

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<b>JACK A. DORAZIO,</b>	:	<b>CIVIL ACTION</b>
<b>Plaintiff,</b>	:	
	:	
v.	:	
	:	
<b>CAPITOL SPECIALTY</b>	:	
<b>PLASTICS, INC.,</b>	:	
<b>Defendant.</b>	:	<b>No. 01-6548</b>

**MEMORANDUM AND ORDER**

Schiller, J.

November, 2002

**I. INTRODUCTION**

Defendant Capital Specialty Plastics (“CSP”) is an Alabama<sup>1</sup> corporation in the business of developing and selling packaging technology. In December, 1999, it hired Plaintiff Jack Dorazio as a Key Account Manager, responsible for sales and marketing of the company’s products. The parties executed an employment agreement, dated December 18, 1999, providing for a term of 10 years and for termination “for cause” at any time and without cause upon one year’s written notice. Plaintiff alleges that he developed and implemented a marketing plan for Defendant by calling on contacts that Plaintiff had cultivated in his many years in the industry. Plaintiff also alleges that he invented new and novel uses for Defendant’s products. Despite these contributions, he avers, Defendant terminated Plaintiff in March 2001 without cause and later breached the employment agreement by attempting to terminate him a second time “for cause.” Plaintiff sued in three counts: Count I for breach of contract, Count II for fraud by way of a scheme to steal Plaintiff’s contacts and ideas, and Count III for misappropriation of Plaintiff’s intellectual property rights in his inventions.

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<sup>1</sup>Because Plaintiff is a Pennsylvania resident, this Court has subject matter jurisdiction pursuant to 28 U.S.C. §1332.

Presently before this Court are Plaintiff's motion for summary judgment on Count I and Defendant's motion for summary judgment on Counts II and II. Because the language of the employment agreement makes clear that Defendant was obligated to compensate Plaintiff following his dismissal without cause, I grant summary judgment for Plaintiff as to Count I. Because factual disputes exist as to whether Defendant misappropriated Plaintiff's trade secrets, I will deny Defendant's summary judgment motion as to Count II. Finally, because this Court cannot properly exercise jurisdiction over Plaintiff's Count III claim, I will grant summary judgment for Defendants as to Count III.

Also before the Court are Defendant's *in limine* motions to bifurcate the issue of the amount of punitive damages and to exclude certain evidence. In light of the above rulings on the summary judgment motions, I will deny Defendant's motion to bifurcate and revisit the issue upon submission of letter briefs regarding the availability of punitive damages on the re-styled Count II claim in accordance with the accompanying order. I will deny Defendant's motion to exclude evidence to the extent specified in the accompanying order.

## **II. THE SUMMARY JUDGMENT MOTIONS**

### **A. Legal Standard**

Summary judgment is appropriate when the record discloses no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c); *see also Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986). In reviewing the record, "a court must view the facts in the light most favorable to the nonmoving party and draw all inferences in that party's favor." *Armbruster v. Unisys Corp.*, 32 F.3d 768, 777 (3d Cir. 1994). The moving party bears

the burden of showing that the record reveals no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Fed. R. Civ. P. 56(c); *Anderson*, 477 U.S. at 247. Once the moving party has met its burden, the non-moving party must go beyond the pleadings to set forth specific facts showing that there is a genuine issue for trial. Fed. R. Civ. P. 56(e); *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 585-86 (1986). “There is no issue for trial unless there is sufficient evidence favoring the nonmoving party for a jury to return a verdict for that party.” *Anderson*, 477 U.S. at 249. “Such affirmative evidence – regardless of whether it is direct or circumstantial – must amount to more than a scintilla, but may amount to less (in the evaluation of the court) than a preponderance.” *Williams v. Borough of West Chester*, 891 F.2d 458, 460-61 (3d Cir. 1989).

## **B. Discussion**

### **1. Count I**

Plaintiff alleges that Defendant breached the employment agreement by terminating him without cause and then terminating him a second time “for cause” and failing to furnish compensation according to the terms of the agreement. The agreement provides that Plaintiff might be terminated without cause upon one year’s written notice (the “Notice Period”) or for cause at any time. (Employment Agreement, ¶ 7.A.) Both parties agree that CSP dismissed Plaintiff in March 2001 “without cause.” (Pl.’s Mot. for Partial Summ. J. at 2; Def.’s Mem. of Law in Opp’n at 3.) The portion of the employment agreement governing such dismissals provides:

The employee will continue to receive his compensation . . . and his benefits . . . during the Notice Period and, at the election of the company, may be required to continue to perform his duties and responsibilities during the Notice Period.

