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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

OTR WHEEL ENGINEERING, INC.,  
BLACKSTONE/OTR, LLC, and F.B.T.  
ENTERPRISES, INC.,  
  
Plaintiffs,  
  
v.  
  
WEST WORLDWIDE SERVICES, INC.,  
and SAMUEL J. WEST, individually and  
his marital community, et al.,  
  
Defendants.

No. CV-14-085-LRS

**ORDER DENYING  
MOTION FOR  
RECONSIDERATION  
RE TRADE SECRET  
MISAPPROPRIATION,  
INTER ALIA**

**BEFORE THE COURT** is “Defendants’ Motion For Reconsideration Of This Court’s Reconsideration Of Trade Secret Summary Judgment Ruling.” (ECF No. 384). This motion is heard without oral argument.

Pursuant to Fed. R. Civ. P. 60(b)(6), Defendants ask the court to reconsider its “Order Granting [Plaintiffs’] Motion For Reconsideration Re Trade Secret Misappropriation, *Inter Alia*,” (ECF No. 380), which vacated the court’s previous order (ECF No. 317) granting summary judgment on Plaintiffs’ trade secret claim and reinstated that claim for adjudication at trial.

**I. PROTECTABLE TRADE SECRETS**

In its order granting Plaintiffs’ motion for reconsideration, the court stated as follows:

Not necessarily because it believes it committed a “clear error,”

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1 but because of what it believes are “highly unusual circumstances,”  
2 the court vacates its prior ruling that Plaintiffs have failed to identify  
3 their trade secrets with sufficient particularity and will allow that issue  
4 to proceed to trial where it will be determined as a matter of law by  
5 the court at the close of Plaintiffs’ case-in-chief or by a jury at the  
6 close of the evidence.

7 (ECF No. 380 at p. 8).

8 The court now clarifies that it was not only because of “highly unusual  
9 circumstances,” but because it committed “clear error” that it vacated its summary  
10 judgment ruling as a matter of law that Plaintiffs failed to identify their trade  
11 secrets with sufficient particularity.<sup>1</sup> This is a permissible basis for reconsideration  
12 under Fed. R. Civ. P. 60(b) and does not require a showing by Plaintiffs that  
13 “injury and circumstances beyond [their] control . . . prevented them from  
14 proceeding in a proper fashion.” *Latshaw v. Trainer Wortham & Co.*, 452 F.3d  
15 1097, 1103 (9<sup>th</sup> Cir. 2006). Plaintiffs timely moved for reconsideration on an  
16 appropriate basis.

17 The court did not “clearly err” in reconsidering its summary judgment  
18 ruling. This reconsideration was not based on new evidence, but on evidence  
19 already in the record (e.g., Fourth Declaration of Fredrick B. Taylor, ECF No.  
20 251). Plaintiffs have produced sufficient evidence raising a genuine issue of  
21 material fact that they have identifiable trade secrets consisting of the specific  
22 instructions on how to prepare and manufacture the *Outrigger* tires that were  
23 provided to its manufacturer, Superhawk, and that these tires are the result of a  
24 unique layout of steel and nylon reinforcing materials, and a phased method of  
25 construction using specific types of rubber. (Fourth Declaration of Fredrick B.

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26 <sup>1</sup> The court’s order did make it clear that it found it committed “clear error”  
27 in concluding as a matter of law that Plaintiffs failed to reasonably protect any  
28 trade secrets. (ECF No. 380 at p. 8).

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1 Taylor, ECF No. 251 at Paragraphs 14, 16, 20, 21 and 32).

2 The fact that Plaintiffs have not produced the actual written instructions is  
3 not dispositive of the question of whether Plaintiffs have identifiable trade secrets  
4 and does not allow the court to rule as a matter of law that Plaintiffs do not have  
5 identifiable trade secrets, those being “information, including a formula, pattern,  
6 compilation, program, device, method technique, or process, that . . . [d]erives  
7 independent economic value, actual or potential, from not being generally known  
8 to the public or to other persons who can obtain economic value from its disclosure  
9 or use[.]” RCW 19.108.010(4)(a).<sup>2</sup> In his declaration, Taylor states that he “gave  
10 to Solideal the building specifications that OTR and STA [Specialty Tire of  
11 America] had developed together [and] [t]o my knowledge Solideal turned this  
12 teaching into technical drawings, build instructions, green tire specifications and  
13 finish tire specifications that it uses to build Outrigger tires.” (ECF No. 251 at  
14 Paragraph 36). As this court previously noted, there is evidence in the record that  
15 Solideal communicated build specifications to tire manufacturers in China. (ECF  
16 No. 380 at p. 3). And there is the evidence of Defendants’ interactions with  
17 Alliance Tire Group and/or Michael Zhang which arguably suggest Defendants  
18 recognized the “independent economic value” of Plaintiffs’ tire technology. (ECF  
19 No. 312 at p. 12).

