, but those claims must be
23 plausible under Rule 8, Twombly, and Iqbal. See, e.g., Richtek
24 Tech. Corp. v. UPI Semiconductor Corp., No. 09-05659 WHA, 2011 WL
25 166198, at *3 (N.D. Cal. Jan. 18, 2011) (dismissing copyright
26 infringement claim for failure to identify acts and works
27 constituting infringement); Salt Optics, Inc. v. Jand, Inc., No.
28 SACV 10-0828 DOC, 2010 WL 4961702, at *6 (N.D. Cal. Nov. 19, 2010).

1 Plaintiff must plead some non-speculative facts about what
2 Defendant infringed and how. Accordingly, Plaintiff's copyright
3 infringement claim is DISMISSED with leave to amend, except as to
4 the input and output formats allegedly contained in Defendant's
5 Aprisa software and documentation.

6 Plaintiff's claim as to those formats is sufficient to state a
7 claim at this point. See Compl. ¶ 35. Plaintiff states, in full,
8 "Synopsys is in possession of a small portion of Aprisa
9 documentation -- provided by ATopTech -- revealing that Aprisa
10 includes proprietary PrimeTime and GoldTime input and output
11 formats." Id. Since Plaintiff has specifically asserted that
12 these input and output formats from PrimeTime and GoldTime
13 documentation are copyrighted and were duplicated in Defendant's
14 materials, this portion of the complaint is sufficient enough,
15 taken as true, for Plaintiff to state a claim for copyright
16 infringement based on that limited set of materials.

17 On this point, Defendant contends that the Court should find
18 as a matter of law that the input and output formats are not
19 protected under copyright, citing the decision in Oracle v. Google,
20 872 F. Supp. 2d at 997, in support of this contention. That
21 decision came at the end of a long bench trial, and the facts as to
22 the input and output formats in that case had been fully developed
23 on the record. See id. at 997-98. At the pleading stage, the
24 Court declines to make a finding as a matter of law as to input and
25 output formats in general. This holding does not, of course,
26 preclude Defendant from making a later motion on this matter.

27 Plaintiff's copyright infringement claim based on alleged
28 infringement of Plaintiff's input and output formats in Defendant's

1 Aprisa software and documentation is undisturbed. The rest of the
2 claim is DISMISSED with leave to amend.

3 **B. Trade Secret Misappropriation**

4 To plead a claim for trade secret misappropriation under the
5 California Uniform Trade Secrets Act ("CUTSA"), Cal. Civ. Code §
6 3426 et seq., a plaintiff must assert (1) the existence of a trade
7 secret, and (2) misappropriation of the trade secret. See, e.g.,
8 DocMagic, Inc. v. Ellie Mae, Inc., 745 F. Supp. 2d 1119, 1145 (N.D.
9 Cal. 2010); Cal. Civ. Code § 3426.1(b). A trade secret is
10 "information, including a formula, pattern, compilation, program,
11 device, method, technique, or process, that: (1) derives
12 independent economic value, actual or potential, from not being
13 generally known to the public or to other persons who can obtain
14 economic value from its disclosure or use; and (2) is the subject
15 of efforts that are reasonable under the circumstances to maintain
16 its secrecy." Cal. Civ. Code § 3426.1.

17 Before a defendant is compelled to respond to a complaint
18 upon claimed misappropriation or misuse of a trade secret
19 and to embark on discovery which may be both prolonged
20 and expensive, the complainant should describe the
21 subject matter of the trade secret with sufficient
22 particularity to separate it from matters of general
23 knowledge in the trade or of special knowledge of those
24 persons who are skilled in the trade, and to permit the
25 defendant to ascertain at least the boundaries within
26 which the secret lies.

24 Diodes, Inc. v. Franzen, 260 Cal. App. 2d 244, 253 (Cal. Ct. App.
25 1968).¹ A plaintiff alleging trade secret misappropriation need

26 _____
27 ¹ Plaintiff argues that Diodes is inapposite because it predates
28 CUTSA and a later codification of a rule moving the obligation to
identify the precise trade secrets from the pleading stage to the
discovery stage. See Opp'n at 7. The Court is not convinced on
this point: "[F]ederal courts in the Ninth Circuit look to Diodes

1 not "spell out the details of the trade secret" but must identify
2 the trade secret with sufficient particularity to give defendants
3 "reasonable notice of the issues which must be met at the time of
4 trial and to provide reasonable guidance in ascertaining the scope
5 of appropriate discovery." Id. at 252-53.

6 Defendant argues that Plaintiff neither identifies any trade
7 secrets nor pleads facts that Defendant acquired a trade secret
8 through "improper means" or other circumstances that would give
9 rise to CUTSA liability. MTD at 8. According to Defendant,
10 Plaintiff's complaint simply points to everything Plaintiff has
11 created and claims everything is a trade secret. See id. at 9
12 (citing Compl. ¶¶ 18, 21-22, 33-35, 37-38, 40, 42, 44). Further,
13 Defendant claims that because Plaintiff deposited its documentation
14 with the Copyright Office, that material would no longer constitute
15 trade secrets because such deposits are public. Id.

16 Plaintiff responds that its complaint specifically identifies
17 the misappropriated trade secrets as information disclosed and
18 subject matter claimed in Plaintiff's several copyright
19 registrations, including all of the material related to PrimeTime,
20 IC Compiler, GoldTime, and their documentation. Id. at 6-7 (citing
21 Compl. ¶¶ 16-18, 20-21, 24-30, 39). Plaintiff then argues that it
22 did allege that Defendant used improper means to acquire the trade
23 secrets, since it pled that Defendant breached the parts of the
24 License Agreements that forbid it from incorporating Copyrighted
25 Software into its own products and from disclosing confidential

26
27 for guidance on the applicable pleading standard for claims brought
28 under the CUTSA." Pellerin v. Honeywell, Int'l, Inc., 877 F. Supp.
2d 983, 988 n.1 (S.D. Cal. 2012); see also Farhang v. Indian Inst.
of Tech., Kharagpur, No. 08-02658 RMW, 2010 WL 2228936, at *13
(citing Diodes, 260 Cal. App. 2d at 253).

1 information under the License Agreements. Id. at 8 (citing Compl.
2 ¶ 33). Plaintiff also notes that it alleged that Defendant
3 "improperly accessed and stole other . . . proprietary
4 documentation by downloading such materials from [Plaintiff's]
5 'SolvNet' secure website without permission." Id. (quoting Compl.
6 ¶ 37). Plaintiff further states that it took reasonable measures
7 to protect its trade secrets' secrecy by redacting source code
8 submissions from its Copyright Office filings and employing
9 confidentiality agreements, but Plaintiff contends that in any
10 event, this would be a factual issue inappropriate for resolution
11 on a motion to dismiss. Id. at 8-9.