Under New York law,<sup>2</sup> where the terms of a contract are unambiguous, the court must enforce the language as written and not “make a new contract for the parties under the guise of interpreting the writing.” *Morlee Sales Corp. v. Mfrs. Trust Co.*, 9 NY2d 16, 19 (N.Y. 1961). Here, the terms of the employment agreement are unambiguous. A straightforward application of those terms, yields only one conclusion: Defendant breached the contract by dismissing plaintiff without cause and then dismissing him again “for cause” before the one year Notice Period had expired without furnishing the required compensation. Defendant failed to provide for terms governing employment during the Notice Period or modifying its obligation to pay the Plaintiff for one year following termination without cause. Under the language of the contract, once Defendant dismissed Plaintiff without cause, it incurred an obligation to pay. *See Guasteferro v. Family Health Network*, 203 A.D.2d 905 (N.Y. 1994). Therefore, I grant summary judgment for Plaintiff on Count I.

## **2. Count II**

Count II of the Complaint alleges that CSP’s entry into the employment agreement was “part and parcel” of a scheme to defraud Mr. Dorazio and steal “all or most of his marketing knowledge, contacts and ideas.” (Pl.’s Compl., ¶ 15). By inducing him to enter into the agreement, Plaintiff alleges, CSP “caus[ed]” him to “provide” these items of intellectual property. (Pl.’s Compl., ¶ 16). Although it appears from the Complaint that Plaintiff attempts to make out a fraudulent inducement claim, Plaintiff argues that Count II “goes well beyond” a fraudulent inducement claim. (Pl.’s Resp. to Def.’s Mot. for Summ. J. at 3.) Rather, he contends, it is a claim that “defendant purposefully and intentionally executed a scheme to hire people with contacts and business knowledge valuable to it

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<sup>2</sup> The Agreement provides that it shall be construed, interpreted and enforced in accordance with, and shall be governed by New York law. (Employment Agreement, ¶ 10).

and then fire them for concocted reasons after taking from them those contacts and that business knowledge.” (Id.) I will evaluate Plaintiff’s Count II allegations under the two most readily applicable theories, fraudulent inducement and misappropriation of trade secrets.

**a. Fraudulent Inducement**

New York Law<sup>3</sup> recognizes a cause of action for fraudulent inducement where a plaintiff can show “misrepresentation or a material omission of fact which was false and know to be false by defendant, made for the purpose of inducing the other party to rely upon it, justifiable reliance of the other party on the misrepresentation or material omission, and injury.” *Shea v. Hambros PLC*, 244 A.D.2d 39, 46 (1st Dept. 1998). Allegations that a party was falsely induced into entering a contract through representations that are not collateral or extraneous to the contract, however, will not suffice to support a claim for fraud. *See McKernin v. Fanny Farmer Candy Shops.*, 176 A.D.2d 233, 234 (2d Dep’t 1991); *Metro. Transp. Auth. v. Triumph Advert. Prods.*, 116 A.D.2d 526, 527 (1st Dep’t 1986). Specifically, “where a fraud claim arises out of the same facts as plaintiff’s breach of contract claim, with the addition only of an allegation that defendant never intended to perform the precise promises spelled out in the contract. . . , the fraud claim is redundant and plaintiff’s sole remedy is for breach of contract.” *Sudul v. Computer Outsourcing Servs.*, 868 F. Supp. 59, 62 (S.D.N.Y. 1994).

To make out a fraudulent inducement claim, therefore, Plaintiff must show a legal duty separate from the duty to perform under the contract or demonstrate a fraudulent misrepresentation collateral or extraneous to the contract. *Bridgestone/Firestone, Inc. v. Recovery Credit Servs., Inc.*

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<sup>3</sup> The parties agree that New York law governs the Count II claim as originally styled.

98 F.3d 13, 21 (2d. Cir. 1996). Alternatively, Plaintiff must show that he seeks to recover “special damages proximately caused by the alleged false representation that are not recoverable under the contract measure of damages.” *Best Western Int’l, Inc. v. CSI Int’l. Corp.*, No. 94 Civ. 360, 1994 U.S. Dist. LEXIS 11815, at \*17, 1994 WL 465905, at \*5.

