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## Alcor Wins Bid To Overturn \$6.5M Blood Testing IP Verdict

By **Cara Salvatore**

Law360 (September 5, 2019, 10:07 PM EDT) -- A \$6.5 million trade-secrets verdict against diagnostics company Alcor Scientific was overturned Thursday by a federal judge who found that a new trial on one claim was warranted because the evidence supporting damages over an employee's alleged theft of computer code from Italian competitor Alifax was far outweighed by opposing evidence.

U.S. District Judge William Smith acknowledged that there was a bare minimum of evidence to support the jury's finding for Alifax after it said that an employee who went to Alcor took trade secrets related to a computer algorithm behind a blood analyzer. But that evidence was outgunned by Alcor's presentation at trial, the judge said.

The "verdict that the defendants misappropriated Alifax's algorithm and thereby obtained a one-year head start in the market relies on extensive, inference-driven reverse engineering from a wafer-thin factual," Judge Smith said. "That outcome requires rejecting powerful expert testimony" and a wealth of contrary evidence.

He pointed to the testimony of one of Alcor's expert witnesses, who presented findings that the allegedly stolen algorithm components — specifically four conversion constants — would not work if the algorithm were plugged into a device other than Alifax's.

"Alifax failed to challenge this opinion in any serious way," the judge said.

Alcor developed a competing device, allegedly using information the employee provided.

In the early May verdict, a jury awarded Alifax \$6.5 million over the conversion constants. Soon after, Alcor argued that the verdict wasn't supported by the trial evidence.

"In addition to failing to show that its specific conversion constants had value to competitors, Alifax failed to show that any such value is derived from the alleged secrecy of the conversion algorithm," Alcor said in its motion.

The jury found that a former Alifax employee in the company's research and development program and production plant in Italy, took "source code concerning the conversion of photometric measurements" to its Ocean State-based competitor.

The allegedly stolen code is used to ensure that an optical sensor on a blood testing machine gives consistent results every time, using the specially developed conversion formulas. Alifax said Alcor never had this type of technology before the employee's move.

The conversion trade secret was the only claim for which the jury awarded damages. Alcor was also found liable for trade secrets regarding a plastic part, but the jury awarded only \$1 on that claim. Alcor was found not liable on two other trade secrets claims, and still other claims were dismissed before reaching the jury.

The judge said Thursday he made a mistake by allowing a "dramatic" physical piece of evidence on

the claim over the plastic part. The black-colored part introduced as evidence was not relevant enough to Alifax's claim, which had to do with a clear part, the judge said. The coloring was functional, not just incidental, since the part was used in a light-sensing system. For that reason and others, the judge granted Alcor judgment as a matter of law regarding this trade secret.

Alifax is represented by Robert Stier Jr. of Pierce Atwood LLP.

Alcor is represented by Craig Scott of Hinckley Allen.

The case is Alifax Holding SpA v. Alcor Scientific Inc., case number 1:14-cv-00440, in the U.S. District Court for the District of Rhode Island.

--Editing by Peter Rozovsky.

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