12 The Court finds for Defendant on this point. First,
13 Plaintiff's complaint is impermissibly conclusory. For instance,
14 Plaintiff alleges that "its trade secrets at issue in this case,
15 which [have] been copied and misappropriated by [Defendant],
16 relates to [Plaintiff's] PrimeTime, GoldTime, and IC Compiler
17 products. Such information includes [Plaintiff's] proprietary
18 input and output formats, scripts, and technical product
19 documentation, which generally are not publicly known, and derive
20 value from being secret." Compl. ¶ 21. Other pleadings refer
21 explicitly to Plaintiff's publicly available patents, which
22 Plaintiff improperly refers to as trade secrets. See Opp'n at 7
23 (citing Compl. ¶¶ 25-29).² These are conclusions of law disguised

24 ² Farhang held that a patent application cited in an otherwise
25 vague pleading regarding trade secrets could give reasonable notice
26 of the scope of a purported trade secret. See 2010 WL 2228936, at
27 *13. However, the patent applications in Farhang were unpublished
28 and not publicly available. Plaintiff's patents have issued and
been published. "[I]t is well established that disclosure of a
trade secret in a patent places the information comprising the
secret into the public domain. Once the information is in the
public domain and the element of secrecy is gone, the trade secret

1 as factual pleadings, and they do not state claims under Twombly
2 and Iqbal. Materials are not trade secrets just because Plaintiff
3 says they are: there must be some minimally plausible factual
4 explanation for why trade secret protection applies.

5 Second, it is impossible for the Court, let alone Defendant,
6 to determine where trade secret protection begins and ends as to
7 any of this material (e.g., non-redacted portions of public
8 documents, open-source code, and so forth). Plaintiff's complaint
9 is too sweeping and vague for Defendant to be on notice of what
10 trade secrets are at issue and where the boundary between those
11 secrets and general knowledge might lie. See Farhang, 2010 WL
12 2228936, at *13 (citing Diodes, 260 Cal. App. 2d at 253).

13 Plaintiff does refer, as in its copyright infringement claim,
14 to "input and output formats" being protected trade secrets, see ¶¶
15 18-21, which is an iota more precise than the rest of Plaintiff's
16 claims, but the Court finds that Plaintiff's pleading as to how
17 these formats are protected by trade secret law are impermissibly
18 conclusory. Plaintiff need not spell out every detail of its trade
19 secrets, but its vague references to an enormous array of potential
20 sources do not suffice to survive Defendant's motion to dismiss.
21 On this point, unlike in Plaintiff's copyright claim, more is
22 necessary. For example, examining the manuals filed under seal,
23 the Court cannot determine which parts of Plaintiff's code and
24 documentation are supposed to be trade secrets and which parts are
25 publicly available, open source commands. See, e.g., Compl. ¶ 19

26
27
28 is extinguished" Ultimax Cement Mfg. Corp. v. CTS Cement
Mfg. Corp., 587 F.3d 1339, 1355 (Fed. Cir. 2009) (citation and
quotations omitted).

1 (PrimeTime includes open source commands that are distinct from
2 Plaintiff's proprietary code).

3 As to the question of whether Plaintiff's Copyright Office
4 filings are covered by trade secret protection, the Court cannot
5 make a broad finding at this point. If Plaintiff filed unredacted
6 material and now claims that material as trade secrets, Plaintiff's
7 claims fail, since that material is publicly accessible. See,
8 e.g., KEMA, Inc. v. Koperwhats, No. C-09-1587 MMC, 2010 WL 726640,
9 at *4 (N.D. Cal. Mar. 1, 2010) (holding that source code filed with
10 the Copyright Office and not redacted can destroy secrecy required
11 under California trade secret law). Plaintiff argues that the
12 Copyright Office restricts access to deposited material, but that
13 is not quite true: the Copyright Office indeed places restrictions
14 on requests for reproductions, 37 C.F.R. § 202.20(d), but the same
15 restrictions do not necessarily apply to access and inspection.
16 See 17 U.S.C. § 705(b); see also 37 C.F.R. § 201.2(b)(1) (providing
17 for public "inspection [at the Copyright Office] of . . . material
18 deposited in connection with a completed copyright registration").
19 The Court cannot as a matter of law say that restrictions on
20 copying will necessarily protect all publicly filed documents, when
21 those documents are readily accessible for public inspection. See
22 KEMA, 2010 WL 726640, at *4. Plaintiff claims that it redacted
23 some of its source code from the Copyright Office filings, which
24 could serve to protect trade secrets in some cases, 37 C.F.R. §
25 202.20(c)(2)(vii), but without even slightly more detailed
26 pleadings the Court cannot determine which parts of Plaintiff's
27 publicly filed materials may be trade secrets and which are not.

28

1 Plaintiff's pleadings, unsupported by more facts, fail to
2 provide a reasonable basis for inferring that the formats are
3 protected by trade secret law and therefore fail to "raise a right
4 to relief above the speculative level." Twombly, 550 U.S. at 555.
5 Plaintiff's trade secret misappropriation claim is DISMISSED with
6 leave to amend, per the guidelines given above. If Plaintiff is
7 concerned about maintaining its trade secrets' confidentiality,
8 Plaintiff may identify the alleged trade secrets in a sealed
9 filing.

10 **C. Common Law Misappropriation**

11 Plaintiff asserts a claim for common law misappropriation
12 based on the allegation that Defendant improperly acquired, used,
13 and disclosed Plaintiff's Copyrighted Software and confidential and
14 proprietary information, including materials accessed and
15 downloaded from SolvNet. Compl. ¶¶ 113-118. Plaintiff makes this
16 claim in the alternative, "[t]o the extent that any portion of
17 [its] Copyrighted Software is found not to be protectable under
18 copyright or found not to be protectable trade secrets." Id. ¶
19 113.

20 First, Defendant argues that this claim is preempted by CUTSA
21 because CUTSA preempts claims "based on the same nucleus of
22 operative facts" as trade secret claims, regardless of whether the
23 material in question meets the definition of a trade secret. MTD
24 at 12 (citing K.C. Multimedia, Inc. v. Bank of America Tech. &
25 Ops., Inc., 171 Cal. App. 4th 939, 962 (Cal. Ct. App. 2009);
26 SunPower Corp. v. SolarCity Corp., No. 12-CV-694 LHK, 2012 WL
27 6160472, at *4-6 (N.D. Cal. Dec. 11, 2012)). Second, Defendant
28 contends that the Copyright Act preempts this claim, since the

1 Copyright Act preempts state law causes of action if the work
2 involved falls within the Copyright Act's subject matter and the
3 rights the plaintiff asserts under state law are equivalent to
4 those established in the Copyright Act. MTD at 13 (citing 17
5 U.S.C. § 301(a)).