Mr. Dorazio fails to show a misrepresentation collateral or extraneous to the contract. He alleges that CSP misrepresented the purpose of entering into the contract and its intent to perform under the contract. Thus, Plaintiff must rely on the existence of a duty owed him independent of the contract. Plaintiff appears to allege that Defendants have a duty to avoid trading on his goodwill, and correctly points out that employees and employers may have property rights in goodwill and contacts under trade secret law. (Pl.’s Resp. to Def.’s Mot. for Summ. J. at 7.) However, the cases he cites for the proposition that attempts to trade on “goodwill” constitute misappropriation of a property right, *Sample, Inc. v Porath*, 341 N.Y.S. 2d. 683, 690 (1973) and *Tiffany & Co. v. L’Argene Prods. Co.*, 324 N.Y.S.2d 326, 329-30 (1971), are cases disposed of under *trademark* law and deal with “goodwill” in a company name among customers and are therefore innaposite. With nothing more before me, I am unable to discern what recognized legal duty has been breached. Moreover, the alleged “duty” not to trade on Plaintiff’s goodwill does not fit the pattern of duties “collateral or extraneous” to the contract because Plaintiff fails to identify a promise made to him regarding his knowledge, contacts or ideas that induced him to enter into the contract.

Finally, Plaintiff fails to sufficiently allege special damages. The measure of damages recoverable for being fraudulently induced to enter into a contract which otherwise would not have been made is “indemnity for [the] loss suffered through that inducement.” *Deerfield Communications Corp. v. Cheeseborough-Ponds, Inc.*, 68 N.Y.2d 954, 956 (1986) (quoting *Sager v Friedman*, 270 NY

472, 481 (1936)).<sup>4</sup> Here, Plaintiff contends that the damages caused by the alleged scheme include the loss of income caused by his termination and continuing during his as yet unsuccessful job search. Yet, as Plaintiff is well aware, his claim for lost income must arise under his employment agreement with CSP which provides for one year's salary and benefits following dismissal without cause.<sup>5</sup> Plaintiff has not specifically claimed damages from the alleged theft of contacts, ideas and good will, but this is of no moment as this alleged theft would not properly support a fraudulent inducement claim under New York law.

**b. Misappropriation of Trade Secrets**

To recover under New York law<sup>6</sup> for the misappropriation of a trade secret, a plaintiff must

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<sup>4</sup> In *Deerfield*, a purchaser of goods sued the seller for breach of contract. The defendant counterclaimed for fraudulent inducement based on plaintiff's misrepresentation of an intent to abide by a collateral agreement to limit the geographic scope of resale. The defendant also counterclaimed for breach of contract. The court upheld a jury award of damages on both counterclaims, noting the absence of duplication in the award. On the fraudulent inducement counterclaim, the jury awarded costs to locate the goods, the costs to repurchase the goods, storage fees and disposal costs, and on the breach of contract counterclaim, the jury awarded the balance remaining due to the seller on the purchase price. *See* 68 N.Y.2d at 957.

<sup>5</sup> Plaintiff's alleged entitlement to punitive damages does not help his case for fraudulent inducement. *See Best Western*, 1994 U.S. Dist. LEXIS 11815 at \*17-18, 1994 WL 465905, at \*5 (finding that plaintiff who sought, among other remedies, punitive damages on fraudulent inducement claim, had not sufficiently made claim for special damages separate from those arising out of breach of contract claim.)

<sup>6</sup> A federal trial court sitting in diversity must apply the law of the forum state to determine the choice of law. *Klaxon Co. v. Stentor Electric Mfg. Co.*, 313 U.S. 487, 497 (1941). Here, the Employment Agreement between the parties states that the agreement is to be "construed, interpreted and enforced in accordance with and shall be governed by the laws of New York, without regard to the principles of conflicts of law." (Employment Agreement, ¶ 10). Pennsylvania courts generally honor the intent of the contracting parties and enforce choice of law provisions in contracts executed by them. *Kruzits v. Okuma Mach. Tool, Inc.*, 40 F.3d 52, 55 (3d Cir.1994) citing *Smith v. Commonwealth Nat. Bank*, 557 A.2d 775, 777 (1989). Further, although they do not agree as to the precise nature of the claim, the parties agree that New York law applies to Count II as originally styled. Defendants convincingly argue, citing *Corestates*

