DOCKET NO. UWY-CV-14-6026552-S	:	SUPERIOR COURT
NUCAP INDUSTRIES INC., NUCAP US INC., as successor to ANSTRO MANUFACTURING, INC.;	:	J.D. WATERBURY
	:	AT WATERBURY
Plaintiffs,	:	NOVEMBER 3, 2016
VS.	:	
PREFERRED TOOL AND DIE, INC., PREFERRED AUTOMOTIVE COMPONENTS, a division of PREFERRED TOOL AND DIE; and ROBERT A. BOSCO, JR.,	:	
Defendants.	:	

PLAINTIFFS' REDACTED REPLY IN SUPPORT OF THEIR MOTION FOR AN ORDER OF COMPLIANCE TO PREFERRED TO RESPOND TO PLAINTIFFS' THIRD REQUESTS FOR THE PRODUCTION OF DOCUMENTS

Plaintiffs, Nucap Industries Inc. ("Nucap Industries") and Nucap US Inc., as the successor to Anstro Manufacturing ("Nucap US") (collectively "Plaintiffs" or "Nucap"), respectfully file this Reply in support of their Motion for an Order of Compliance to Defendants, Preferred Tool and Die, Inc. ("Preferred Tool") and Preferred Automotive Components, a division of Preferred Tool and Die ("Preferred Automotive") (collectively, "Preferred"), to produce documents responsive to Plaintiffs' Third Requests for Production.

I. Preferred Should Be Required to Produce All of Its Tooling Documents.

The Court should compel Preferred to produce all of its tooling documents because Nucap's Complaint alleges manufacturing misappropriation, placing Preferred's manufacturing processes, *i.e.*, its tooling, directly at issue in the litigation. Subsequent discovery has supported these allegations. Consequently, the tooling information is discoverable under Practice Book § 13-2 and the Court should overrule Preferred's objections.

A. The Scope of Plaintiffs' Misappropriation Allegations is Not Limited to Six Parts, As Preferred Misleadingly Asserts.

Preferred's Objection ("Objection") that Nucap's request for Preferred's tooling documents is not relevant or reasonably calculated to lead to the discovery of admissible evidence is based on the flawed and misleading assertion that "Nucap has only accused six of Preferred's shims of incorporating trade secrets." *See* Objection at 9. Preferred's characterization of Nucap's allegations is not consistent with Nucap's pleadings or its discovery responses.

Nucap's Complaint alleges misappropriation of its manufacturing and design processes, which implicates tooling design in the context of the aftermarket brake industry. *See* Complaint at ¶¶ 71-73, previously attached as Exhibit A to Motion for Compliance. The Complaint further details how Preferred's shims are nearly identical to Nucap shims and came to market on a suspiciously short time frame, an allegation that further implicates tooling design and the manufacturing process. *Id.* at ¶¶ 3-5, 62-74.

In response to Preferred's First Set of Interrogatories, Interrogatory No. 2 – the interrogatory in which Preferred asked Nucap to, among other things, identify all information that Nucap asserts constitutes a trade secret of Nucap that Preferred has allegedly misappropriated – Nucap's answer included the following:

> (13) The designs, engineering and material specifications, drawings, methods, techniques, processes, manufacturing costs and pricing **associated with Plaintiffs' tooling**, including, **but not limited to**, the tooling used with respect to the parts identified at #1-12 herein.

See Plaintiffs' Answers to Defendant Preferred Tool's First Set of Interrogatories (emphasis added), previously attached as Exhibit D to Motion for Compliance.

Discovery in this case reveals that the timeline on which Preferred was able to "tool up" in order to manufacture the shims it was (and presumably still is) selling strongly suggest that

Preferred benefitted from trade secret information belonging to Nucap.[1] Preferred was not [redacted] *see* Deposition of Carl Dambrauskas ("Dambrauskas Dep. Tr.") at 48:6-9; 51:18-25, previously attached as Exhibit B to Motion for Compliance; at least two individuals employed by Preferred during the relevant time frame (Messrs. Dambrauskas and Reynolds) [redacted] are former employees of a company (Anstro Manufacturing) affiliated with Nucap, *see id.* at 47:22-23, 63:25-64:5, 81:8-18, 122:14-16; and the telephone records of Defendant Bosco, another former Anstro employee [redacted]. *See id.* at 131:13-132:22.

