IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

SKF USA INC.,	)	
	)	
Plaintiff,	)	Case No. 08 CV 4709
	)	
v.	)	Consolidated with
	)	
DALE H. BJERKNESS, *et al.*,	)	Case No. 09 CV 2232
	)	
Defendants,	)	District Judge Pallmeyer
	)	
	)	Magistrate Judge Denlow
SKF USA INC.,	)	
Plaintiff,	)	
v.	)	
EQUIPMENT RELIABILTY SERVICES, INC.,	)	
	)	
Defendant.	)	

DEFENDANTS' OBJECTIONS TO PLAINTIFF'S
FEE PETITION PURSUANT TO LOCAL RULE 54.3

Defendants Bjerkness, Koch, Remick, Sever and Equipment Reliability Services, Inc., ("ERSI") (collectively "defendants") object to SKF Inc. ("plaintiff")'s Fee Petition as follows:

INTRODUCTION

Plaintiff spent $1.3 million pursuing a case worth $81,068. Long before trial, defendants attempted on many occasions to settle this case for much more than $81,068. Yet, plaintiff not only rejected the offers, but would not even counteroffer. Plaintiff's reason for not settling was simple and clear – it wanted to bankrupt the defendants via litigation so as to quash legitimate competition. The numbers alone demonstrate this. No reasonable party, counseled by two large law firms, would spend 16 times the value of a case in attorneys' fees and costs to try an $80,000 case that it could readily have settled for fair value unless it was waging an economic war of attrition whose objective was the extermination of a smaller competitor.

After two years of relentless prosecution, heedless of defendants' settlement proposals, and bent on bankrupting the defendants, plaintiff predictably refuses to negotiate its fee petition and asks this Court to award it $1.3 million in fees for securing its $81,068 judgment. Such a request is unprecedented in Illinois trade secret misappropriation jurisprudence. It is therefore no surprise that plaintiff fails to cite a *single* case in the Seventh Circuit for the proposition that it is reasonable to expend $1.3 million in legal fees to prosecute an $81,068 claim.

As demonstrated by plaintiff's own cited authority, *RKI, Inc. v. Grimes,* 233 F.Supp.2d 1018 (N.D. Ill. 2002), the only case which is arguably factually relevant here, plaintiff's petition for $1.3 million in fees is unjustifiable. In *RKI*, an employment-related dispute involving, as does the case at bar, claims of breach of duty of loyalty, tortious interference with contract and trade secret misappropriation, Holland & Knight expended only (and was fully awarded by Judge Denlow) $274,956 in fees to prosecute its ITSA claim through trial and for its fee petition work, all of which was recovered. Plaintiff seeks nearly 6 times the *RKI* fee award.

As explained more fully below, January 6, 2009 is the appropriate cut-off date for all fees expended by plaintiff in this case following defendants' offer to settle for more than double the Court's eventual award. Further, plaintiff's fee award should be further reduced due to plaintiffs excessive spending and staffing and given the severe disproportion between the $7.2 million plaintiff sought at trial and the $81.068 it actually received.[1] Accordingly, in accordance with governing Seventh Circuit authority, plaintiff should be awarded at most, no more than two to three times its $81.068 judgment, or $162,139 to $243,205.

[1] As stated by plaintiff in counsel's opening statement, plaintiff sought approximately $600,000 in damages for lost profits, $1.2 million in exemplary damages (equaling double the amount of compensatory damages claimed) and $5.4 million in punitive damages (fully nine times the claimed amount of compensatory damages) for a total of $7.2 million. *See* **S**. Sundheim Opening Statement, p. 29, Exh. A; *see also* Expert Report of Patricia Domzalski, Exh. B, in which plaintiff's expert opines that plaintiff suffered roughly $621,000 in lost profits.

PROCEDURAL HISTORY

The Court held a preliminary injunction hearing in late Fall of 2008 and a merits trial in January 2010. On August 9, 2010, this Court found for plaintiff on its Illinois Trade Secret Act ("ITSA") claim awarding plaintiff compensatory and punitive damages totaling just over $81,068, and also awarded plaintiff reasonable attorneys' fees for prosecuting its ITSA claim. The Court based its damages calculation on the defendants' use of a sequence of machine operation parameters memorized by an individual defendant and on the legal theory of unjust enrichment. The Court's April 24, 2009 preliminary injunction decision could have, but did not, enjoin the defendants from using the same memorized parameter sequence on which its damages award was later based. Defendants fully complied with each and every requirement of the Court's April 24, 2009 preliminary injunction.