6 Plaintiff responds that neither statute preempts its common
7 law misappropriation claim. Opp'n at 9-10. First, Plaintiff
8 argues that preemption is a factual issue inappropriate for
9 resolution at this stage, and that in any event, the facts at issue
10 under the common law misappropriation claim are different from the
11 ones supporting the trade secret misappropriation claim. Id. at
12 10-11. Second, Plaintiff argues that the Copyright Act does not
13 preempt the common law misappropriation claim because that cause of
14 action contains an "extra element" beyond what copyright law
15 requires: breach of a confidential relationship. Id. at 11-12. As
16 to both statutory preemption theories, Plaintiff argues that this
17 claim must survive in any event because Plaintiff pled it in the
18 alternative. Id. at 10-12.

19 The Court does not need to reach the copyright preemption
20 issue, because the Court finds that CUTSA preempts Plaintiff's
21 common law misappropriation claim. As a threshold matter, the
22 Court does not find this to be an inappropriate factual dispute.
23 It is a pleading issue and is therefore entirely appropriate for
24 resolution on a Rule 12(b)(6) motion. See SunPower, 2012 WL
25 6160472, at *4-6 (resolving a similar dispute on the pleadings).
26 Moreover, preempted claims are not saved from preemption just
27 because they are pled in the alternative. Lewis v. Activision
28 Blizzard, Inc., C 12-1096 CW, 2012 WL 5199505, at *4 (N.D. Cal.

1 Oct. 22, 2012). In this case, as explained below, even if the
2 Court had found that portions of the Copyrighted Software were not
3 protectable under copyright or trade secret law -- which it did
4 not, as those dismissals were on pleading grounds -- Plaintiff's
5 claim would still be preempted.

6 In reference to preemption:

7
8 The preemption inquiry for those causes of action not
9 specifically exempted by § 3426.7(b) focuses on
10 whether other claims are not more than a restatement
11 of the same operative facts supporting trade secret
12 misappropriation If there is no material
13 distinction between the wrongdoing alleged in a
14 [C]UTSA claim and that alleged in a different claim,
15 the [C]UTSA claim preempts the other claim.

16 Farmers Ins. Exch. v. Steele Ins. Agency, Inc., No. 2:13-CV-00784-
17 MCE-DAD, 2013 WL 3872950, at *7 (E.D. Cal. July 25, 2013)
18 (quoting Convolve, Inc. v. Compaq Comp. Corp., No. 00 CV 5141(GBD),
19 2006 WL 839022, at *6 (S.D.N.Y. Mar. 31, 2006) (internal quotations
20 omitted) (applying California law)).

21 Plaintiff's argument on this point is that its common law
22 misappropriation claim is based on a different set of facts than
23 its CUTSA claim. Opp'n at 10. Plaintiff contends that its common
24 law misappropriation claim covers "additional proprietary technical
25 documents from SovlNet, materials which are not alleged to comprise
26 [Plaintiff's] misappropriation claim under CUTSA." Id. at 11. The
27 Court cannot discern this distinction from the pleadings.

28 Plaintiff's trade secret misappropriation claim, Compl. ¶¶ 57-
65, is so vague that it appears to encompass just about every piece
of material Plaintiff has ever created or acquired, leading that
claim to bleed into its common law misappropriation claim to the

1 point that the two become indistinct and overlapping. Plaintiff's
2 CUTSA claim refers only to "trade secrets," which Plaintiff
3 indiscriminately defines throughout its complaint as (so far as the
4 Court can tell) code and documentation related to PrimeTime,
5 GoldTime, and IC Compiler, all of which -- except the IC Compiler
6 material -- would appear to be part of Plaintiff's Copyrighted
7 Software. See, e.g., id. ¶¶ 18-21, 41-44. Plaintiff alleges its
8 common law misappropriation claim in terms of its "Copyrighted
9 Software and confidential and proprietary information, including
10 those materials improperly accessed and downloaded from SolvNet."
11 See id. ¶¶ 113-114. Plaintiff contends that the SolvNet materials
12 were different from those at issue in the CUTSA misappropriation
13 claim, but while SolvNet may not be mentioned specifically in
14 Plaintiff's trade secret sections, throughout the complaint
15 Plaintiff never distinguishes the material on SolvNet from anything
16 else it claims to be a protected work. See, e.g., Compl. ¶¶ 37-40.
17 This all suggests that Plaintiff's trade secret and common law
18 misappropriation claims concern the same material.

19 The Court can therefore see no distinction between those two
20 claims, except that Plaintiff pled the common law misappropriation
21 claim in the alternative. Absent any real distinction among any of
22 Plaintiff's allegations, this pleading distinction is meaningless:
23 there is no way to distinguish Plaintiff's common law
24 misappropriation claim from its CUTSA claim. They are based on the
25 same facts. CUTSA preempts this claim. It is therefore DISMISSED
26 with leave to amend, if Plaintiff can distinguish it from its trade
27 secret misappropriation claim.

28 ///

1 D. CFAA

2 The CFAA, 18 U.S.C. § 1030 et seq., establishes both civil and
3 criminal causes of action for an array of activities concerning
4 "protected computers," defined in relevant part as computers that
5 are "used in or affecting interstate or foreign commerce or
6 communication." Id. § 1030(e)(2). The CFAA is "designed to target
7 hackers who accessed computers to steal information or to disrupt
8 or destroy computer functionality, as well as criminals who
9 possessed the capacity to access and control high technology
10 processes vital to our everyday lives." LVRC Holdings LLC v.
11 Brekka, 581 F.3d 1127, 1130 (9th Cir. 2009). The Ninth Circuit has
12 recently made clear that the CFAA is not meant to serve as a
13 supplement or replacement for misappropriation claims. United
14 States v. Nosal, 676 F.3d 854, 862-63 (9th Cir. 2012) (en banc).

15 To prevail in a civil action under the CFAA, "a private
16 plaintiff must prove that the defendant violated one of the
17 provisions of [section] 1030(a)(1)-(7), and that the violation
18 involved [among other things, loss to one or more persons during
19 any one year period . . . aggregating at least \$5,000 in value]." Brekka, 581 F.3d at 1131.