The time frame in which Preferred was able to "tool up" and produce fifty different shims for its largest customer, Bosch, strongly suggests that Nucap trade secrets were used to shortcut the process. Mr. Dambrauskas also testified [redacted]. *Id.* at 244:18-246-3. Within that set, [redacted]. *Id.* at 246:16-247:13.

Preferred's claim that there is nothing suspicious about the timeline in which Preferred was able to come to market with shims for Bosch in 2015, *see* Objection at 4, ignores the implications of Mr. Dambraksuas' testimony that, [redacted]

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[1] There is no merit to Preferred's claim that the information at issue does not qualify for trade secret protection because the information is already in the public domain. Even Preferred's own witness and former sales manager contradicted that assertion and acknowledged that Nucap's part prints and tooling drawings are proprietary. Dambrauskas Dep. Tr. at 32:16-33:5; 40:17-41:9.

[redacted]. Dambrauskas Dep. Tr. at 28:15-28:22. Accepting that testimony, [redacted]. Mr. Dambraksuas, however, testified [redacted]. *Id.* at 244:18-246-3.[2] Preferred's position on a shorter time frame as "normal" concerns testimony from Mr. Dambruaskas [redacted]. *See* Dambrauskas Dep. Tr. at 84:19-86:15 ([redacted]). Given the significant discrepancies between the time Mr. Dambraksuas testified it would normally take to come to market and the time it actually took for Preferred to do it, Nucap is entitled to explore through discovery whether, in fact, Preferred has made use of Nucap's trade secrets in connection with its tooling for the shims produced for Bosch.

Furthermore, Preferred has designated all of its product drawings as "Confidential – Attorneys' Eyes Only," which precludes Nucap personnel or engineers from reviewing the product drawings or identifying potentially infringing parts. The six parts Nucap originally identified in Interrogatory Answers as incorporating Nucap's confidential or proprietary material

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[2] Mr. Dambraksuas further testified [redacted]. Dambrauskas Dep. Tr. at 26:11-27:18. That testimony further calls into question the timing in which Preferred became ready to go to market with shims for Bosch in late 2014 and early 2015.

were made available to Nucap outside of this litigation on a non-confidential basis.[3] For the vast majority of the part drawings Preferred has produced in this case, Preferred's use of the "Confidential – Attorneys' Eyes Only" designation means that counsel for Plaintiffs cannot consult with any employees of Nucap on product similarities or the likelihood that the Preferred products were designed using Nucap's confidential information. As such, it is inaccurate to assert, as Preferred has done in its Objections, that Nucap either agrees or admits that only six parts made by Preferred have similarities to Nucap products.

For the reasons already briefed, Nucap has no way of fully exploring its claims of misappropriation without access to Preferred's tooling documents. The Preferred part drawings previously produced give Nucap an incomplete picture of Preferred's misappropriation because they represent only one half of the product development process (tooling being the other half). Preferred's own witness [redacted]. *See* Dambrauskas Dep. Tr. at 32:16-33:5. Although Preferred previously produced (although designated as Attorneys' Eyes Only) all its part drawings without any demand that Nucap make a threshold showing that the Preferred products were the same as the corresponding Nucap products, Preferred now makes that objection here in the context of tooling. Preferred's Objections fail to explain that contradictory position—how all of Preferred's part design drawings are relevant and were produced without objection by Preferred, but the corresponding tooling drawings are somehow irrelevant and objectionable.[4]

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[3] Preferred's Carl Dambrauskas provided the part drawings to a customer of Nucap as part of a package of sales pitch materials and on a non-confidential basis. Those drawings were then provided to Nucap.

[4] For the same reasons, Preferred's scope and burden objections are unwarranted. Preferred can easily identify the applicable tooling drawings that correspond to

B. Preferred's Objections Are Unwarranted and Inconsistent with the Standard For Discovery Under Practice Book § 13-2.

Preferred otherwise "doubles down" on its claim that Nucap should be required to establish its claims with an exacting specificity before discovery is permissible. Preferred's method is not the standard in Connecticut, however, and Preferred cites no relevant Connecticut law or authority in its Objection. If adopted, Preferred's position would undermine Plaintiffs' ability to obtain fair discovery on its claims in this case.

