

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

FILED IN OPEN COURT:
DATE: 7/6/18
TIME: 4:30
INITIALS: JKS

ECIMOS, LLC,)
)
Plaintiff,)
)
v.)
)
CARRIER CORPORATION,)
)
Defendant.)

Case No. 2:15-cv-2726-JPM-cgc

JURY VERDICT FORM

We, the jury, unanimously answer the following questions submitted by the Court as follows:

BREACH OF CONTRACT
(ECIMOS's Claim)

1. Has ECIMOS, LLC ("ECIMOS") proven by a preponderance of the evidence that it entered into a software licensing contract with Carrier Corporation ("Carrier")?

Yes No

If your answer is "Yes," proceed to Question 2.

If your answer is "No," skip Questions 2 through 5 and proceed to Question 6.

2. Has ECIMOS proven by a preponderance of the evidence that Carrier materially breached the software licensing contract, in a way that was not excused, by failing to pay ECIMOS a license fee for installing and using ECIMOS's software on the Windows 7 operating system? (Recall that a breach of contract by Carrier would be excused by an earlier material breach of contract by ECIMOS. What constitutes a "material" breach is discussed on page 34 of the Jury Instructions.)

Yes No

Regardless of your answer, proceed to Question 3.

3. Has ECIMOS proven by a preponderance of the evidence that Carrier materially breached the software licensing contract, in a way that was not excused, by failing to maintain the confidentiality of ECIMOS's materials relating to ECIMOS's software and/or hardware drawings? (Recall that a breach of contract by Carrier would be excused by an earlier material breach of contract by ECIMOS. What constitutes a "material" breach is discussed on page 34 of the Jury Instructions.)

Yes No

If you answered "Yes" to Questions 2 and/or 3, proceed to Question 4.
Otherwise, skip Questions 4 and 5 and proceed to Question 6.

4. Has ECIMOS proven by a preponderance of the evidence that Carrier's breach or breaches of the software contract caused damages to ECIMOS?

Yes No

If your answer is "Yes," proceed to Question 5.
If your answer is "No," skip Question 5 and proceed to Question 6.

5. You have returned a verdict in favor of ECIMOS on its breach of contract claim. What amount of damages do you find that ECIMOS should recover as a result of Carrier's breach of contract?

Amount \$ 1,500,000.00

What amount of damages that you awarded under this question, if any, is already included within any amount of damages that you have previously awarded ECIMOS for misappropriation of trade secrets under Question 13 and/or copyright infringement under Question 19?

Amount \$ _____ (misappropriation of trade secrets)

Amount \$ _____ (copyright infringement)

Regardless of your answer, proceed to Question 6.

BREACH OF CONTRACT

(Carrier's Claim)

6. Has Carrier proven by a preponderance of the evidence that it entered into a service contract with ECIMOS?

Yes No

If your answer is "Yes," proceed to Question 7.

If your answer is "No," skip Questions 7 through 9 and proceed to Question 10.

7. Has Carrier proven by a preponderance of the evidence that ECIMOS materially breached the service contract in a way that was not excused? (Recall that a breach of contract by ECIMOS would be excused by an earlier material breach of contract by Carrier. What constitutes a "material" breach is discussed on page 34 of the Jury Instructions.)

Yes No

If your answer is "Yes," proceed to Question 8.

If your answer is "No," skip Questions 8 and 9 and proceed to Question 10.

8. Has Carrier proven by a preponderance of the evidence that ECIMOS's breach of the service contract caused damages to Carrier?

Yes No

If your answer is "Yes," proceed to Question 9.

If your answer is "No," skip Question 9 and proceed to Question 10.

9. You have returned a verdict in favor of Carrier on its breach of contract claim. What amount of damages do you find that Carrier should recover as a result of ECIMOS's breach of contract?

Amount \$ _____

Regardless of your answer, proceed to Question 10.

TRADE SECRET MISAPPROPRIATION

10. Has ECIMOS proven by a preponderance of the evidence that any of the following are trade secrets:

a. ECIMOS's software source code, including the algorithms for the valid tests and test procedures and the way the software source code interacts with ECIMOS's database?

Yes No

b. ECIMOS's assembled hardware drawings and wiring diagrams?

Yes No

If your answer is "Yes" to any subpart of Question 10, proceed to Question 11. Otherwise, skip Questions 11 through 14 and proceed to Question 15.