21 Plaintiff alleges that Defendant violated section
22 1030(a)(2)(C) of the CFAA. Compl. ¶ 95. That section prohibits
23 "intentionally access[ing] a computer without authorization or
24 exceeds authorized access, and thereby obtain[ing] . . .
25 information from any protected computer." 18 U.S.C. §
26 1030(a)(2)(C). Defendant contends that Plaintiff's CFAA claim,
27 Compl. ¶¶ 95-98, is deficient because the Ninth Circuit has made
28 clear that the CFAA, meant to target malicious hackers, prohibits

1 unauthorized access but not unauthorized use, which is what
2 Plaintiff's complaint charges. See MTD at 14-15. Defendant also
3 argues that Plaintiff equivocates between allegations of
4 "unauthorized" access versus "exceeded authorized access," which
5 Defendant contends is legally significant; that Plaintiff pled no
6 facts about Defendant's alleged access to Plaintiff's computer
7 network SolvNet; and that Plaintiff's allegations describe legally
8 insufficient violations of use restrictions rather than violations
9 of access prohibitions. Id. at 15. Plaintiff contends that its
10 license agreement and other agreements, like its privacy policy,
11 were sufficient to restrict Defendant's "access" to SolvNet. See
12 Opp'n at 17 (citing Compl. ¶¶ 37-39, 94-98).

13 Defendant relies in large part on Nosal, 676 F.3d at 854, in
14 which the Ninth Circuit held that the CFAA applied narrowly to
15 punish hacking ("the circumvention of technological access
16 barriers"), not the misappropriation of trade secrets or
17 contravention of use policies. 676 F.3d at 863. In Nosal,
18 employees of an executive search firm used their authorized log-in
19 credentials to download proprietary information from a confidential
20 database on their employer's computer system, and then transferred
21 that information to a competitor, in violation of their employer's
22 use restrictions on the disclosure of confidential information to
23 third parties or using confidential information for any purpose
24 except company business. See id. at 856. The Ninth Circuit held
25 that the CFAA prohibits only the unauthorized procurement or
26 alteration of information, not its misuse or appropriation, and
27 therefore the phrase "exceeds authorized access" in the CFAA "does
28 not extend to violations of use restrictions." Id. at 863-64.

1 Plaintiff responds that Defendant's reliance on Nosal is
2 misplaced because, while that case admittedly distinguished access
3 from use restrictions, Plaintiff insists that what it imposed on
4 Defendant was an access restriction via the license agreements.
5 See Opp'n at 17-18. Plaintiff contends that the fact that
6 Defendant agreed to abide by the terms of Plaintiff's Privacy
7 Policy, EULA, and other agreements with Plaintiff regarding
8 confidentiality of SolvNet content prohibits Defendant from
9 accessing SolvNet material for which it lacks a license, rendering
10 any such access a violation of the CFAA. Compl. ¶¶ 38-39.
11 According to Plaintiff, when Defendant downloaded "articles, FAQs,
12 and other documentation related to PrimeTime and [IC Compiler],"
13 Defendant's access, downloading, and use of those materials went
14 beyond the scope of its licenses with Plaintiff and therefore
15 breached the CFAA. Id.

16 The Court finds that Plaintiff has not stated a CFAA claim.
17 It is true that some courts have held that the CFAA applies to
18 access restrictions that are contractual, as well as technological
19 restrictions. See Weingand v. Harland Fin. Solutions, Inc., No. C
20 11-3109 EMC, 2012 WL 2327660, at *3 (N.D. Cal. June 19, 2012); see
21 also Nosal, 676 F.3d at 864 (distinguishing between access
22 restrictions and use restrictions, but not the form of the
23 restrictions); Craigslist Inc. v. 3Taps Inc., -- F. Supp. 2d --,
24 2013 WL 1819999, at *3-4 (N.D. Cal. Apr. 30, 2013) (noting Nosal's
25 distinction). But other courts have asserted that statutes like
26 the CFAA apply only to breaches of technical barriers. See, e.g.,
27 In re Facebook Privacy Litig., 791 F. Supp. 2d 705, 715-16 (N.D.
28 Cal. 2011) (holding, in a California Penal Code section 502 case,

1 that the rule of lenity requires interpreting access "without
2 permission" to apply only to access exceeding technical barriers);
3 Facebook, Inc. v. Power Ventures, Inc., No. C 08-05780-JW, 2010 WL
4 3291750, at *11 (N.D. Cal. July 20, 2010) (same).

5 Neither the Ninth Circuit nor Congress has fully explored the
6 limits of this nuanced distinction. However, it is clear to the
7 Court that Nosal's discussion of the differences between CFAA-
8 actionable unauthorized access or procurement and non-CFAA misuse
9 or misappropriation requires plaintiffs to plead, clearly and
10 plausibly, that whatever access restriction they allege was not
11 simply a use prohibition disguised as a limit on access. Nosal,
12 676 F.3d at 863-64; see also Craigslist Inc., 2013 WL 18199999, at
13 *4 (holding that framing a contractual prohibition in terms of
14 "access" was insufficient to state a CFAA claim because the
15 contractual prohibition depended on the accessor's purpose and did
16 not govern "who may access information, what information may be
17 accessed, or the methods by which information may be access"). In
18 other words, the state of CFAA doctrine in the Ninth Circuit
19 suggests that while a breach of a contractual provision may in some
20 cases be enough to allege unauthorized access, see Craigslist Inc.,
21 2013 WL 1819999, at *4, such an alleged breach must be pled with
22 enough clarity and plausibility to state that access itself -- not
23 just a particular use -- was prohibited.

24 Plaintiff fails to plead sufficient facts to support an
25 allegation of unauthorized access either by breach of contract or
26 by technical means. Plaintiff's sparse allegations simply state
27 that Defendant breached its license when it accessed SolvNet and
28 downloaded "articles, FAQs, and other documentation" relating to

1 software for which Defendant had a license. Compl. ¶¶ 38-39. The
2 allegation that this activity exceeded authorized access, even
3 though Plaintiff does not suggest that Defendant was not allowed to
4 access SolvNet or that Plaintiff had restricted or revoked
5 Defendant's access prior to Defendant's use of SolvNet, is
6 implausible. Further, Plaintiff does not allege with any
7 believable precision what restricted material Defendant downloaded,
8 given the competing allegation that Defendant had rights to use
9 PrimeTime and GoldTime. Absent facts stating that Defendant "has
10 no rights, limited or otherwise, to access the computer in
11 question," Brekka, 581 F.3d at 1133, Plaintiff's mere allegation
12 that Defendant breached a license agreement does not sufficiently
13 indicate that Defendant breached an access prohibition under the
14 CFAA.

15 Accordingly, Plaintiff's CFAA claim is DISMISSED with leave to
16 amend.

17 **E. CDAFA**

18 Plaintiff asserts a claim under the CDAFA, which prohibits
19 "[k]nowingly access[ing] and without permission tak[ing],
20 copy[ing], or mak[ing] use of any data from a computer, computer
21 system, or computer network, or tak[ing] or copy[ing]any supporting
22 documentation, whether existing or residing internal or external to
23 a computer, computer system, or computer network."