demonstrate (i) that he possessed a trade secret and (ii) that the defendant used that trade secret in breach of an agreement, a confidential relationship, or duty, or as a result of discovery by improper means. *Integrated Cash Mgmt. Servs., Inc. v. Digital Transactions, Inc.*, 920 F.2d 171, 173 (2d Cir.1990); *Speedry Chem. Prods., Inc. v. Carter's Ink Co.*, 306 F.2d 328, 331 (2d Cir.1962); *Brignoli v. Balch Hardy & Scheinman, Inc.*, 645 F.Supp. 1201, 1205 (S.D.N.Y.1986); *Sublime Prods., Inc. v. Gerber Prods., Inc.*, 579 F.Supp. 248, 251 (S.D.N.Y.1984); *Rapco Foam, Inc. v. Scientific Applications, Inc.*, 479 F.Supp. 1027, 1029 (S.D.N.Y.1979); Restatement of Torts § 757 (1939). Under New York law, “[a] trade secret is ‘any formula, pattern, device or compilation of information which is used in one’s business, and which gives [the owner] an opportunity to obtain an advantage over competitors who do not know or use it.’” *Ashland Management Inc. v. Janien*, 82 N.Y.2d 395, 407 (N.Y. 1993). In determining whether information constitutes a trade secret, New York courts

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*Bank, N.A. v. Signet Bank*, No. Civ. A. 96-3199, 1996 U.S. Dist. LEXIS 12673, at \*13, n.3, 1996 WL 482909, at \*5, n.3 (E.D. Pa. Aug. 26, 1996), that the choice of law provision is broad enough to encompass a claim for fraudulent inducement.

Although when Count II is styled as a misappropriation of trade secrets claim, its relationship to the contract becomes more attenuated, the choice of law provision still governs. Cases addressing this issue “examine the choice of law provisions of the individual contracts, and then determine, based upon their narrowness or breadth, whether the parties intended for the agreement to encompass all elements of their association.” *Composiflex, Inc. v. Advanced Cardiovascular Sys., Inc.*, 795 F. Supp. 151, 157 (W.D. Pa. 1992). In *Composiflex* the court determined that parties envisioned a broad application of the choice of law clause reading, “this Agreement shall be construed in accordance with the laws of the State of California as to all matters, including, but not limited to, matters of validity, construction, effect or performance.” The court also noted that the parties chose to use terms such as “as to all matters” and “including, but not limited to” to describe the parameters of the relationship. As a result, the court applied California law to a misappropriation of trade secrets claim. Here, whether or not the contract was merely a vehicle, as Plaintiff alleges, for a scheme to misappropriate trade secrets, it forms the basis of interaction from which the misappropriation claim arises. The parties determination to have the agreement “governed by” the laws of New York reflects an intent to have the choice of law clause govern more than merely those claims sounding in contract. *Corestates*, 1996 WL 482909 at \*5.

have considered the following factors:

(1) the extent to which the information is known outside of plaintiff's business; (2) the extent to which it is known by employees and others involved in the business; (3) the extent of measures taken by plaintiff to guard the secrecy of the information; (4) the value of the information to the business and its competitors; (5) the amount of effort or money expended by the plaintiff in developing the information; (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

*Id* at 407 (citing Restatement of Torts § 757 cmt. b).

Here, Dorazio's affidavit indicates that he spent approximately thirty years in the plastics business before coming to CSP, during which time he developed "significant business contacts." (Affidavit of J. Dorazio at 4,8.) During his short employment with CSP, Dorazio claims to have given CSP the names and data of approximately 500 high-level business contacts in the pharmaceutical and biotech industries. (*Id.* at 13.)

Under certain circumstances, New York law recognizes customer lists as trade secrets. *See Defiance Button Mach. Co. v. C & C Metal Prods. Corp.*, 759 F.2d 1053, 1063 (2d Cir.), *cert. denied*, 474 U.S. 844, 88 L. Ed. 2d 108, 106 S. Ct. 131 (1985) ("A customer list developed by a business through substantial effort and kept in confidence may be treated as a trade secret and protected at the owner's instance against disclosure to a competitor, provided the information it contains is not otherwise readily ascertainable."); *accord Leo Silfen, Inc. v. Cream*, 29 N.Y.2d 387, 392-93, 278 N.E.2d 636, 640, 328 N.Y.S.2d 423, 428 (1972). "The question of whether or not a customer list is a trade secret is generally a question of fact." *A.F.A. Tours, Inc. v. Whitchurch*, 937 F.2d 82, 89 (2d Cir. 1991); *see also Chevron U.S.A. Inc. v. Roxen Serv., Inc.*, 813 F.2d 26, 29 (2d Cir. 1987); *Ashland Mgmt.*, 82 N.Y.2d at 407.

