

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

LEMKO CORPORATION,)
)
Plaintiff,)
)
v.)
)
MOTOROLA MOBILITY HOLDINGS,)
INC. now and as it existed as)
MOTOROLA, INC. before its separation,)
)
Defendants.)

No.

JURY TRIAL DEMANDED

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COMPLAINT

Plaintiff Lemko Corporation complains of defendant Motorola Mobility Holdings, Inc. now, and as it existed as Motorola, Inc. before January 2011, for trade secret misappropriation, unjust enrichment and spoliation.

The Parties

1. Lemko Corporation is an Illinois corporation with its principal place of business in Schaumburg, Illinois. Lemko designs and develops cellular broadband networking software and systems.

2. Motorola Inc. was a Delaware corporation that, in January 2011, separated into two separate companies: Motorola Solutions, Inc. ("Motorola Solutions"), which is a Delaware corporation having offices in Schaumburg, Illinois, and Motorola Mobility Holdings, Inc. ("Motorola Mobility"), a Delaware corporation, with offices in Libertyville, Illinois. This case is brought against Motorola Mobility, as it has existed since January 2011, and as it existed as Motorola Inc. before its separation into Motorola Solutions and Motorola Mobility. Motorola Mobility and the entity as it existed at Motorola Inc. are hereafter referred to simply as "Motorola."

The Relevant Technology

3. Emergency calls placed on a cellular network generally provide the location of the cellular phone itself to direct emergency assistance to the site of the phone.

4. In order for a cellular network to determine the location of a particular cellular phone, however, a calculation must be made based upon GPS satellite signals. While a typical cell phone can receive a GPS satellite signal, limitations in power make it difficult, if not impossible, for most phones to calculate and send location information along with the emergency call.

5. To overcome these computational limitations, a network-based, position-determining entity ("PDE") is employed to assist a mobile cellular phone to calculate its location. A network PDE receives satellite signals, including a GPS signal, from the cellular phone and the network-based PDE then calculates the location of the mobile cellular phone.

6. Lemko created a unique software-based PDE that can be embedded in every base station and in every cellular phone, sometimes called a position-determining module ("PDM"). Lemko's PDE system (including PDM) included algorithms, software and highly valuable source code, all of which were maintained by Lemko in strict confidence.

Xiaohong Sheng

7. On or about February 1, 2005, Lemko hired Xiaohong Sheng ("Sheng") as a Project Lead Engineer. In May 2005, Ms. Sheng received a Ph.D. from the University of Wisconsin at Madison in engineering. Previously, she obtained degrees in engineering from Zhejiang University in China.

8. As part of Lemko's hiring process, Sheng was required to sign an Employment Offer. (Attached as Exhibit A).

9. The Employment Offer provides, in relevant part, as follows: "[a] copy of the Employee Manual is included, and we ask that you read it and with the execution of this offer you are acknowledging that you have read and understand it."

10. The Employee Manual provides, in relevant part, as follows:

Confidential Information

I am aware that during the course of my employment confidential information will be made available to me, for instance, product designs, marketing strategies, customer lists, pricing policies and other related information. I understand that this information is proprietary and critical to the success of Lemko Corporation and must not be given out or used outside of Lemko's premises or with non-Lemko employees. In the event of termination of employment, whether voluntary or involuntary, I hereby agree not to utilize or exploit this information with any other individual or company.

(the "Confidentiality Agreement").

11. On or about January 8, 2005, Sheng signed the Employment Offer and agreed to be bound by the Lemko Employee Manual.

12. Independently, as a key technical employee of Lemko, Sheng occupied a position of trust and confidence and, thus, had an obligation not to use or disclose Lemko's trade secrets, including its PDE system, algorithms, software and source code for the benefit of anyone else.

13. In the performance of Sheng's duties at Lemko, she had access to Lemko's trade secrets, initially, in the development of distributed voice mail systems and, later, in PDE technology.

14. Sheng continued to work for Lemko through October 31, 2006, when she suddenly left her job as a developer of Lemko's PDE algorithms, software and source code to take a job with Motorola, without giving any prior notice to Lemko.