ARGUMENT

The process of determining a proper fee award begins with the "lodestar" calculation.[2] *Eddleman v. Switchcraft, Inc.*, 965 F.2d 422, 424 (7th Cir. 1992). In its discretion, this Court may reduce the lodestar amount to consider: (1) the parties' settlement history; (2) the proportionality of the amount awarded compared to the amount of damages initially sought; and (3) excessive or unnecessary spending.[3] *Cole v. Wodziak*, 169 F.3d 486 (7th Cir. 1999); *Moriarty v. Svec*, 233 F.3d 955 (7th Cir. 2000) (*"Moriarty I"), cert. denied*, 532 U.S. 1066 (2001); *Pasternak v. Radek*, 2008 WL 2788551, at *5 (N.D. Ill. Apr. 3, 2008) (Exh. C). Here, this Court should significantly reduce the lodestar amount based on these three well-established principles.

[2] Plaintiff cites *JCW Investments, Inc. v. Novelty, Inc.*, 482 F.3d 910 (7th Cir. 2007) for the proposition that the lodestar amount is presumed to be reasonable. Tellingly, however, the fee award in *JCW Investments* was less than double the amount of damages awarded at trial.

[3] As aptly noted by the Appellate Court for the First District of Illinois in *Ryan v. City of Chicago*, 274 Ill.App.3d 913, 923 (1st Dist. 1995), the lodestar approach has caught much criticism because "it has led to abuses such as lawyers billing excessive hours [and] it creates a disincentive for the early settlement of cases."

A. Plaintiff Should Not Recover Attorneys' Fees Incurred After Defendants' November 2008 Settlement Offer.

All attorneys' fees and costs incurred after January 6, 2009 should be deemed unreasonable because Plaintiff's legitimate goals in prosecuting an ITSA claim had been fully satisfied by then (as evidenced by the disparity between the higher settlement offer and the damages awarded at trial). It was unreasonable, unnecessary and wasteful, for plaintiff to persist in this litigation, including a full-blown trial on damages, after that point.[4] For the court to award fees for services performed after January 6, 2009 would be to encourage prevailing litigants to wage the economic warfare that this suit has represented.

Plaintiff incorrectly argues in its Fee Petition that this Court may not consider defendants' November 2008 settlement offer because it was not made part of a formal Rule 68 Offer of Judgment. In truth, substantial settlement offers should be considered by the court when determining fee awards whether Fed. R. Civ. P. 68 applies or not. *See Moriarty I*, 233 F.3d at 967 ("[s]ubstantial settlement offers should be considered by the district court as a factor in determining an award of reasonable attorney's fees, even where Rule 68 does not apply."). The rationale being (as the Seventh Circuit noted in *Moriarty*) that "[a]ttorney's fees accumulated after a party rejects a substantial offer provide minimal benefit to the prevailing party…." *Id.* A settlement offer is substantial if "the offered amount appears to be roughly equal to or more than the total damages recovered by the prevailing party." *Id.*

Despite plaintiff's unsupported suggestions to the contrary, Judge Denlow's Settlement Standing Order does not prohibit evidence of defendants' settlement attempts in a fee dispute

[4] While defendants' settlement offer was made in November 2008, defendants propose a January 6, 2009 cut-off date for legal fees to account for the time reasonably necessary to evaluate and respond to the settlement offer. January 6, 2009 represents the invoice date for plaintiff's legal expenses through the end of December 2008 when the preliminary injunction hearing ended.

such as the one at issue. Instead, Judge Denlow's Standing Order provides only that "[s]tatements made by any party during the settlement conference are not to be used in discovery and will not be admissible at trial." *See* J. Denlow Standing Order, Exh. D. Neither use prohibited by Judge Denlow is involved here, and of course, Judge Denlow's Standing Order cannot and does not overrule the governing Seventh Circuit authority cited above.