As noted, Plaintiff argues, based on a trademark case, that he has a protectable property interest in the goodwill of customers acquired before coming to CSP. Be that as it may, in the *trade secret* context, the existence and amount of goodwill built up around relationships with customers in the contact list goes to the *value* of the information to the business and its customers. *North Atl. Instruments, Inc. v. Haber*, 188 F.3d 38, 46 (2d. Cir. 1999). The existence of goodwill is thus another factor, though only a factor, working in Plaintiff's favor.

Mr. Dorazio has set forth facts sufficient to create a genuine issue of material fact with regard to whether his contacts constitute protectable trade secrets. Reading the facts in the light most favorable to the Plaintiff, a jury could return a verdict for Plaintiff on this issue.<sup>7</sup> Thus, Mr. Dorazio's Count II claim survives summary judgment.

### **3. Count III**

Count III alleges that Mr. Dorazio is the sole and original owner of several new and novel uses of CSP technology for which CSP has improperly sought patent protection. Dorazio seeks an order directing defendant to "correct inventorship" and to "assign ownership" to plaintiff of "any and all issued patents or patent applications and other intellectual property rights in the inventions...." (Compl. ¶ 21) Defendant indicates that of the inventions claimed by Dorazio, three are currently the subject of pending patent applications and the remainder are not subject to any pending patent application. It is therefore impossible for this Court to grant Plaintiff the relief he requests.

First, this court does not have jurisdiction to "correct inventorship." The federal statute, 35

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<sup>7</sup>Dorazio's marketing knowledge and ideas might well qualify as a trade secret. Yet the record contains no factual support, other than Dorazio's testimony that he had developed "significant contacts and marketing knowledge," for this proposition. (Aff. of J. Dorazio ¶ 4.) The record reveals nothing with respect to the value of Mr. Dorazio's marketing knowledge or ideas, or any steps he took to protect that knowledge or those ideas.

U.S.C. §116, governing inventorship errors in pending patent applications does not explicitly create authority in the district courts to preside over such issues. *See* 35 U.S.C. §116 (2002). At the same time, 35 U.S.C. § 256 (2002), which governs inventorship disputes over issued patents, explicitly creates such authority in the district courts. *See* 35 U.S.C. § 256. Various courts have interpreted this difference to mean that district courts have jurisdiction over inventorship issues only where the patent has issued. *See MCV, Inc. v. King-Seeley Thermos Co.*, 870 F.2d 1568, 1570 (Fed. Cir. 1989); *Iowa State Univ. Research Found. v. Sperry Rand Corp.*, 444 F.2d 406, 408 (4th Cir. 1971) (noting that only a court can resolve a dispute over issued patent because “after issuance of a patent, the Commissioner lacks jurisdiction over it.”) (citing 35 U.S.C. §§ 141, 146)); *Display Research Labs. v. Telegen Corp.*, 133 F. Supp. 2d 1170, 1173-74 (N.D.Cal. 2001); *RustEvader Corp. v. Cowatch*, 842 F. Supp. 171, 173 (W.D. Pa. 1993).<sup>8</sup>

Second, because I cannot make a determination with regard to inventorship, and because Plaintiff provides no other basis on which to assign property rights in his claimed inventions, such as a provision in Plaintiff’s employment agreement protecting his ownership rights, I am unable to “assign” plaintiff any ownership rights in his claimed inventions. Third, Plaintiff’s blanket claim to ownership fails on ripeness grounds. As noted, no patent has issued to date; only applications are pending. Yet Plaintiff seeks a declaration that he owns all patent rights in his alleged inventions. Thus, any case or controversy that Plaintiff might establish would have to arise under 35 U.S.C. §

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<sup>8</sup> The fact that the patent applications may yield patents is of no help to Plaintiff. Justiciability must be judged as of the time of filing, not as of some indeterminate future date when the court might reach the merits and the patent has issued. *GAF Bldg. Materials Corp. v. Elk Corp.*, 90 F.3d 479, 482 (Fed. Cir. 1996); *Spectronics Corp. v. H.B. Fuller Co.*, 940 F.2d 631, 635 (Fed. Cir.), cert. denied, 502 U.S. 1013, 116 L. Ed. 2d 749, 112 S. Ct. 658 (1991) (“Later events may not create jurisdiction where none existed at the time of filing.”).