Sheng's Recruitment by Motorola

15. Unbeknownst to Lemko, Motorola actively sought Sheng as an employee because of her knowledge of PDE technology and, specifically, the highly confidential PDE source code she developed at Lemko. Before Sheng was hired by Motorola to work on PDE, Motorola had no project or experience in PDE.

16. In November 2006, Sheng began working for Motorola under Motorola's CTO William Alberth ("Alberth"). Motorola issued Sheng a Motorola-owned laptop computer for use in carrying out her assigned tasks.

17. Yingchun Xu was Sheng's immediate supervisor at Motorola. He worked under Alberth in the Advanced Technology Group in the United States and, later, was assigned to work for Motorola in China as General Manager of its Research and Development Center in Nanjing and Beijing, China. While employed at Motorola, Xu visited Lemko under mutual confidentiality and non-disclosure agreements; he learned generally of Lemko's secret PDE developments and then actively recruited Sheng. Xu knew Sheng had knowledge of Lemko's PDE source code and hired her for Motorola because she had access to and knowledge of Lemko's trade secrets, including its PDE source code.

18. In April 2007, at Alberth's direction, Xu gave Sheng the assignment of developing PDE source code for Motorola, giving Sheng just one month to do what had taken her eighteen months to do at Lemko.

19. Motorola knew that Sheng had possession of Lemko's secret PDE source code and knew or should have known that, inevitably, she might use it as part of her work at Motorola.

20. By setting the one-month deadline and assigning Sheng to develop PDE software, Motorola knowingly put Sheng in a position where the disclosure and use of Lemko's trade secrets relating to PDE was inevitable. Sheng had the Lemko source code on her computer and she was induced to use it for Motorola because of a substantial increase in pay and an unrealistic one-month deadline created for Sheng's work. She admitted Motorola used Lemko PDE code.

Misappropriation

21. Because of the time restrictions placed on Sheng by her superiors (Xu and Alberth) at Motorola, she was effectively pressured into using Lemko's trade secrets (including its PDE source code) for Motorola's benefit. Once developed, Motorola then sought to conceal Sheng's use of Lemko's secret source code by isolating it and then exporting it to foreign locations for commercialization. Lemko's PDE source code and source code derived from it were then integrated into Motorola cellular phones by overseas engineering teams.

22. Motorola established a business in Nanjing, China that employed more than 500 software engineers. The Nanjing facility was initially headed by William Alberth, then later by Xu, who moved to China to head-up the Nanjing operation full-time. It was at this facility that much of the Lemko PDE software and source code was incorporated into Motorola equipment and cell phones.

23. Motorola actually built Sheng's source code into at least one Motorola CDMA handset which was tested both on a Motorola network and on a Sprint-Nextel-related commercial network.

24. Lemko's source code was actually present on Sheng's computer at Motorola. PDE logs existed on Motorola's UNIX servers. The testing of Lemko PDE

software involved Motorola's iDEN group in Nanjing, China; Motorola's CDMA group in Beijing, China; Motorola's business units in Schaumburg and Libertyville, Illinois; Motorola's facilities in the Netherlands and other areas worldwide. Motorola has admitted Lemko source code was present on its servers.

25. Further, Lemko's PDE source code (and source code derived from it) is located in a memory device inside Motorola cell phones.

26. Xu and Sheng prepared at least one and possibly three invention disclosures for Motorola relating to PDE technology that incorporate Lemko trade secrets.

27. Having got what it needed, on or about July 2008, Motorola summarily terminated Sheng.

COUNT I
Misappropriation of Trade Secrets

28. Lemko incorporates by reference each of the allegations made in paragraphs 1 through 27 above.

29. This claim for misappropriation of trade secrets is brought under the Illinois Trade Secrets Act, 765 ILCS 1065/1 et seq.

30. Lemko owns valuable trade secrets relating to its PDE system, including highly confidential algorithms, software and source code. These trade secrets have significant economic value and had been subject to reasonable efforts to maintain confidentiality.

31. Specifically, Lemko has taken reasonable steps to maintain the secrecy of its trade secrets, including requiring employees like Sheng not to use or disclose its trade secrets for the benefit of third parties such as Motorola and restricting access to its PDE software and source code.