Defendants attempted in good faith to settle this case on an at least three occasions with very generous offers. *See* Anaclerio Decl. at ¶¶ 8, 11, Exh. E; Canade Decl. at ¶¶ 20-22, Exh. F; and Alcala Decl. at ¶ 3 and Tab A, Exh. G. On each occasion, plaintiff ignored defendants' offers, refusing even to counter them, while making it clear that plaintiff's goal was not to secure its business information and recover damages for its misappropriation, but to bankrupt defendants. Specifically, defendants made the following settlement offers:

Date	**Defendants Settlement Offer**	**Response By Defendant**
1. November 25, 2008	$173,247	None
2. January 22, 2010	$75,000	None
3. September 1, 2010	$250,000	None

Id..

In considering whether a cut-off date for plaintiff's recoverable fees is appropriate, one of defendants' settlement offers is particularly noteworthy. On November 25, 2008, more than a year before trial and near the end of the preliminary injunction hearing, defendants offered to settle this case on terms exceeding $173,246.57 in value.[5] Specifically, defendants' settlement proposal included: (a) a cash payment of $150,000; (b) a royalty payment equaling approximately $14,051.23; (c) a restriction on ERSI's customer solicitation valued at

[5] *See* Bjerkness Decl., Exh. H, for a detailed valuation of defendants' Nov. 25, 2008 settlement offer.

approximately $9,195.34; and (d) the release of defendants' wage claims. *See* Bjerkness Decl., Exh. H. Defendants' November 2008 settlement offer would certainly have persuaded any plaintiff not bent on defendants' economic destruction to settle, a point made still more evident by the fact that defendants' settlement offer was more than double the amount the court ultimately deemed reasonable compensatory and punitive damages. But rather than accepting defendants' settlement offer, or at the very least countering it, plaintiff not only maintained this action but indeed instituted a second, virtually identical lawsuit against ERSI in Minnesota, conducted exhaustive discovery, forced a three-day trial, deployed fully nine lawyers and ran up an additional $820,000 in legal fees.

Case law confirms that plaintiff should not recover legal fees or any other costs incurred after the preliminary injunction hearing concluded in December of 2008. To illustrate, in *Wickens v. Shell Oil Co.*, 2009 WL 1582971 (S.D. Ind. June 3, 2009) (Exh. I), an environmental action to recover clean-up costs, the district court held that defendant Shell Oil Company agreed to contribute to the environmental investigation and remediation costs of the property at issue on January 9, 2007, and thus, plaintiff was not entitled to recover any legal fees incurred after that date. *Id*. at *6. In so holding, the district court found that plaintiffs "carried this litigation beyond the point where the purposes underlying the fee shifting provisions of the statute were being served." *Id*. The Seventh Circuit affirmed the district court's ruling that a cut-off date for plaintiff's fee award was proper after which point plaintiffs' attorneys' efforts were clearly aimed at obtaining goals secondary to the purposes of the underlying statute. *Wickens*, 2010 WL 3398160, at *7-8 (7th Cir. Aug. 31, 2010); *see also Moriarty I*, 233 F.3d 955 (stating that a "district court should reflect on whether to award only a percentage (including zero percent) of the attorney's fees that were incurred after the date of the settlement offer."); *Vocca v. Playboy*

Hotel of Chicago, Inc., 686 F.2d 605, 606 (7th Cir. 1982) (denying any award of attorney's fees in an age discrimination suit given that "[c]ounsel's refusal to settle the case earlier for an amount only slightly less than the amount ultimately agreed upon" through settlement, thereby unreasonably prolonging the litigation).

As in *Wickens*, plaintiffs' post-January 6, 2009 prosecution efforts here were not about recovering its damages and related reasonable litigations expenses as provided for in the ITSA, but rather aimed at bankrupting the individual defendants and stiffing competition via unnecessary continued litigation. *Wickens*, 2009 WL 1582971, at *5 (S.D. Ind. June 3, 2009) (stating that once the "haggling over fees and costs" becomes a separate dispute, it is unreasonable to require defendants to pay for these fees). Thus, in no event should plaintiff here recover for fees incurred after January 6, 2009.

