

*This opinion will be unpublished and  
may not be cited except as provided by  
Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A13-0627**

Analog Technologies Corp.,  
Respondent,

vs.

Edward Knutson, et al.,  
Appellants.

**Filed December 30, 2013  
Affirmed  
Halbrooks, Judge**

Dakota County District Court  
File No. 19-C1-07-007480

Dean A. LeDoux, Samuel W. Diehl, Gray, Plant, Mooty, Mooty & Bennett, P.A.,  
Minneapolis, Minnesota (for respondent)

Jon S. Swierzewski, Richard J. Reding, Larkin Hoffman Daly & Lindgren Ltd.,  
Minneapolis, Minnesota (for appellants)

Considered and decided by Halbrooks, Presiding Judge; Ross, Judge; and Crippen,  
Judge.\*

**UNPUBLISHED OPINION**

**HALBROOKS, Judge**

In this appeal following remand in a trade-secrets dispute, appellants Dimation,  
Inc. and Edward Knutson assert that the district court did not comply with our instruction

---

\* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to  
Minn. Const. art. VI, § 10.

to clarify the terms of an injunction to satisfy the requirements of Minn. R. Civ. P. 65.04. Appellants argue that the modifications to the injunction on remand do not resolve the infirmities of the original injunction—it is still impermissibly vague, does not adequately describe the conduct to be enjoined, lacks adequate findings of fact, and improperly references a separate document. We affirm.

## FACTS

This matter is before us for a second time. The facts underlying this matter are set forth in *Analog Tech. Corp. v. Knutson*, No. A10-1181, 2011 WL 1236164 (Minn. App. Apr. 5, 2011) (*Analog I*). In that decision, we held that the district court properly denied appellants’ posttrial motions and awarded exemplary and injunctive relief, but we remanded for the district court to address a “lack of clarity in the scope and specificity of the injunction.” *Analog I*, 2011 WL 1236164, at \*5. In particular, we instructed the district court to modify paragraphs (a), (b), (c), and (d) of the November 3, 2009 injunction. *Id.* at \*7. We observed that “[w]ithout describing which aspects of the flip-chip and BGA processes derive from [the] misappropriated trade secrets, the order does not adequately guide the parties as to the specific conduct restrained.” *Id.* at \*6. We also noted a durational incongruity between the injunction and its accompanying memorandum. *Id.*

On remand, the district court asked the parties to submit proposed amendments to the injunction. Analog submitted proposed amended language that prohibits appellants from any use or disclosure of Analog’s flip-chip or BGA processes as described in its

confidential Exhibit A. Analog's Exhibit A is a nine-page, single-spaced, technical description of Analog's flip-chip and BGA processes as of the time of trial in May 2009.

Appellants also submitted proposed modifications. Appellants' proposed amended language generally tracked the structure of Analog's and also contained references to Analog's Exhibit A. But appellants' submission provided an explicit exception from restrained conduct for any flip-chip or BGA process that "is generally known and is readily ascertainable." Appellants argued in their brief to the district court that the processes described in Exhibit A are generally known and readily ascertainable. Appellants submitted a second proposed order that recited a conclusion that the information identified in Exhibit A is "generally known" and "readily ascertainable" and therefore terminated the injunction on the basis that the trade secret no longer exists.

The district court held a hearing. The parties offered affidavits and other evidence not in the trial record<sup>1</sup> and advocated their respective positions regarding the injunctive language. Appellants again argued that the content of Analog's Exhibit A does not meet the definition of a trade secret because it describes processes generally used in the flip-chip and BGA industry rather than Analog's particular trade secrets within that field. But appellants offered no alternative injunctive language to aid the district court in clarifying the injunction.

---

<sup>1</sup> In *Analog I*, we expressly permitted the district court to "open the record if helpful to gather the factual details needed to assure that the injunction unambiguously and narrowly describes the restrained processes and activities, and the duration of the restraint." *Id.* at \*7.

Analog offered the affidavit of its president and founder, William Berg, that explains that Exhibit A is a high-level description of Analog's misappropriated flip-chip and BGA processes, and is not intended to be an exhaustive description of each and every aspect of Analog's flip-chip and BGA processes. The Berg affidavit also references trial testimony about Analog's flip-chip and BGA processes "and the unique aspects that caused them to be confidential and trade secret information."