24 Defendant moves to dismiss Plaintiff's section 502 claim for
25 the same reasons as the CFAA claim. Defendant argues that
26 Plaintiff fails to plead unauthorized access under the CFAA or
27 access "without permission" under the CDAFA. See MTD at 14-17.
28 Plaintiff responds that it properly alleged Defendant's accessing

1 SolvNet without permission, as described above, and that Defendant
2 cannot use the License Agreements' authorization to argue that it
3 had permission to access SolvNet. Opp'n at 18. Plaintiff adds
4 that the CDAFA does not require that "access" be without
5 permission: the statutory language requires only that taking,
6 copying, or making use of the accessed data be without permission.
7 Id. at 18-19.

8 Defendant cites a recent case from this Court, which held that
9 the rule of lenity required limiting the CDAFA's "without
10 permission" language to apply only to the circumvention of
11 technical barriers, since to apply it more broadly -- for example,
12 to breaches of a license agreement -- would be unconstitutionally
13 vague. In re Facebook Privacy, 791 F. Supp. 2d at 716. Other
14 courts have concurred with this ruling, absent definitive
15 clarification from the legislature or courts of appeal, but there
16 is some disagreement on the point. Compare In re Google Android
17 Consumer Privacy Litig., No. 11-MD-02264 JSW, 2013 WL 1283236, at
18 *11-12 (N.D. Cal. Mar. 26, 2013) (only technical breaches are
19 actionable under the CDAFA), and Facebook, Inc. v. Power Ventures,
20 Inc., 844 F. Supp. 2d 1025, 1036 (N.D. Cal. 2012) (same), with
21 Weingang, 2012 WL 2327660, at *4-6 (discussing split authority on
22 whether the CDAFA should only apply to technical breaches, but not
23 deciding which split to adopt), and Facebook, Inc. v. ConnectU LLC,
24 489 F. Supp. 2d 1087, 1090-91 (N.D. Cal. 2007) (holding that a
25 defendant's access to a plaintiff's website by using information
26 voluntarily supplied by authorized users was "without permission"
27 and a violation of the CDAFA).

28 In support of its contention that a contract alone can

1 prohibit access per the CDAFA, Plaintiff cites Therapeutic Research
2 Faculty v. NBTY, Inc., 488 F. Supp. 2d 991, 998-99 (E.D. Cal.
3 2007), which held that while some of the defendants' employees'
4 access to the plaintiffs' computers was authorized, some was not,
5 so the plaintiffs could state a CDAFA claim as to the unauthorized
6 accessors. Specifically, in Therapeutic Research, a corporation
7 bought a single-user software license -- limited specifically to a
8 single, individual employee of the corporation -- and shared not
9 only among multiple employees but also with at least one other
10 corporation. See id. at 993-94. The Court does not find this case
11 compelling, since the contract at issue there specifically
12 precluded access for a large category of users. The same is not
13 the case here.

14 The Court cannot find, as a matter of law, that Plaintiff does
15 not state a claim under the CDAFA solely because Plaintiff relies
16 on the alleged breach of a license agreement instead of a technical
17 breach. However, Plaintiff's complaint does not state a claim
18 under the CDAFA for pleading reasons. Plaintiff pleads that
19 SolvNet users "must abide by 'the terms of the Privacy Policy and
20 the end user license agreement and other agreements with
21 [Plaintiff]' that his or her company signed 'regarding the
22 confidential nature of all SolvNet content.'" This means that users
23 must only access and download materials for which their company has
24 a license." Compl. ¶ 38. Plaintiff then states that "[i]n 2013,
25 [Plaintiff] discovered that [Defendant] accessed SolvNet and
26 engaged in unauthorized access to and downloading of articles,
27 FAQs, and other documentation related to PrimeTime and [IC
28 Compiler]. [Defendant's] downloading and other use of these

1 materials was beyond the scope of its licenses with [Plaintiff.]"
2 Id. ¶ 39.

3 The court finds Plaintiff's allegations do not provide enough
4 detail to be plausible. Although Plaintiff pleads that Defendant's
5 access or use of the material in question, large portions of the
6 complaint are describe how Defendant was licensed to use much of
7 the material at issue here. Defendant also apparently had access
8 to SolvNet unless some contractual term was clear enough to
9 prohibit access or there was some technical prohibition. In this
10 context, alleging that the License Agreements and other contracts
11 Defendant had entered forbade Defendant from using SolvNet is
12 conclusory and not plausible. Plaintiff must explain how the
13 License Agreements and its other user agreements with Defendant
14 were enough to put Defendant on notice that its access to SolvNet
15 was "without permission."

16 Since there are many ways for Plaintiff to repair its CDAFA
17 claim, the Court DISMISSES this claim with leave to amend.

18 **F. Breach of Contract and Breach of the Implied Covenant**

19 Plaintiff asserts claims for breach of contract and breach of
20 the implied covenant of good faith and fair dealing against
21 Defendant, based on Defendant's alleged breaches of the CPLA's
22 confidentiality and proper use provisions, as well as Defendant's
23 alleged refusal to comply with Plaintiff's attempts to verify its
24 compliance with the CPLA. See Compl. ¶¶ 121-25, 127-132.

25 **i. Breach of Contract**

26 "To state a cause of action for breach of contract, a party
27 must plead [1] the existence of a contract, [2] his or her
28 performance of the contract or excuse for nonperformance, [3] the

1 defendant's breach, and [4] resulting damage." Mora v. U.S. Bank,
2 N.A., No. 11-6598 SC, 2012 WL 2061629, *6 (N.D. Cal. June 7, 2012)
3 (citing Harris v. Rudin, Richman & Appel, 74 Cal. App. 4th 299, 307
4 (Cal. Ct. App. 1999)). Additionally, if the plaintiff alleges the
5 existence of a contract, the plaintiff may set forth the contract
6 verbatim, attach it as an exhibit, or plead it according to its
7 legal effect. See Lyons v. Bank of America, N.A., No. 11-01232 CW,
8 2011 WL 3607608, at *2 (N.D. Cal. Aug. 15, 2011).

9 Plaintiff has pled the existence of a contract and its
10 performance of it. However, Plaintiff's allegation of breach is
11 deficient. Plaintiff's pleadings on this point are sufficient only
12 as to Defendant's alleged copying of GoldTime's input and output
13 formats, which are the only portions of GoldTime that Plaintiff
14 adequately alleges Defendant copied. Other parts of Plaintiff's
15 allegations are insufficiently vague and conclusory because, as
16 discussed above, Plaintiff does not explain what other parts of the
17 software were copied, or how? Defendant breached any
18 confidentiality clause. These deficiencies make it impossible for
19 the Court to find Plaintiff's claim of breach plausible.
20 Separately, the parties' dispute over whether Defendant continued
21 to use GoldTime's input and output formats after its license's
22 expiration in February 2013 is a factual dispute, inappropriate for
23 decision on a motion to dismiss. However, as noted below, this
24 does not save the claim, because Plaintiff fails to allege damages.
25 See MTD at 17; Opp'n at 13 n.5.