20 All of this evidence gives rise to a reasonable inference that Plaintiffs’ build  
21 specifications- although not produced in written form by Plaintiffs or Solideal-

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23 <sup>2</sup> The requirement of “novelty and uniqueness” is inherent in this definition.  
24 *Machen, Inc. v. Aircraft Design, Inc.*, 65 Wn.App. 319, 327, 828 P.2d 73 (1992),  
25 *overruled on other grounds, Waterjet Technology, Inc. v. Flow Intern. Corp.*, 140  
26 Wn.2d 313, 323, 996 P.2d 598 (2000).  
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1 constitute trade secret information. As in *Forro Precision, Inc. v. International*  
2 *Business Machines Corp.*, 673 F.2d 1045, 1056-57 (9<sup>th</sup> Cir. 1982), it will be  
3 Plaintiff’s burden at trial to prove this by a preponderance of the evidence to the  
4 satisfaction of a jury.<sup>3</sup> A jury will determine if Plaintiffs have described “the  
5 subject matter of the trade secret with sufficient particularity to separate it from  
6 matters of general knowledge in the trade or of special knowledge of those persons  
7 . . . skilled in the trade.” *Imax Corp. v. Cinema Technologies, Inc.*, 152 F.3d 1161,  
8 1164-65 (1998), quoting *Universal Analytics v. MacNeal-Schwendler Corp.*, 707  
9 F.Supp. 1170, 1177 (C.D. Cal. 1989), *aff’d*, 914 F.2d 1256 (9<sup>th</sup> Cir. 1990). In  
10 making this determination, the jury will hear Defendants’ arguments regarding  
11 specificity and take into account the absence of actual written building  
12 instructions.<sup>4</sup> The jury will decide if the building specifications testified to by

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15 <sup>3</sup> Defendants assert that in *Forro*, “there was no dispute about the seminal  
16 question here- did the plaintiff actually own any trade secrets?” (ECF No. 386 at  
17 p. 6). There was such a dispute in *Forro* because the judge instructed the jury that  
18 IBM must prove “the drawings allegedly used by Forro constituted trade secret  
19 information and were so treated by IBM,” 673 F.2d at 1056, and the Ninth Circuit  
20 found that “IBM introduced sufficient evidence to allow the jury to identify the  
21 secrets claimed to be misappropriated.” *Id.* at 1057.

25 <sup>4</sup> Of course, the court will not allow a “trial by ambush” whereby Plaintiffs  
26 present for the first time at trial, trade secret evidence which should have been  
27 disclosed during discovery. As is typical in jury trials, the court anticipates that at  
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1 Plaintiffs are “fictional.”<sup>5</sup>

## 2 **II. FAILURE TO PROTECT ALLEGED TRADE SECRETS**

3 As Plaintiffs point out in their response brief (ECF No. 285 at pp. 9-10), the  
4 court did not consider new evidence in concluding there is a genuine issue of  
5 material fact whether Plaintiffs made a reasonable effort to protect any trade  
6 secrets. Defendants’ reply brief offers no rebuttal on this point.

7 Defendants offered Mr. Zhang’s declaration in support of their Motion For  
8 Summary Judgment Re Trade Secret Misappropriation (ECF No. 196 at p. 7), and  
9 this court was aware from its own review of the record that there was a June 12,  
10 2007 Processing Agreement which amended the March 7, 2005 Processing  
11 Agreement. The June 12, 2007 Processing Agreement was included as part of the  
12 record in Ex. BR to ECF No. 208 (ECF No. 317 at p. 7, n. 1), but the companion  
13 June 12, 2007 “Supplementary Technology License Agreement” was not.

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15 the close of Plaintiffs’ case-in-chief, Defendants will make Fed. R. Civ. P. 50(a)  
16 motions for judgment as a matter of law, including one specifically directed at  
17 Plaintiffs’ trade secret claim and whether there is enough evidence to allow the  
18 jury to consider that claim.

19  
20 <sup>5</sup> Thus far, the court has no basis for concluding that Plaintiffs have  
21 destroyed or deliberately withheld written building specifications. Therefore, there  
22 is no basis for presuming that such evidence does not exist now or did not exist at  
23 one time. *Burgin v. Universal Credit Co.*, 2 Wn. 2d 364, 384, 98 P.2d 291 (1940),  
24 a very old case that did involve a trade secret claim, is not persuasive. Plaintiffs’  
25 evidence raises a genuine issue of material fact that building specifications exist.  
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1 Plaintiffs appropriately made it part of the record when they filed their motion for  
2 reconsideration so that the court could rule on a complete record.

3 **III. CONCLUSION**

4 This court did not commit “clear error” in granting Plaintiffs’ Motion For  
5 Reconsideration Re Trade Secret Misappropriation and reinstating Plaintiffs’ trade  
6 secret claim. “Defendants’ Motion For Reconsideration Of This Court’s  
7 Reconsideration Of Trade Secret Summary Judgment Ruling,” (ECF No. 384), is  
8 **DENIED.**

9 Because the trade secrets claim has been reinstated, it is necessary to set  
10 deadlines for filing of amended exhibit and witness lists, objections to newly listed  
11 exhibits, new designations of deposition testimony, and objections to those  
12 designations. Amended exhibit and witness lists and new deposition designations  
13 shall be served and filed no later **April 18, 2016**. Any new deposition counter-  
14 designations shall be served and filed no later than **April 25, 2016**. Objections to  
15 newly listed exhibits shall be served and filed no later than **May 2, 2016**.  
16 Objections to new deposition designations and new counter-designations shall be  
17 served and filed no later than **May 9, 2016**. An amended joint proposed pre-trial  
18 order shall be served and filed no later than **May 16, 2016**. Copies of newly listed  
19 exhibits not previously provided to the court, shall be provided no later than **May**  
20 **16, 2016**.

21 **IT IS SO ORDERED.** The District Executive is directed to forward copies  
22 of this order to counsel of record.

23 **DATED** this 21st of March, 2016.

24 *s/Lonny R. Suko*

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26 LONNY R. SUKO  
27 SENIOR UNITED STATES DISTRICT JUDGE  
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