The district court issued a modified injunction on March 13, 2013. While the November 2009 injunction prohibited appellants from using or disclosing Analog's flip-chip and BGA "processes," "confidential information," and "trade secrets," the March 2013 injunction prohibits the use or disclosure of Analog's flip-chip and BGA "processes as described in Exhibit A." The modified injunction also clarifies the expiration date of the injunction. This appeal follows.

## **DECISION**

We uphold a district court's decision to issue an injunction absent a clear abuse of discretion. *Carl Bolander & Sons Co. v. City of Minneapolis*, 502 N.W.2d 203, 209 (Minn. 1993). We review a district court's implementation of remand instructions for an abuse of discretion. *Janssen v. Best & Flanagan, LLP*, 704 N.W.2d 759, 763 (Minn. 2005). We conclude that the abuse-of-discretion standard of review also applies to the modification of an injunction on remand.

## **I.**

### **A. Specificity of Modified Injunction**

Appellants challenge the modified injunction, arguing that it should be set aside because it is impermissibly vague and does not adequately describe the conduct to be enjoined. Appellants focus on paragraphs (a)-(b) of the modified injunction, as their primary argument is that a clear recitation of Analog's trade secret is necessary for appellants to understand what conduct is restrained. Paragraphs (c)-(e) in the modified injunction address restrictions on appellants' performance of work in the flip-chip and BGA field generally.

We note at the outset that the issue before us is not whether appellants misappropriated Analog's trade secret or whether Analog is entitled to injunctive relief. The district court's rulings relating to those issues were raised and affirmed in appellants' first appeal. The narrow issue before us is whether the modified injunction defines the nature, scope, and duration of the prohibited conduct with enough specificity to reasonably permit compliance and enforceability. We hold that it does.

#### **1. Restrained processes and activities**

Appellants argue that the modified injunction encompasses overly broad flip-chip and BGA processes that are well known in the industry, and therefore the enjoined conduct is not limited to a protectable trade secret. Appellants also argue that their subjective understanding of the field and the processes at issue is irrelevant and that the injunctive language must be understandable to an ordinary person.

Analog counters that the modified injunction is sufficiently specific and understandable, given the parties' familiarity with the trade secrets at issue, and in light of the context provided by the Berg affidavit and trial testimony. Analog clarified at oral argument that the misappropriated trade secret is the specific order and combination of the components and processes included in Exhibit A, and not each stand-alone component or process it describes. According to the Berg affidavit, the misappropriated trade-secret information comprises unique turnkey processes optimized for low production volumes and "include[s] the compilation of equipment, materials, process variable settings and controls, routers, work instructions, quality control methods, and quality management system[s]."

The task confronting the district court was to describe the aspects of the flip-chip and BGA processes that derive from the misappropriated trade secrets. With Analog's proposed language referencing Exhibit A before it, and no alternative clarifying language put forth by appellants, the district court crafted a modified order that prohibits, in relevant part, the use or disclosure by appellants of the flip-chip and BGA processes described in Analog's Exhibit A. We conclude that in crafting this modification, the district court acted within its discretion.

As for appellants' argument that its subjective understanding of the field and processes is irrelevant, we note that the authority appellants cite for this proposition does not go as far as appellants suggest. The Eleventh Circuit case that appellants rely on stands for the unremarkable proposition that a restrained party must be able to understand its obligations by reading the injunction. *See E. Air Lines, Inc. v. Air Line Pilots Ass'n*

*Int'l*, 920 F.2d 722, 730 (11th Cir. 1990). We conclude here that appellants can understand their obligations by reading the modified injunction.

## **2. Duration**

In *Analog I*, we also noted a lack of clarity in the duration of the injunction. 2011 WL 1236164, at \*6. The district court responded by imposing a specific expiration date (June 1, 2013) for all but paragraphs (a)-(b), which are permanent, or coextensive with the existence of the trade secret under Minn. Stat. § 325C.02 (2012). Appellants do not challenge the duration of the modified injunction, other than to argue that Analog has no protected trade secret as defined by Exhibit A, and, therefore, the injunction must terminate.