26 The more significant pleading deficiency of Plaintiff's breach
27 of contract claim is this failure to allege damages. Plaintiff
28 merely states that Defendant "sought commercial gain and

1 competitive advantage by accessing and using [Plaintiff's]
2 proprietary information to develop its products, including
3 [Defendant's] Aprisa, which incorporate and are derived from
4 [Plaintiff's] confidential information and trade secrets." Compl.
5 ¶ 40; see also Opp'n at 13. Plaintiff did not make this allegation
6 as part of its breach of contract claim, see Compl. ¶¶ 120-25, but
7 even if it had, it does not assert that Plaintiff was damaged by
8 Defendant's seeking commercial gain or competitive advantage -- the
9 mere fact that Defendant sought those things does not indicate harm
10 to Plaintiff. Plaintiff's breach of contract claim is DISMISSED
11 with leave to amend, so that Plaintiff can more plausibly explain
12 the alleged breach and how it damaged Plaintiff.

13 **ii. Breach of Implied Covenant**

14 "The covenant of good faith and fair dealing, implied by law
15 in every contract, exists merely to prevent one contracting party
16 from unfairly frustrating the other party's right to receive the
17 benefits of the agreement actually made." Guz v. Bechtel Nat.
18 Inc., 24 Cal. 4th 317, 349 (Cal. 2000). The covenant "cannot
19 impose substantive duties or limits on the contracting parties
20 beyond those incorporated in the specific terms of their
21 agreement." Id. at 349-50. The elements of a claim for breach of
22 the covenant of good faith and fair dealing are:

23 (1) the plaintiff and the defendant entered
24 into a contract; (2) the plaintiff did all
25 or substantially all of the things that the
26 contract required him to do or that he was
27 excused from having to do; (3) all
28 conditions required for the defendant's
performance had occurred; (4) the defendant
unfairly interfered with the plaintiff's
right to receive the benefits of the
contract; and (5) the defendant's conduct
harmed the plaintiff.

1 Woods v. Google, Inc., 889 F. Supp. 2d 1182, 1194 (N.D. Cal. 2012)
2 (citing Judicial Counsel of California Civil Jury Instructions §
3 325 (2011)).

4 Plaintiff alleges that it had a right to confidentiality under
5 the CPLA, that the CPLA contained an implied covenant of good faith
6 and fair dealing, and that Defendant breached the implied covenants
7 by failing to maintain the confidentiality of Plaintiff's
8 proprietary information and by failing to comply with Plaintiff's
9 attempts to verify Defendant's compliance with the CPLA. Compl. ¶¶
10 127-129. Plaintiff asserts that it was harmed by this behavior
11 beyond mere breaches of the CPLA, because Defendant allegedly
12 maintained its relationship with Plaintiff to gain access to
13 Plaintiff's confidential material, and that Defendant, in bad
14 faith, frustrated Plaintiff's attempts to ensure confidentiality
15 and compliance with the CPLA. Id. ¶¶ 130-31. Defendant argues
16 that the CPLA included no "audit right" or "right to verify
17 compliance," and that Plaintiff's breach of the implied covenant
18 claim constitutes nothing but a breach of contract claim because
19 Plaintiff's allegations of bad faith or "independently wrongful"
20 conduct are conclusory allegations, devoid of facts to support the
21 claim. See MTD at 18, Reply at 11.

22 The Court agrees with Defendant. First, as to Plaintiff's
23 allegation that Defendant breached the implied covenant by refusing
24 to allow Plaintiff to audit Defendant's compliance, Plaintiff never
25 alleged that the CPLA contained any clause that granted it a right
26 to verify Defendant's compliance, and breaches of the implied
27 covenant apply only to "benefits of the agreement actually made."
28 Guz, 24 Cal. 4th at 349. Plaintiff cannot simply add a contractual

1 term after the fact.

2 Second, Plaintiff's assertions of bad faith are unacceptably
3 conclusory, because Plaintiff simply asserts -- without supporting
4 facts -- that Defendant acted in bad faith and for independently
5 wrongful purposes. See Compl. ¶¶ 130-31. This is defective
6 pleading under Twombly and Iqbal.

7 Finally, Plaintiff does allege that Defendant breached the
8 confidentiality provisions of the CPLA, but this allegation is
9 duplicative of Plaintiff's breach of contract claim. "If the
10 allegations in a breach of implied covenant claim do not go beyond
11 the statement of a mere contract breach and, relying on the same
12 alleged acts, simply seek the same damages or other relief already
13 claimed in a companion contract cause of action, they may be
14 disregarded as superfluous as no additional claim is actually
15 stated." Malcolm v. JP Morgan Chase Bank, N.A., No. 09-CV-4496,
16 2010 WL 934252, *6 (N.D. Cal. Mar. 15, 2010) (quoting Schulken v.
17 Wash. Mut. Bank, No. 09-CV-02708, 2009 WL 4173525 (N.D. Cal. Nov.
18 19, 2009)); see also Dunkel v. eBay Inc., No. 12-CV-01452-EJD, 2013
19 WL 415584, at *9-10 (N.D. Cal. Jan. 31, 2013). Nothing in
20 Plaintiff's breach of implied covenant claim suggests that this
21 claim is at all different from Plaintiff's breach of contract
22 claim.

23 Accordingly, Plaintiff's breach of the implied covenant claim
24 is DISMISSED with leave to amend.

25 **G. UCL**

26 The UCL prohibits unfair competition, including, inter alia,
27 "any unlawful, unfair or fraudulent business act." Cal. Bus. &
28 Prof. Code § 17200. "Because [section 17200] is written in the

1 disjunctive, it establishes three varieties of unfair competition--
2 acts or practices which are unlawful, or unfair, or fraudulent."
3 Berryman v. Merit Prop. Mgmt., Inc., 152 Cal. App. 4th 1544, 1554
4 (Cal. Ct. App. 2007).