Plaintiff argues that this Court must consider the $480,000 in claimed attorneys' fees incurred by plaintiff at the time of defendants' November 2008 settlement offer to determine whether the offer was significant. However, this argument does not justify post-January 6th fees for at least three reasons. First, at the time of defendants' offer, plaintiff had no more than $31,494 in damages, per the Court's damages calculation.[6] Certainly, $480,000 in attorneys' fees and costs for a $31,494 claim is unreasonable. At most, plaintiff should have calculated attorneys fees as a two or three times damages multiple, or $94,482.48. Clearly then, defendants' $173,247 offer trumps the $125,977 ($31,494.16 + $94,482.48) total damages amount, making such an offer not only significant, but significantly greater than was fair. Second, given plaintiff's failure to counter offer, defendants had no way of determining the amount of claimed

[6] Using the Court's method of damages calculation per its August 9, 2010 Opinion, $31,494.16 are the damages from July 2008 until January 6, 2009. *See* 8/9/10 Opinion at pgs. 14-15. Specifically, during this period while defendants used the parameter sequence at issue, defendant ERSI collected revenues amounting to $48,452.50. *See* Invoices at Exh J. Applying the 65% profit margin adopted by the Court, damages amount to $48,452.50 x 65%, or $31,494.16. *See* 8/9/10 Opinion at pgs. 14-15.

attorney fees. Thus, plaintiff's own refusal to negotiate equitably bars it from later making an argument that defendants' offer could not or would not cover attorney fees. Finally, plaintiff fails to cite any applicable case law that this Court even needs to consider attorney fees to determine the significance of defendants' settlement offer. Plaintiff relies on the irrelevant and inapplicable § 1988 civil rights cases where as a matter of law attorneys' fees are a part of "costs." *See Lightfoot v. Walker*, 826 F.3d 516 (7th Cir. 1987) (§ 1983 prisoners' rights case); *Mohr*, 194 F. Supp.2d at 787 (civil rights action for race discrimination); *Grosvenor v. Brienen*, 801 F.2d 944, 946 (7th Cir. 1986) (police misconduct case). Because attorneys' fees are statutorily defined as "costs" in civil rights cases, a Rule 68 cost shifting analysis requires that "costs" include attorney fees when determining whether a Rule 68 offer of judgment (that must include "costs" incurred to date of the Rule 68 offer) exceeds a later obtained judgment. *See* FRCP 68. Here, no such analysis is required by Rule 68, the civil rights statutes, or otherwise.

Thus, plaintiff's failure to accept, entertain, or otherwise respond to defendants' November 25, 2008 substantial settlement offer prohibits it from obtaining any fees or costs beyond January 6, 2009. Further, as set forth below, controlling authority indicates that plaintiff's recoverable fees should be limited to two to three times the $81,068 judgment.

B. Plaintiff's Request of $1.3 Million in Fees is Grossly Disproportionate to the $81,068 Damages Award.

A fee award should be proportionate to the plaintiff's recovery. *Moriarty v. Svec*, 429 F.3d 710, 717-18 (7th Cir. 2005) (*"Moriarty II")* (vacating district court's decision to award attorneys' fees and remanding with instructions for lower court to consider proportionality); *Moriarty I*, 233 F.3d at 967-68 ("proportionality concerns are a factor in determining what a reasonable attorney's fee is"); *Catalan v. RBC Mortgage Co.*, 2009 WL 2986122, at *8 (N.D. Ill. Sept. 16, 2009) (same) (Exh. K); *see also Cole*, 169 F.3d at 488 (noting that "[i]n ordinary

private litigation … a fee exceeding the damages usually is not 'reasonable' [and] a fee 19 times the damages, which plaintiffs sought, is off the map.")

Plaintiff's own cited authority recognizes that a disproportionately high fee request, such as plaintiff's here, "raises a red flag" to the court. *Anderson 30 v. AB Painting & Sandblasting Inc.*, 578 F.3d 542, 546 (7th Cir. 2009); *see also Moriarty I*, 233 F.3d at 968 ("district court's fee order should evidence increased reflection before awarding attorney's fees that are large multipliers of the damages recovered or multiples of the damages claimed.")

In cases where a proportionality analysis is proper, as here, courts typically award fees of no more than three times the amount of damages awarded to plaintiff. *See, e.g., Cole*, 169 F.3d at 489 (fees awarded were three times the total recovery); *Tuf Racing Prods., Inc. v. American Suzuki Motor Corp.*, 223 F.3d 585, 588 (7th Cir. 2000) (plaintiff awarded fees less than three times the amount of damages awarded); *Moriarty I*, 233 F.3d at 960 (plaintiff recovered approximately $20,000, requested six times this amount ($120,000) in attorneys' fees, but the court awarded only $66,000).