261, which governs assignment of rights appurtenant to patent applications. *See* 35 U.S.C. § 261. The scope of rights conveyed in the assignment of patent rights before the granting of the patent “is much less certainly defined than that of a granted patent.” *Westinghouse Elec. v. Formica Insulation*, 266 U.S. 342, 352-53 (1924); *see also Sarkes Tarzian, Inc. v. United States*, 159 F. Supp. 253, 256 (D. Ind. 1958) (although a form of property, patent application is only inchoate patent right, maturing into a depreciable patent asset only when patent issues). As between CSP and himself, therefore, Dorazio has nothing to contest with regard to ownership of rights in his claimed inventions because neither he nor CSP have established such rights.

In sum, to the extent Plaintiff is asking the Court to announce his ownership rights in whatever patents may issue based on his alleged inventorship, his claim is not ripe. *Display Research Labs.*, 133 F. Supp. 2d at 1175; *GAF Bldg. Materials Corp. v. Elk Corp.*, 90 F.3d 479, 483 (Fed. Cir. 1996); *see also De Ferranti v. Lyndmark*, 30 App. D.C. 417, 425 (1908) (“In a patent, no vested right of which the applicant cannot be deprived is acquired under the preliminary proceedings leading up to its issuance.”).

Plaintiff, therefore, cannot survive summary judgment on his Count III claims.

An appropriate order follows.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<b>JACK A. DORAZIO,</b>	:	<b>CIVIL ACTION</b>
<b>Plaintiff,</b>	:	
	:	
v.	:	
	:	
<b>CAPITOL SPECIALTY</b>	:	
<b>PLASTICS, INC.,</b>	:	
<b>Defendant.</b>	:	<b>No. 01-6548</b>

**ORDER**

AND NOW, this    day of **November, 2002**, upon consideration of Defendant’s motion for summary judgment, Plaintiff’s motion for partial summary judgment, Defendant’s motion *in limine* to bifurcate the issue of punitive damages and Defendant’s motion *in limine* to exclude certain evidence, all the responses thereto, and for the foregoing reasons, it is hereby **ORDERED** that:

1. Plaintiff’s Motion for Partial Summary Judgment on Count I (Document No. 14) is **GRANTED** as to liability. Proof of damages shall be argued at trial.
2. Defendant’s Motion for Summary Judgment on Counts II and III (Document No. 15) is **GRANTED IN PART** and **DENIED IN PART** as follows:
  - a. Summary Judgment on Count II is **DENIED**. Count II shall proceed as a claim for misappropriation of trade secrets under New York law.
  - b. Summary Judgment on Count III is **GRANTED**.
3. Defendant’s Motion In Limine to Bifurcate (Document No. 22) is **DENIED**.
4. Defendant’s Motion In Limine to Exclude Evidence (Document No. 23) is **GRANTED IN PART** and **DENIED IN PART** as follows:
  - a. Plaintiff may introduce evidence concerning, or from, former CSP employees

as it relates to the Count II claim.

- b. Paul Jensen may testify as to his conversation with CSP President Robert Abrams, but may not testify as to Mr. Abrams character to show action in conformity therewith.
  - c. Plaintiff may testify as to what he heard Mr. Abrams say during a telephone conversation at which Plaintiff was present.
  - d. Plaintiff's wife may not testify as to the existence of Plaintiff's special damages.
  - e. Plaintiff may not introduce evidence of inventorship or ownership of new ideas or inventions relating to his Count III claim.
5. By **November 20, 2002**, the parties shall each submit the following:
    - a. Proposed Points for Charge and Jury Interrogatories;
    - b. A letter brief on the issue of whether punitive damages are available on Plaintiff's Count II claim.
  6. By **November 20, 2002**, the parties shall submit a Join Pretrial Stipulation in accordance with the Scheduling Order of March 19, 2002.
  7. The parties shall make a good faith effort to reach agreement on the Points for Charge and Jury Instructions.

**BY THE COURT:**

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**Berle M. Schiller, J.**