5 Plaintiff brings its UCL claim under the unlawful and unfair
6 prongs of the UCL, having conceded that it does not allege
7 violation of the fraudulent prong. See Opp'n at 15 n.6.
8 Plaintiffs can plead a UCL violation under the "unlawfulness" prong
9 by pleading that a business practice violated a predicate federal,
10 state, or local law. See Cel-Tech Commc'ns, Inc. v. Los Angeles
11 Cellular Tel. Co., 20 Cal. 4th 163, 180 (Cal. 1999) (citing State
12 Farm Fire & Cas. Co. v. Superior Court, 45 Cal. App. 4th 1093, 1103
13 (Cal. Ct. App. 1996)). For UCL unfairness claims brought by
14 competitors instead of consumers, California courts have held that
15 the UCL requires the competitor plaintiff to allege an incipient
16 violation of an antitrust law or that law's policy or spirit
17 "because [the unfair practice's effect] are comparable to a
18 violation of the law, or that otherwise significantly threatens or
19 harms competition." Id. at 187.

20 Plaintiff's UCL unlawfulness claim alleges that Defendant's
21 conduct violated "numerous state and federal statutes and codes,"
22 including the CFAA, the CDAFA, and laws pertaining to improper use
23 of proprietary and confidential materials. Compl. ¶¶ 108-09. As
24 noted above, all of these claims failed and are dismissed, except -
25 - as a pleading matter -- Plaintiff's copyright infringement claim
26 as to the input and output formats in Defendant's Aprisa software
27 and documentation. Plaintiff's UCL claim is DISMISSED with leave
28 to amend except as to that predicate copyright claim.

1 As to both Plaintiff's UCL unlawfulness and unfairness claims,
2 Defendant disputes their predication on a breach of contract claim.
3 Defendant is correct that a breach of contract alone cannot be the
4 predicate of a UCL unfairness or unlawfulness claim unless the
5 breach also constitutes conduct that was unlawful, unfair, or
6 fraudulent, see Arce v. Kaiser Found. Health Plan, Inc., 181 Cal.
7 App. 4th 471, 489-90 (Cal. Ct. App. 2010), but Plaintiff's UCL
8 claims are not based solely on a breach of contract. To the extent
9 that those claims rely on Plaintiff's breach claim, they are
10 DISMISSED, as are Plaintiff's UCL claims based on any other
11 dismissed claim.

12 Plaintiff's UCL unfairness claim primarily asserts that
13 Defendant's alleged access to and copying of Plaintiff's
14 confidential materials, as well as its subsequent refusal to verify
15 a lack of anti-competitive conduct, are actionable anti-competitive
16 behaviors covered by the UCL. See Opp'n at 16; Compl. ¶¶ 6-7, 35-
17 36. Plaintiff also contends that its statement of a claim under
18 the CDAFA supports a UCL unfairness claim, see Opp'n at 16, but the
19 Court has dismissed that predicate claim. As vague as Plaintiff's
20 allegations are, the UCL cognizes them as being sufficient to state
21 a claim at this stage of litigation -- at least for consumers. See
22 Williams v. Gerber Prods. Co., 552 F.3d 934, 938-39 (9th Cir. 2008)
23 (dismissals in UCL cases are rare and generally fact-dependent);
24 Cel-Tech, 20 Cal. App. 4th at 181 (the UCL was intentionally framed
25 in broad, sweeping terms). Plaintiff appears to rely mainly on the
26 breadth of the UCL's unfairness prong on this point. See Opp'n at
27 16-17.

28

1 However, Defendant is correct that when a defendant in a UCL
2 unfairness case is a competitor of a plaintiff (as opposed to being
3 a consumer), a business practice is unfair only if it "threatens an
4 incipient violation of an antitrust law, or violates the policy or
5 spirit of one of those laws because its effects are comparable to
6 or the same as a violation of the law, or otherwise significantly
7 threatens or harms competition." Cel-Tech, 20 Cal. App. 4th at
8 187. In this case, Plaintiff has not alleged or even suggested a
9 violation of the letter, policy, or spirit of an antitrust law.
10 See id.; see also Drum v. San Fernando Valley Bar Assoc., 182 Cal.
11 App. 4th 247, 254-55 (Cal. Ct. App. 2010). Accordingly, the Court
12 finds that Plaintiff has failed to state a UCL unfairness claim.
13 This claim is DISMISSED with leave to amend.

14 **H. Patent Infringement**

15 Plaintiff asserts claims against Defendant for direct,
16 contributory, induced, and willful infringement of the Patents-in-
17 Suit, based on Defendant's products Aprisa and, as to two patents,
18 Apogee. See Compl. ¶¶ 67, 74, 81, 88. Plaintiff asserts that
19 Defendant's products infringe by operating "in a manner that
20 infringes [the asserted patent]," id., and that Defendant "has
21 been, is currently, and unless enjoined, will continue to actively
22 induce, encourage or contribute to the infringement of [each
23 Patent-in-Suit]," id. ¶¶ 68, 75, 82. According to Plaintiff,
24 Defendant induces and contributes to its customers' patent
25 infringement by providing allegedly infringing products and "by
26 dictating by its design and instructions to users thereto the
27 manner in which the software is used causing such infringement."
28 Id.

1 Defendant concedes that the lenient pleading standard for
2 direct patent infringement protects Plaintiff's direct infringement
3 claim at this stage. MTD at 21 n.5. However, Defendant asserts
4 that Plaintiff's allegations of contributory, induced, and willful
5 patent infringement all fail because Plaintiff does not adequately
6 plead that Defendant knew of the Patents-in-Suit before the
7 complaint was filed, or that Defendant's software at issue here
8 lacks substantial non-infringing uses or is made or adapted for
9 infringement of the Patents-in-Suit. Id. at 21-23.

10 **i. Induced Infringement**

11 To state a claim for inducement of infringement, a plaintiff
12 must allege sufficient facts -- subject to Twombly and Iqbal -- to
13 raise the reasonable inference that the defendant knowingly induced
14 infringement and possessed specific intent to encourage another's
15 infringement. See In re Bill of Lading Transmission & Processing
16 Sys. Patent Litig., 681 F.3d 1323, 1339 (Fed. Cir. 2012).
17 Plaintiff alleges that Defendant induced or encouraged infringement
18 by providing products "designed and intended to enable"
19 infringement and "by dictating by its design and instructions to
20 users thereto the manner in which the software is used causing such
21 infringement." Compl. ¶¶ 68, 75, 82, 89. Defendant argues that
22 these are impermissible legal conclusions couched as factual
23 allegations, and that Plaintiff does not allege the element of pre-
24 suit knowledge of the patents. MTD at 22-23. Plaintiff asserts
25 that it put Defendant on notice of the Patents-in-Suit at least by
26 May 8, 2013, via a warning letter, or by November 28, 2012, when it
27 contacted Defendant regarding suspected infringement. Opp'n at 20-

28

1 21 (citing Compl. ¶¶ 44).³ Plaintiff also contends that its
2 allegations about Defendant's design and instructions, Compl. ¶¶
3 68, 75, 82, 89, are sufficient to satisfy the relevant pleading
4 standards. Id.