Remarkably, plaintiff failed to note that in the very cases it cites to support its claim that it is entitled to recoup attorneys' fees 16 times the amount of damages it recovered, the courts awarded fees that were only two or three times the amount recovered by plaintiffs. *See, e.g., JCW Invs., Inc.*, 482 F.3d at 920 (where plaintiff won all three counts for infringement and unfair competition the fees awarded were less than twice the amount of damages recovered); *Allied Enterprises, Inc. v. Exide Corp.*, 2002 WL 424996, at *1 (S.D. Ind. Jan. 15, 2002) (fees awarded were twice the total recovery amount) (Exh. L); *Olian v. Bd. of Educ.*, 2010 WL 1197100, at *2 (N.D. Ill. Mar. 22, 2010) (plaintiff received a fee award that was $60,000 *less* than the amount of compensatory damages awarded at trial) (Exh. M); *Wallace v. Mulholland*, 957 F.2d 333, 335

(7th Cir. 1992) (fees awarded ($43,200) were less than twice the $21,000 in damages awarded at trial; *Sheehan v. Donlen Corp.*, 173 F.3d 1039, 1043 (7th Cir. 1999) (fee award was just over two times the amount of damages awarded); *Mohr v. Chicago School Reform Bd. of Trustees*, 194 F.Supp.2d 786, 789 (N.D. Ill. 2002) (plaintiff awarded attorneys' fees nearly three times the total recovery amount). As the cases clearly demonstrate, a proper fee award here should not exceed two or three times the damages amount. Plaintiff's stated lodestar amount is grossly disproportionate and should be reduced accordingly.

Further, while a recovery of less than ten percent of the plaintiff's claim does not preclude an award of fees, it is an important factor in determining the reasonableness of the fee claim. *See Pearlman v. Zell*, 185 F.3d 850, 859 (7th Cir. 1999) ("Recovery of less than 10% of the claim shows that, even making allowances for puffing in the complaint, the defendant has won on the bulk of the seriously disputed items"); *Cole*, 169 F.3d at 486 (same). Here, what plaintiff recovered at trial ($81,068) is dramatically less than the $7.2 million it sought at trial. In fact, plaintiff recovered less than 1.1% of the damages it sought. If the Seventh Circuit has questioned whether a recovery of less than 10% of the claimed amount deserves any fee award (as stated in *Cole* and *Moriarty*), it is easy to conclude here that plaintiff's fee award should be no greater than two or three times the recovery (or between $162,139 and $243,205) where plaintiff recovered only 1.1% of its claim.

In its fee petition, plaintiff cites *Estate of Borst v. O'Brien*, 979 F.2d 511, 517 (7th Cir. 1992), where the court awarded a fee award 47 times greater than the damages award. Plaintiff's reliance on *Borst* is entirely misplaced as it is both factually and legally dissimilar to the present case. First, *Borst's* holding was narrowly tailored to apply only to fee awards in relation to civil rights cases. *Id*. at 516-17 ("the amount of an award, taken alone, does not represent the full

value achieved by litigation vindicating one's civil rights."). Indeed, the mandatory fee awards provided for in the civil rights statutes are designed to encourage lawyers to take these cases, vindicate important rights and get paid for doing so. But for the mandatory fee shifting, aggrieved plaintiffs would be hard pressed to find attorneys to take their cases. *Grosvenor v. Brienen*, 801 F.2d 944, 946 (7th Cir. 1986).

Here, no such public policies are at issue. In fact, the sheer number of attorneys and hours that plaintiff put on this case demonstrates that it had no problem finding lawyers willing to bill their hours. Second, the *Borst* police brutality case predates the Seventh Circuit's *Moriarty II* decision requiring courts to consider proportionality where appropriate. Since the *Moriarty II* decision, no court has come close to awarding such an exorbitant amount of attorneys' fees. Further, the *Borst* court awarded only $47,000 in attorney's fees and costs and in doing so, reduced the lodestar amount by 40% due to limited success. *Id*. at 516.[7]

Thus, proportionality requires that plaintiff's fees and cost petition be reduced to, at most, two to three times the amount of the $81,068 judgment, or $162,139 to $243,205.

