

ABB TURBO SYSTEMS AG v. TURBOUSA, INC., Appeal No. 2014-1356 (Fed. Cir. December 17, 2014). Before Prost, Newman and Taranto. Appealed from S.D. Fla. (Judge Moore).

Background:

ABB sued TurboUSA for misappropriating and conspiring to misappropriate trade secrets (TS) under Florida law. ABB alleged that at least one former employee paid at least one current ABB employee for confidential information related to ABB parts, servicing and pricing from 1986-2009. TurboUSA moved to dismiss ABB's complaint as time-barred (under Florida TS Law). The district court agreed with TurboUSA and held that: (1) the claim was not brought within 3 years after the misappropriation was (or should have been) discovered; and (2) alternatively, reasonable efforts to protect the secret information were not used (a second requirement under Florida TS law). ABB appealed.

Issues/Holdings:

Did the district court err by dismissing the trade secret claim? Yes, reversed and remanded.

Discussion:

The Federal Circuit noted that the statute of limitations bar is an affirmative defense (thus not required to be addressed in ABB's complaint) and that dismissal at the pleading stage is improper unless it is apparent from the face of the complaint that the claim is time-barred. The Federal Circuit noted that the district court based its conclusion that ABB's complaint was untimely because misconduct occurred over a long period and through geographically dispersed meetings (and thus should have known). The Federal Circuit, in reversing the district court, reasoned that the district court made too many assumptions to conclude that ABB should have known. In particular, the Federal Circuit acknowledged that the alleged acts of misappropriation were clandestine communications/cash payments, which make plausible *lack* of actual or constructive notice.

The Federal Circuit found that ABB alleged enough facts showing that ABB reasonably protected its trade secrets. ABB alleged that it had reasonably protected trade secrets by imposing confidentiality/nondisclosure obligations on employees, marking documents confidential ("do not disseminate"), and restricting physical and electronic access by third parties. In reversing the district court's alternative ground of dismissal, the Federal Circuit noted that the district court: (i) cited no authority suggesting ABB's measures were not reasonably protective, and (ii) other courts have held similar protective measures sufficient at the pleading stage. The Federal Circuit further noted that only in extreme cases can reasonable precautions be determined on summary judgment because the answer depends on a balancing of costs, which requires estimation and measurement by knowledgeable people.