32. Sheng not only contractually agreed not to use or disclose Lemko's trade secrets, she occupied a position of trust and confidence with Lemko.

33. Motorola knew, or should have known, that Lemko's PDE system, algorithms, software and source code were valuable, secret and confidential and further knew or should have known that Sheng had access to and knowledge of Lemko's trade secrets.

34. Motorola, nonetheless, misappropriated Lemko's trade secrets, knowing that Lemko's PDE system, algorithms, software and source code were trade secrets and knowing further that, by assigning Sheng the responsibility to develop PDE algorithms, software and source code for Motorola, she would inevitably be required to disclose or use Lemko's trade secrets for Motorola's benefit. Motorola, therefore, used improper means to acquire knowledge of Lemko's trade secrets and, at the time of the disclosure and use of the trade secrets by Sheng to Motorola, knew or had reason to know of such trade secrets.

35. Motorola also knew or should have known that the disclosure and use of Lemko's trade secrets were unauthorized and that even the disclosure and use of a portion of such trade secrets or information derived from them was improper.

36. Lemko has been damaged by Motorola's misappropriation in the amount of at least a reasonable royalty for all such use. Further, Motorola has been unjustly enriched by reason of its use of the Lemko trade secrets and information derived from them, including specifically the benefit of having PDE in all of its A-GPS cellular phones. Lemko believes that each of the cellular phones sold by Motorola, including those sold using A-GPS technology (included but not limited to DCMA, CDMA1X, iDEN and UMTS/WCDMA) directly or indirectly use Lemko's trade secrets.

COUNT II
Unjust Enrichment

37. Lemko incorporates by reference each of the allegations made in paragraphs 1 through 36 above.

38. Motorola has been unjustly enriched by its misappropriation and use of Lemko's trade secrets in that it has retained the benefit of use of Lemko's PDE algorithms, software and source code; the keeping of such a benefit has been to Lemko's detriment, and Motorola's retention of these benefits violates fundamental principles of justice, equity and good conscience.

39. It is contrary to equity and good conscience for Motorola to retain the benefit of Lemko's PDE algorithms, software and source code and to incorporate and use them or anything derived from them in Motorola's cell phones. Motorola has benefitted from its use of Lemko's PDE algorithms, software and source code; it unjustly did not pay Lemko for such use and its failure to pay Lemko is to Lemko's detriment.

40. Lemko is, therefore, entitled to recover the full benefits, profits and advantages realized by Motorola through use of Lemko's PDE algorithms, software and source code and anything derived from it.

COUNT III
Negligent Spoliation of Evidence

41. Lemko incorporates by reference each of the allegations made in paragraphs 1 through 40 above.

42. Ms. Sheng was doing her development work on a UNIX server in conjunction with other software engineers located in the United States and China.

43. Motorola filtered-out, deleted and destroyed information, data and source code that would confirm its use of Lemko's PDE source code, including destroying its

employees Xiaohong Sheng's and her co-workers David Zhou's and Jin Li's Unix Home Directories. It is believed that Motorola also erased PDE-related works in Motorola's Clearcase repository belonging to Sheng. This was not done as part of any proper Motorola policy because, at the time of the destruction, Motorola was already in litigation with Lemko.

44. Motorola had a duty to maintain documents relevant to its use of Lemko's software and source code and breached that duty causing damage to Lemko and making proof of its misappropriation claim more difficult. Motorola should have foreseen that such evidence was material to the then-existing claims between it and Lemko and to the misappropriation and unjust enrichment claims made in this Complaint as well.

45. By destroying evidence of its misappropriation, Motorola has also engaged in willful, deliberate and malicious conduct and is, therefore, subject to increased damages under the Illinois Trade Secrets Act, 765 ILCS 1065/4(b). Motorola's conduct was done voluntarily and intentionally and its misappropriation is not the result of a mistake or accident. Further, Motorola's acts were malicious, in that they were accompanied by a conscious and wanton disregard of Lemko's rights. Hence, this Court may award exemplary damages in an amount not exceeding twice the amount of any damage awarded.