5 The Court does not find that any of the correspondence
6 Plaintiff references put Defendant on notice of the Patents-in-
7 Suit. Defendant attached copies of these letters in a declaration
8 supporting its reply brief, and the Court takes judicial notice of
9 these copies under Federal Rule of Evidence 201, because the
10 letters are incorporated by reference into Plaintiff's complaint.
11 See Compl. ¶¶ 41, 44; ECF No. 33 ("Drummond Decl.") Exs. B ("May 8
12 Ltr."), C ("Nov. 20 Ltr."). The May 8 Letter refers to alleged
13 copying of proprietary command sets, and the November 28 Letter
14 does not refer to any copying at all. Thus, the Court is left only
15 with Plaintiff's allegations that Defendant "had knowledge and
16 notice of the [Patents-in-Suit]," Compl. ¶¶ 68, 75, 82, 89, which
17 are merely legal conclusions pled as factual allegations.

18 The Court finds Plaintiff's other allegations of inducement
19 conclusory. Plaintiff need only provide bare facts supporting its
20 claim, and it certainly need not prove its claim at the pleading
21 stage, but descriptions of the Patents-in-Suit and Defendant's
22 products, coupled with bare pleadings of the elements of these
23 infringement claims, do not suffice to allow the Court to make a
24 reasonable inference of Defendant's intent to induce infringement.
25 See Compl. ¶¶ 68, 75, 82, 89. Plaintiff could, for example, have
26

27 ³ Defendant notes that it is not aware of a November 28, 2012
28 letter, but only of a November 20, 2012 letter. The parties do not
further address this point, so the Court analyzes only the November
20, 2012 letter.

1 pled facts as to how Defendant's design or instruction were meant
2 to induce or encourage Defendant, but Plaintiff's Complaint simply
3 states that Defendant "induced, encouraged or contributed to its
4 customers' direct infringement by providing, selling or offering
5 for sale the Aprisa software that is designed and intend to [work
6 in a manner infringing the Patents-in-Suit]." Id. Plaintiff has
7 not sufficiently alleged that Defendant induced infringement of the
8 Patents-in-Suit.

9 Accordingly, Plaintiff's induced infringement claims are
10 DISMISSED with leave to amend.

11 **ii. Contributory Infringement**

12 To state a claim for contributory infringement, a plaintiff
13 must allege sufficient facts to raise the reasonable inference that
14 the defendant sells or offers to sell a material or apparatus (1)
15 for use in practicing a patented process, (2) that is material to
16 practicing the invention, (3) that has no substantial non-
17 infringing uses, and (4) is known by the party "to be especially
18 made or especially adapted for use in an infringement of such
19 patent." In re Bill of Lading, 681 F.3d at 1337. Plaintiff
20 contends that the Court should make the inference that Defendant
21 contributed to others' infringement of the Patents-in-Suit because
22 Plaintiff's complaint does not indicate that Defendant's products
23 have substantial non-infringing uses. Opp'n at 19-20 (citing
24 Compl. ¶¶ 68, 75, 82, 89). Defendant argues that it is Plaintiff's
25 burden to allege that Defendant's accused software lacks
26 substantial non-infringing uses or is especially made or adapted
27 for infringement of the Patents-in-Suit, and that Plaintiff failed
28 to do so. MTD at 21-22; Reply at 14-15.

1 Per above, the Court finds that Plaintiff fails to allege that
2 Defendant knew that any of its software was made or adapted for
3 infringement of any of the Patents-in-Suit, which leads to a
4 finding here that Plaintiff has failed to allege that Defendant's
5 software was designed to infringe any particular patent. See
6 Fujitsu Ltd. v. Netgear Inc., 620 F.3d 1321, 1326 (Fed. Cir. 2010)
7 (plaintiffs must plead, among other things, knowledge of the patent
8 in order to plead a contributory infringement claim). Further,
9 while Plaintiff does not have to prove its claims at the pleading
10 stage, Plaintiff has failed to raise the reasonable inference that
11 Defendant's software has no substantial non-infringing uses.
12 Plaintiff does not have to explain everything that Defendant's
13 software does, but when Plaintiff's complaint is so vague as to its
14 own claims and Defendant's products, the Court cannot find that
15 Defendant's software has no substantial non-infringing uses.

16 Plaintiff's contributory infringement claims are DISMISSED
17 with leave to amend.

18 **iii. Willful Infringement**

19 To state a claim for willful infringement, a plaintiff must
20 plead sufficient facts to raise the reasonable inference that the
21 defendant "was aware of the asserted patent, but nonetheless acted
22 despite an objectively high likelihood that its actions constituted
23 infringement of a valid patent." i4i Ltd. P'ship v. Microsoft
24 Corp., 598 F.3d 831, 861 (Fed. Cir. 2010) (citation omitted).
25 Plaintiffs need only make out a bare assertion of knowledge of an
26 issued patent, but mere recitation of elements is insufficient.
27 see Avocet Sports Tech., Inc. v. Garmin Int'l, Inc., No. C 11-04049
28 JW, 2012 WL 1030031, at *3 (N.D. Cal. Mar. 22, 2012).

1 As stated above, Plaintiff fails to allege that Defendant was
2 aware of the Patents-in-Suit. Further, Plaintiff's allegations of
3 willfulness amount to nothing more than recitation of that claim's
4 elements:

5 [Defendant's] acts of direct and indirect infringement
6 are willful, as [Defendant] knew or should have known of
7 the [Patents-in-Suit] and that making, using, offering to
8 sell and selling within the United States, or importing
9 into the United States, its Aprisa or Apogee software
products would infringe the [Patents-in-Suit], but acted
despite an objectively high likelihood that such
activities would infringe the patent.

10 Compl. ¶¶ 69, 76, 83, 90. Such pleadings are insufficient to state
11 a claim for willful infringement. Plaintiff's willful infringement
12 claims are therefore DISMISSED with leave to amend.

13
14 **V. CONCLUSION**

15 As explained above, the Court GRANTS in part and DENIES in
16 part Defendant ATopTech Inc.'s motion to dismiss Plaintiff
17 Synopsys, Inc.'s complaint. All of Plaintiff's claims except its
18 copyright infringement claim based on its proprietary input and
19 output formats and its UCL unlawfulness claim predicated on that
20 alleged infringement are DISMISSED with leave to amend.

21 Plaintiff may file an amended complaint within thirty (30)
22 days of this Order's signature date. Failure to do so may result
23 in dismissal of this action with prejudice.

24
25 IT IS SO ORDERED.

26
27 Dated: October 24, 2013



28 UNITED STATES DISTRICT JUDGE