

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

Charge Injection Technologies, Inc. :
 :
 Plaintiff, :
 :
 v. : C.A. No. 07C-12-134-JRJ
 :
 E.I. DuPont DeNemours and :
 Company :
 :
 Defendant. :

ORDER

AND NOW TO WIT, this 23rd day of November, 2010, the Court having heard and duly considered the E.I. DuPont DeNemours and Company’s (“DuPont”) Notice of Exceptions to the Special Discovery Master’s February 16, 2010 Ruling¹ granting Charge Injection Technologies, Inc.’s (“CIT”) Motion for Leave to File a Third Amended Complaint, CIT’s opposition thereto, the parties’ briefing and the relevant case law, **IT APPEARS TO THE COURT THAT:**

1. Under Superior Court Civil Rule 15(c)(2) a proposed amendment to a pleading relates back to the date of the original pleading “when the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the

¹ Trans. ID. 29581307.

original pleading....” Rule 15 is to be liberally construed.² Although leave to amend may be denied if the proposed amendment is futile or would be subject to dismissal, a proposed amendment is “futile” before discovery is complete only if no set of facts can be proved under the amendment which would constitute a valid claim.³ If a party is given fair notice of the general fact situation out of which the new claim is based, the amendment will relate back even if the statute of limitations has run.⁴

2. The Court finds that the claims set forth in the proposed Third Amended Complaint arise from the same conduct as that described in the Second Amended Complaint, *i.e.* DuPont’s alleged wrongful disclosure of confidential information about Charge Injection technology in violation of the various agreements entered into between the parties.
3. The Court is satisfied, after reviewing the Second and Third Amended Complaints, that the general fact situation giving rise to the new claims in the Third Amended Complaint is the same as that supporting the claims in the Second Amended Complaint. That general fact situation is: DuPont wanted to use CIT’s technology; CIT disclosed to DuPont its confidential and proprietary technology; DuPont allegedly disclosed

² See *E. K. Geyser Co. v. Blue Rock Shopping Center, Inc.*, 229 A.2d 499, 501 (Del. Super. 1967).

³ *E.I. du Pont de Nemours & Co. v. Allstate Ins. Co.*, 2008 WL 555919, at *1 (Del. Super. Ct. Feb. 29, 2008).

⁴ See *DiFonzo v. Robelon Piano Co.*, 144 A.2d 247, 248 (Del. 1958); *Mullen v. Alarm Guard of Delaware, Inc.*, 625 A.2d 258, 264 (Del. 1993).

CIT's confidential and proprietary technology in violation of the parties' agreements. The conduct alleged in the Third Amended Complaint, while relating to different DuPont patent applications to create fibrous webs (air blowing versus flash-spinning),⁵ still boils down to DuPont's alleged wrongful use of CIT's confidential and proprietary technology.⁶ Simply stated another way, the focus of the Second Amended and Third Amended Complaints is the same – DuPont's alleged misappropriation of Charge Injection technology in breach of the various agreements between the parties.

4. The Second Amended Complaint gave DuPont fair notice of the claims alleged in the Third Amended Complaint. Indeed, DuPont knew after the Second Amended Complaint that CIT would seek to enforce DuPont's contractual obligations regarding confidentiality of Charge Injection

⁵ In the Second and Third Amended Complaints, CIT alleges one claim for trade secret misappropriation. One patent application, the '527 is mentioned in the Second Amended Complaint, and four additional patents are referenced in the Third. CIT acknowledges it does not have five separate claims for misappropriation even though five different patent applications are involved. (*See* Hr'g. Tr. at 30 (July 23, 2010), "Since the single misappropriation theory is the rule, any additional acts of misappropriation go back to that first act...we don't have five separate claims...we have one trade secret misappropriation claim."). Even if the four additional patent applications mentioned in the Third Amended Complaint reference different trade secrets than those mentioned in the Second Amended Complaint, the added claims relate back and thus would not be time barred. *See TerraRecon, Inc. v. Fovia, Inc.*, 2006 WL 1867734 (N.D. Cal. 2006).

⁶ For purposes of the Rule 15(c) analysis, DuPont construes "conduct" and "transaction" too narrowly. The filing of the patent applications is not the sum total of the conduct at issue. And, to the extent DuPont maintains the technology referenced in the Third Amended Complaint is completely different than that in the Second, its argument is undercut by the fact that DuPont produced the four additional patent applications in discovery under the Second Amended Complaint. (Hr'g. Tr. at 34).

technology,⁷ and that CIT considered the disclosure of its trade secrets to the U.S. Patent Office a breach of DuPont's contractual obligations.⁸

WHEREFORE, because the Court is satisfied that the claims in the Third Amended Complaint relate back to the original complaint, the Court affirms the Special Discovery Master's decision allowing CIT to file its Third Amended Complaint.

IT IS SO ORDERED.

Jurden, J.

⁷ As CIT points out, "Charge Injection technology" is a defined term used in both the Second and Third Amended Complaints. (See Second Amended Complaint ¶77, Third Amended Complaint ¶103).

⁸ See, e.g., Second Amended Complaint ¶¶ 97-103, 106-14 (Trans. ID. 18591808).