WHEREFORE, plaintiff demands a trial by jury on its claims and seeks judgment as follows:

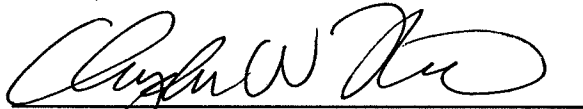
- A. Judgment against Motorola in the amount of Lemko's losses and injuries caused by Motorola's misappropriation, plus interest and costs, but in no event less than a reasonable royalty;

- B. Judgment against Motorola in the amount of its unjust enrichment, including the profits realized on all cellular phones and network equipment using Lemko's PDE source code and software or anything derived from it;
- C. Judgment against Motorola for damages in an amount in excess of the jurisdictional amount of this Court caused by its spoliation of evidence; and
- D. Such further relief as the jury and Court may find reasonable and just.

Jury Demand

Plaintiff demands a trial by jury on all issues presented in this Complaint.

NIRO, HALLER & NIRO



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EXHIBIT A



LEMKO CORPORATION

Employment Offer

January 3, 2005

Ms. Xiaohong Sheng
932 Eagle Heights Apt. C
Madison, WI 53705

Dear Xiaohong:

Everyone at Lemko enjoyed meeting you and believe you can make great contributions as part of the Lemko team. Accordingly, this letter is written to confirm Lemko Corporation's ("Lemko") interest in offering employment to you as a Project Lead Engineer. You have agreed to begin employment on a to be determined, mutually agreed date consistent with your transition from your Ph.D. program at the University of Wisconsin. This offer is the entire offer to you. There are no other express or implied promises, representations or contracts being offered to you. We are excited about working with you and believe that you have the ability to contribute to the success of this organization.

Your starting salary for this position will be \$ 76,000 per year to be paid in accordance with the Company's normal payroll practice. Lemko also wishes to recognize your excellent educational credentials by offering you NSO Stock Option in the amount of \$10,000. These shares will have a vesting period of three years. In addition to your salary, you will receive those fringe benefits normally available to full-time employees in accordance with the Company's established policies.

Lemko's policies and plan documents govern benefits provided to employees and should be consulted for the details of the plan. At Lemko's discretion, policies, pay, and benefits may be changed at any time, and this letter does not establish any vested rights in pay or benefits.

This letter does not create a contract of employment or a contract for pay or benefits. Your employment is "at-will." This means that you may terminate your employment with Lemko at any time and for any reason whatsoever simply by notifying Lemko. Likewise, Lemko may terminate your employment, change your duties or compensation, at any time with or without cause or advance notice. This at-will employment relationship cannot be changed except in writing signed by the President.

As a Company employee, you will be expected to abide by Company rules and policies contained in the Lemko Corporation Employee Manual. A copy of the Employee Manual is included, and we ask you to read it and with the execution of this offer you are acknowledging that you have read and understanding it. Feel free to inquire of any provisions which are not clear prior to executing this offer.

It is Lemko's policy not to infringe upon the proprietary information, trade secrets, or confidential information of third parties. In addition, it is Lemko's policy not to interfere with third parties' contractual or business relations. Therefore, I also write to confirm that you have represented and warranted that you are not subject to any agreement that would prevent you from performing your duties for Lemko, and that you are not subject to or in breach of any non-disclosure agreement, including any agreement concerning trade secrets or

confidential information owned by any other party. Finally, I write to confirm that, during your employment with Lemko, you will not use, disclose, or reverse engineer (i) any confidential information or trade secrets of any former employer or third party, or (ii) any works of authorship developed in whole or in part by you during any former employment or for any other party, unless authorized in writing by the former employer or third party. In this regard we ask you to sign an Employee Confidentiality Agreement, a copy of which is attached for your review.

If you choose to accept this offer of employment, please sign and date this letter on the lines below, and return this letter to me by January 14, 2005. As a condition of your employment you are required to return the Employee Manual Acknowledgment and Employee Confidentiality Agreement, signed and dated.

Sincerely,

LEMKO CORPORATION

By: _____

Its: _____

OFFER ACCEPTED BY:

Signature

Printed Name

Date:

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