11. Has ECIMOS proven by a preponderance of the evidence that Carrier misappropriated any of the following information *that you have already determined to be trade secrets*:

a. ECIMOS's software source code, including the algorithms for the valid tests and test procedures and the way the software source code interacts with ECIMOS's database?

Yes No

b. ECIMOS's assembled hardware drawings and wiring diagrams?

Yes No

If your answer is "Yes" to any subpart of Question 11, proceed to Question 12. Otherwise, skip Questions 12 through 14 and proceed to Question 15.

12. Has ECIMOS proven by a preponderance of the evidence that it suffered detriment as a result of the misappropriation of any of the following trade secret information *that you have already determined to be trade secrets and that you have already determined were misappropriated by Carrier*:

a. ECIMOS’s software source code, including the algorithms for the valid tests and test procedures and the way the software source code interacts with ECIMOS’s database?

Yes _____ No

b. ECIMOS’s assembled hardware drawings and wiring diagrams?

Yes _____ No

If your answer is “Yes” to any subpart of Question 12, proceed to Question 13. Otherwise, skip Questions 13 through 14 and proceed to Question 15.

13. You have returned a verdict in favor of ECIMOS on its trade secret misappropriation claim. What amount of damages do you find that ECIMOS should recover as a result of Carrier’s misappropriation of ECIMOS’s trade secrets?

Amount \$ _____ ECIMOS’s actual loss

Amount \$ _____ Carrier’s *additional* profits due to misappropriation of trade secrets

Or, instead of the above two measures:

Amount \$ _____ Reasonable royalty

What amount of damages that you awarded under this question, if any, is already included within any amount of damages that you have previously awarded ECIMOS for breach of contract under Question 5 and/or copyright infringement under Question 19?

Amount \$ _____ (breach of contract)

Amount \$ _____ (copyright infringement)

Regardless of your answer, proceed to Question 14.

14. Has ECIMOS proven by clear and convincing evidence that Carrier's misappropriation of ECIMOS's trade secrets was willful and malicious? (The "clear and convincing evidence" standard is explained on page 71 of the Jury Instructions, along with the definition of "willful" and "malicious" acts.)

Yes _____ No _____

Regardless of your answer, proceed to Question 15.

COPYRIGHT INFRINGEMENT

15. Has ECIMOS proven by a preponderance of the evidence that it owns a valid copyright with respect to its Run Test software source code? (Recall that by producing a copyright registration, ECIMOS has established a presumption that it owns a valid copyright in the registered material.)

Yes No _____

If your answer is "Yes," proceed to Question 16.

If your answer is "No," skip Question 16 and proceed to Question 17.

16. Has ECIMOS proven by a preponderance of the evidence that Carrier copied the protected elements of ECIMOS's Run Test software source code? (Several *unprotected* elements of the source code are listed on page 56 of the Jury Instructions.)

Yes _____ No

Regardless of your answer, proceed to Question 17.

17. Has ECIMOS proven by a preponderance of the evidence that it owns a valid copyright with respect to its Run Test database script source code? (Recall that by producing a copyright registration, ECIMOS has established a presumption that it owns a valid copyright in the registered material.)

Yes No _____

If your answer is "Yes," proceed to Question 18.

If your answer is "No," skip Question 18 and proceed to Question 19.

18. Has ECIMOS proven by a preponderance of the evidence that Carrier copied the protected elements of ECIMOS's Run Test database script source code? (Several *unprotected* elements of the source code are listed on page 56 of the Jury Instructions.)

Yes ✓ No

Regardless of your answer, proceed to Question 19.

19. If and only if you answered "Yes" to at least one of Questions 16 or 18, you have returned a verdict for ECIMOS on its copyright infringement claim and you must answer the following question: What amount of damages do you find that ECIMOS should recover as a result of Carrier's infringement of ECIMOS's copyrighted material? (If you answered "No" to both of Questions 13 and 15, do not answer this question.)

Amount \$ 1,000,000.00 ECIMOS's actual damages

Amount \$ 5,000,000.00 Carrier's *additional* profits due to copyright infringement

What amount of damages that you awarded under this question, if any, is already included within any amount of damages that you have previously awarded ECIMOS for breach of contract under Question 5 and/or misappropriation of trade secrets under Question 13?

Amount \$ 0 (breach of contract)

Amount \$ 0 (misappropriation of trade secrets)

Once completed, sign the verdict form and return it to the Court.

Heather Bierhoff
JURY FOREPERSON

Date: July 6, 2018