We conclude that the clarification of the expiration date in the injunction provides sufficient specificity with respect to duration and that the district court acted within its discretion in making this modification. If, as appellants claim, the trade secrets that have been the object of this litigation no longer exist, appellants' remedy can be found in Minn. Stat. § 325C.02(a), which provides that, upon application to the district court, an injunction "shall be terminated when the trade secret has ceased to exist."<sup>2</sup> Appellants' argument that the trade secret no longer exists is beyond the scope of their appeal.

---

<sup>2</sup> We note that an injunction "may be continued for an additional reasonable period of time in order to eliminate commercial advantage that otherwise would be derived from the misappropriation." Minn. Stat. § 325C.02(a). "Where the [trade secret] information has, subsequent to the wrongful taking and use, become generally available, the initial conduct is still wrongful and the employer is still entitled to relief for any injury suffered as a result of the wrongful use." *Cherne Indus., Inc. v. Grounds & Assocs., Inc.*, 278 N.W.2d 81, 92 (Minn. 1979).

## **B. Reasons for Issuance of Injunction**

Appellants also challenge the modified injunction on the basis that it fails to set forth the reasons for its issuance. Minn. R. Civ. P. 65.04 requires that “[e]very order granting an injunction . . . shall set forth the reasons for its issuance.” But appellants cite no authority, and we are aware of none, holding that rule 65.04 requires an order modifying an injunction to set forth the reasons for the modification. In our earlier decision, we found no infirmity with the reasons set forth for the issuance of the injunction. *Analog I*, 2011 WL 1236164, at \*5. These reasons apply equally to the injunction as modified. Accordingly, we conclude that the district court did not err when it declined to set forth new reasons under rule 65.04 for the modification of the injunction on remand.

## **C. Reference to “other document”**

Appellants also challenge the format of the modified injunction on the basis that it refers to a separate document, Exhibit A, rather than stand on its own four corners. Minn. R. Civ. P. 65.04 provides that every injunction “shall describe in reasonable detail, *and not by reference to the complaint or other document*, the act or acts sought to be restrained.” (Emphasis added.) We note that this rule presents particular challenges in the context of trade-secret injunctions, which must describe in reasonable detail the restrained conduct without revealing a party’s confidential information.

Here, appellants made no objection to the district court about the reference to an “other document” in Analog’s proposed order. Moreover, appellants’ own proposed orders contain references to Exhibit A. We generally do not consider matters not argued



to and considered by the district court. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). We decline to do so here.

## II.

Closely tracking appellants' argument that the district court should have set forth new reasons for the injunction under rule 65.04, appellants also argue that under Minn. R. Civ. P. 52.01 the district court erred when it did not make new factual findings relating to its March 2013 order. The gravamen of appellants' argument is that the validity of the modified injunction cannot be assessed without new findings by the district court addressing the nature, scope, and existence of Analog's trade secret.

Generally, a district court acting without a jury is required to make findings of fact and conclusions of law. Minn. R. Civ. P. 52.01. But as with appellants' argument under rule 65.04 about setting forth the reasons for the injunction, the findings requirement of rule 52.01 does not necessarily apply to the modification of an order on remand.

In *Analog I*, we affirmed the district court's award of injunctive relief and concluded that the order satisfied the formal requirements of rule 52.01, but remanded for modification of paragraphs (a)–(d) of the injunction to conform to the specificity requirements of Minn. R. Civ. P. 65.04. 2011 WL 1236164, at \*5, \*7. Significantly, we did not vacate or reverse the November 3, 2009 injunction. *See id.* Appellants cite no authority, and we are aware of none, holding that rule 52.01 requires the district court to adopt new findings of fact and conclusions of law to support the clarification of four paragraphs of an injunction on remand. We conclude that the district court did not err when it declined to make new findings under rule 52.01 to support the modification that

we ordered. Accordingly, we hold, as we did in *Analog I*, that the district court's order has no formal deficiency that requires reversal.

**Affirmed.**