State v. McGraw-Hill Cos., cited in Plaintiffs' opening brief, is instructive on the reasons why Preferred's argument would improperly restrict the scope of otherwise permissible discovery. 2014 Conn. Super. LEXIS 2149 (Conn. Super. Ct. Sept. 3, 2014). Similar to this matter, the party resisting discovery in *McGraw-Hill* refused to provide discovery by arguing that there was no legal basis for the requesting party to recover on their substantive claims. *McGraw-Hill*, 2014 Conn. Super. LEXIS 2149, at *7-*8. The Superior Court found that position inappropriately conflated the standard for discovery with the underlying validity of the party's claims, which was not at issue in the discovery motion before the court. Instead, the court in *McGraw-Hill* held that "the rules of discovery do not require that the connection between the information requested and the claims and defenses in the case be established with scientific certainty." *Id.* at *9. Viewing the request under Practice Book § 13-2, the court ordered discovery because the documents sought a reasonable calculation to the plaintiffs' theory of relief.

Nucap's Complaint squarely addresses tooling and manufacturing misappropriation, and the facts developed in discovery thus far have confirmed Nucap's allegations. *See* Compl. at ¶¶

Preferred's part drawings, and the burden of compliance would be minimal in this instance, especially where Preferred has already produced its part drawings.

64-71 (raising misappropriation claims relating to manufacturing processes); Dambrauskas Dep. Tr. at 26:11-27:18, 54:17-21, 103:15-21. Preferred does not challenge the law in Connecticut, nor does it appear to dispute that tooling and manufacturing misappropriation have been alleged in the pleadings and developed through discovery. *See* Motion at 8-9; 11. Despite failing to contest either issue, Preferred incorrectly claims that tooling documents and communications are not discoverable because Plaintiffs' allegations concerning the six identified parts are allegedly "thin" and non-meritorious. Beyond being factually misguided, that position mirrors the one rejected in *McGraw-Hill* because it injects a substantive, dispositive motion-type argument into a discovery motion. Accordingly, Preferred should not be permitted to artificially hamper tooling discovery by limiting it to six products.

II. Preferred Should Not Escape Discovery on the "Six Preferred Products" Preferred Concedes are at Issue, as Nucap Has Supported Its Allegations with Specific and Detailed Evidence.

Especially as it relates to the six Preferred parts identified in Nucap's Supplemental Amended Interrogatory Answers, there should be no question that the tooling designs are discoverable because Nucap has alleged their misappropriation and provided specific details of the product similarities. Preferred concedes as much in its Objection, *see* Objection at 11, as it did in the meet and confer process.

In its after-the-fact attempt to escape discovery of its tooling documents for even the six parts Preferred concedes are at issue, Preferred selectively quotes and excerpts some of the "six Preferred products" previously identified by Nucap as having been incorporated trade secrets misappropriated by Preferred. It would be inappropriate for Nucap to respond to each and every purported "dissimilarity" cited by Preferred in its Objections, as doing so would miss the point of the Motion and make the same mistake as Preferred by assuming that potential substantive differences impact the scope of the allegations in the Complaint and subsequent discovery.

Nucap, however, is forced to correct the record as to some of the incomplete and misleading information presented by Preferred in its Objections.

For example, Nucap alleges that [redacted] part was misappropriated from two separate Nucap/Anstro parts: [redacted]. *See* Plaintiffs Amended Supplemental Answers to Preferred First Interrogatories, attached as Ex. 1. Preferred's Objection is incomplete in that it mentions [redacted], but entirely omits any discussion of [redacted]. [redacted]. [redacted]. *See* Ex. 2, 3, and 4 (product drawings). Along the same lines, Preferred's Objection fails to disclose that Nucap's allegations of similarity for [redacted] are made based on comparisons with two separate Nucap/Anstro parts, [redacted], only one of which ([redacted]) Preferred discloses in its Objection. [redacted]. *See* Ex. 5 and 6 (product drawings). Nucap has presented specific and detailed allegations for the remaining Preferred products as well. *See* Ex. 1.

III. Preferred Has Abandoned Its Confidentiality Objections.

Finally, Preferred has dropped its confidentiality objections to the production of its tooling designs, likely realizing these objections lack merit. For the reasons already briefed, including the existence of a two-tiered Confidentiality Order already in place, there is no reason why the claimed confidential nature of the materials should further delay Preferred's production of these relevant materials.

IV. Conclusion

For the foregoing reasons, Plaintiffs respectfully request the Court grant Plaintiffs' Motion for Compliance.

PLAINTIFFS,
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CERTIFICATION

This is to certify that a copy of the foregoing was mailed, postage prepaid or delivered electronically or non-electronically, on this 3rd day of November 2016 to all counsel and self-represented parties of record, as follows:

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