C. Plaintiff Excessively Staffed and Billed this Case Supporting an Increased Reduction to the Fee Award.

Additional reasons support a fee reduction to a two or three judgment multiple --- excessive and unnecessary attorney time and costs. This Court must exclude from its fee award any hours "not reasonably expended on the litigation." *Pasternak v. Radek*, 2008 WL 2788551, at *5 (reducing lodestar amount by over 50% because of excessive billing so fee award was just two times the amount of the settlement award) (Exh. C). Billing over 2,700 hours to this case is

[7] Plaintiff references in a parenthetical an unpublished Utah trade secret case where a court awarded $2 million in attorneys' fees. *Clearone Communications, Inc. v. Chiang*, No. 2:07-cv-37-TC-DN, 2009 WL 5216856 (D. Utah Dec. 30, 2009). However, unlike the case at hand, there the jury awarded a damages award of $15 million, so that attorneys' fees constituted only 13% of the damages award. *See Clearone* Verdict Forms, Exh. N.

outrageous. *See Sanders v. City of Chicago*, 1996 WL 400053, at *5 (N.D. Ill. July 15, 1996) (J. Conlon) (reducing fee award for "excessive staffing" and noting that it is "highly unusual" and "surely inefficient" for eight attorneys to work on a case involving one plaintiff) (Exh. O). By comparison, defendants billed 700 hours less to defend this case than plaintiff did to prosecute it. Further supporting a significant reduction to the fee award is the fact that plaintiff had marginal success in this case as it won on a single count for misappropriation where it brought five additional claims. "Where the prevailing party has achieved only limited success, the standard lodestar method may yield an excessive award and the district court may reduce the lodestar result." *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983); *see also Altergott v. Modern Collection Techniques, Inc.*, 864 F.Supp. 778, 783 (N.D. Ill. 1994) (reducing lodestar amount by 50% due to excessive billing and given plaintiff's marginal success). Recovering only $81,068 where plaintiff purportedly valued this case in the millions cannot be considered a victory justifying the massive fee petition it seeks.

In fact, the very cases cited by plaintiff confirm the excessiveness of an astonishing $1.3 million fee award to prosecute a trade secret misappropriation case. For example, *RKI, Inc. v. Grimes* involved the prosecution of an ITSA claim by Holland & Knight. 223 F.Supp.2d at 1018. Holland & Knight prosecuted the ITSA claim through trial (which included work on a petition for a new trial) and prepared a fee petition, yet Holland & Knight's legal fees and costs (which included its fee petition work) totaled only $274,956, all of which plaintiff was awarded by Judge Denlow.[8] *Id*. at 1021. In *RKI*, plaintiff brought five causes of action, including trade secret misappropriation under ITSA, conversion, breach of duty of loyalty, breach of employment

[8] *Cintas Corp. v. Perry*, 517 F.3d 459 (7th Cir. 2008), another case cited by plaintiff, involves alleged violations of non-compete, non-disclosure and non-solicitation provisions in an employment context. The *Cintas* court awarded only $287,815 and $29,816 in fees and costs for the hours billed through the completion of the preliminary injunction hearing and summary judgment briefing. The *Cintas* fee award actually supports a significant reduction to the claimed lodestar in the present case.

covenants; and tortious interference with contract. *Id*. at 1019. The *RKI* court entered judgment for plaintiff on *all five counts* where here plaintiff was only marginally successful, recovering a judgment representing less than 2 percent of the amount it requested the court to award under a single claim for trade secret misappropriation. *Id.* In granting plaintiff's petition for attorneys' fees under ITSA, the *RKI* court specifically found that "[plaintiff's] counsel did an excellent job in prosecuting this case" and "achieved an excellent result for their client in a difficult case." *Id.* at 1021. The same cannot be said here where plaintiff estimated its case worth at $7.2 million, and plaintiff wound up receiving just over 1.1% of its demand, or $81,068. Indeed, despite the extensive resources and attorney time plaintiff threw at this case, in the Court's own words, plaintiff's trade secret presentation "was not a model of clarity." *See* 8/9/10 Opinion at 10.

The *RKI* court further noted that the staffing of two experienced partners to defend the employment-related action for trade secrets misappropriation and related torts was appropriate "given the extensive amount of work required in the short time allowed." *Id.* at 1021. Conversely here, plaintiff staffed this case with two senior partners, one senior associate, one mid-level associate and numerous billing support staff to prosecute a case very similar to *RKI Grimes.* This is hardly a ground-breaking case justifying a $1.3 million fee award.

Accordingly, in addition to proportionality, plaintiff's excessive and unnecessary attorney time to litigate a rather straightforward trade secret case requires a fee and cost reduction to no more than two to three times the amount of the $81,068 judgment, or to $162,139 to $243,205.

D. Any Fees and Costs Awarded Post January 9, 2009 Should Be Reduced

Should the Court award any fees or costs for services after January 6, 2009, the award should be reduced for the same reasons as the pre-January 6, 2009 reductions – *i.e.*, excessiveness, unnecessary and limited success and/or lack of proportionality. Specifically, for

the reasons set forth above, all pre- and post-January 6, 2009 fees (totaling $1.3 million) should be reduced by at least 50% due to a gross lack of proportionality and very limited success, and an additional 25% reduction for excessive and unnecessary attorney time and costs.

E. Plaintiff's Award Should be Limited to Amount Requested in Bill of Costs.

Finally, plaintiff seeks to recover an additional $192,827.61 for nontaxable expenses not included in its Bill of Costs, as well as the fees incurred in preparing both its Bill of Costs and the instant Fee Petition. This request should be wholly denied for the reasons set forth above.

Included in this $192,827.61 of nontaxable expenses are $26,018.20 in travel and meal expenses. Clearly, such travel and meal expenses were unnecessary and excessive in light of defendant's settlement offers, the $81,068 judgment recovered and plaintiff's access to competent Chicago counsel capable of handling any and all aspects of this case. Plaintiff's Philadelphia counsel and their related travel, meals and expenses, were entirely unnecessary.

Moreover, plaintiff's non-taxable costs claim is overreaching. For example, plaintiff seeks $131.36 for a meal between plaintiff's witnesses and counsel on a day when the parties were not at trial. *See* 11/10/08 Locke Lord billing entry, Exh. P. Also, plaintiff seeks $30.00 for its attorney's parking fee when deposing a third-party witness in Willowbrook, Illinois. *See* 10/13/08 Locke Lord billing entry Locke Lord bill, Exh. Q. Yet, parking at the Willowbrook office complex was free. No justification exists.

If, however, this Court awards any nontaxable expenses not already included in plaintiff's Bill of Costs, it should be limited to plaintiff's expenses for its computer forensic expert, which amount to $32,900.66. Further, this Court should reject plaintiff's request in its entirety for $107,991 in fees for its one damages expert. This court correctly rejected as unsound the damages calculation offered by plaintiff's expert (excepting only the profit margin calculation).

Furthermore, plaintiff's damages expert's testimony, including a simple profit margin calculation, did not warrant $107,991 in fees for damage calculations that were simple and straightforward. Thus, should this Court award plaintiff any fees for its damages expert, it should allow no more than 10% of the expert's claimed bill of $107,991.25, or $10,799.13.

CONCLUSION

Neither the law nor the facts justify the excessive $1.3 million award plaintiff seeks. Plaintiff's juggernaut unreasonably proceeded heedless of defendants' November 2008 settlement offer because its purpose was to put defendants out of business. Plaintiff's fee request is grossly disproportional to the value of the claim plaintiff prosecuted with very limited success, so the attorneys' fees and costs sought were excessive and unnecessary under the circumstances. Thus, in accordance with Seventh Circuit law, all of the relevant factors, settlement history, proportionality, and excessiveness, demonstrate that the fee award should be no greater than two or three times plaintiff's recovery of $81,068, or $162,139 to $243,205.

Respectfully submitted,

By: s/Brian V. Alcala
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Dated: November 29, 2010

CERTIFICATE OF SERVICE

I, Brian V. Alcala, an attorney, state that, on November 29, 2010, I caused a copy of the foregoing **DEFENDANTS' OBJECTIONS TO PLAINTIFF'S FEE PETITION PURSUANT TO LOCAL RULE 54.3** to be served via ECF/email on the following filling users:

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