

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

BAE SYSTEMS INFORMATION AND :  
ELECTRONIC SYSTEMS INTEGRATION INC., :

Plaintiff, :

v. :

AEROFLEX INCORPORATED and :  
AEROFLEX PLAINVIEW, INC., :

Defendants. :

Civ. No. 09-769-LPS

Public Version  
Released May 25, 2012

**MEMORANDUM ORDER**

At Wilmington this 15<sup>th</sup> day of May, 2012:

Pending before the Court is the Motion for Summary Judgment Based on the Statute of Limitations, Laches, and Estoppel (the "Motion") (D.I. 350) filed by Defendants Aeroflex Incorporated and Aeroflex Plainview, Inc. (collectively, "Aeroflex"). Having reviewed the papers filed in connection with the Motion, and having heard oral argument during the May 4, 2012 pretrial conference (*see* Transcript of May 4, 2012 Pretrial Conference) (D.I. 448) (hereinafter "Tr."), the Court has determined that there are no genuine issues of material fact and that Aeroflex is entitled to judgment as a matter of law. Accordingly, as explained in further detail below, the Court will GRANT Aeroflex's Motion with respect to each of the remaining claims.<sup>1</sup>

---

<sup>1</sup>At the pretrial conference, the Court granted Aeroflex's Motion to Amend Its Answer to Plaintiff's Complaint (D.I. 294), by which Aeroflex sought to include the affirmative defenses of statute of limitations, laches, estoppel, and waiver. (*See* Tr. at 108; D.I. 446) Additional motions remain pending: (1) Aeroflex's Motion for Vacatur of Preliminary Findings in View of Material Misrepresentations of Fact and Motion for Sanctions (D.I. 302); (2) the Motion for Summary Judgment of Breach of Contract filed by Plaintiff BAE Systems Information and Electronic Systems Integration, Inc. ("BAE") (D.I. 338); (3) Aeroflex's Motion for Summary Judgment on Plaintiff[s] Misappropriation of Trade Secrets Claim (D.I. 344); (4) Aeroflex's Motion for

## I. BACKGROUND

The Court provides only the limited background necessary to explain its ruling. Additional background can be found in the Court's August 2011 opinion, which granted Aeroflex's motion for summary judgment on BAE's patent infringement claim. (D.I. 247; D.I. 248; *BAE Sys. Info. and Elec. Sys. Integration Inc. v. Aeroflex Inc.*, 2011 WL 3474344 (D. Del. Aug. 2, 2011))

BAE sued Aeroflex on October 14, 2009, alleging patent infringement as well as several state law claims, including trade secret misappropriation, breach of contract, conversion, and unjust enrichment. (*See* D.I. 1) The Court provided some detail about the parties' contractual relationship in its earlier opinion, noting there was:

a series of contracts between [Aeroflex and BAE], the earliest of which was executed in 1996. In 1996, BAE began development of a first generation advanced direct IRCM system ("DIRCM"). To aid its efforts, BAE subcontracted with Aeroflex to construct a two-axis gimbal assembly<sup>[2]</sup> . . . . The parties entered into a subsequent agreement in 2002 under which Aeroflex agreed to construct an IRCM gimbal assembly known as Fast Jet.

Pursuant to these agreements, BAE provided certain information to Aeroflex, including drawings, specifications,

---

Summary Judgment on Causation and Damages (D.I. 355); (5) Aeroflex's Motion for Summary Judgment on Preemption of Conversion and Unjust Enrichment Causes of Action (D.I. 357); (6) Aeroflex's Motion to Exclude the Expert Opinion of Robert C. Harney, Ph.D. (D.I. 347); and (7) Aeroflex's Motion to Exclude the Expert Opinion of Michael J. Dansky (D.I. 352). In light of the Court's ruling on statute of limitations, each of these pending motions will be DENIED AS MOOT. Aeroflex's motion for sanctions relating to BAE's assertion of patent infringement claims (D.I. 245), as well as BAE's motion requesting leave to file a surreply thereto (D.I. 291), remain pending.

<sup>2</sup>"A gimbal assembly is a device having one or more axes of rotation that allow an object mounted on the gimbal assembly to move freely in various directions." *BAE*, 2011 WL 3474344, at \*1.

renderings of designs, and specific components that were necessary for the design, development, manufacture, assembly, and testing of the gimbal assemblies. Under these subcontracts, as well as various "Proprietary Information Agreements," Aeroflex agreed to contractual provisions involving the use of BAE's intellectual property and other sensitive business information. In particular, the contracts mandated that Aeroflex would not use or reveal any of BAE's trade secrets or intellectual property to any third party. ("BAE SYSTEMS shall be the owner of all inventions, technology, designs . . . technical information . . . and other information conceived, developed or otherwise generated in the performance of this Contract . . . .")

BAE, 2011 WL 3474344, at \*1-2 (internal citations omitted).

The key contractual provisions are contained in several agreements. First, in January 2002, BAE and Aeroflex executed a Proprietary Information Agreement ("2002 PIA"). (D.I. 340

Ex. 1) Relevant provisions of the 2002 PIA include the following:

***[Aeroflex] shall maintain Proprietary Information in confidence and shall not use such Proprietary Information except for the Purpose of this Agreement.***

***[Aeroflex] agrees that any Proprietary Information disclosed hereunder: (i) shall be used by [Aeroflex] solely for the Purpose of this Agreement, (ii) shall not be distributed, disclosed, or disseminated to any third party (except as provided for in this Agreement), (iii) shall only be disclosed to [Aeroflex's] employees on a need to-know basis for the Purpose of this Agreement, and (iv) shall only be disclosed to third parties both with first, the consent of [BAE] and second, provided that (a) such third party has executed a nondisclosure agreement with [BAE] or (b) such third party executes a nondisclosure agreement with [Aeroflex] containing terms consistent with the requirements herein prior to receiving such information and also containing a provision making [BAE] a third party beneficiary to such agreement.***

(D.I. 340 Ex. 1, BAE00000212-13, at ¶¶ 2, 4) (emphasis added) The "Purpose" of the 2002 PIA is "to specify the conditions under which certain Proprietary Information . . . may be exchanged for the purpose of evaluation in connection with UK Fast Jet DIRCM Program." (D.I. 340 Ex. 1,

BAE00000212) "Proprietary Information" is defined to "include, but not be limited to, specifications, drawings, sketches, models, samples, computer programs, reports, data, techniques, designs, codes, documentation, and financial, statistical or other technical information," whether "in oral, visual or written form." (D.I. 340 Ex. 1, BAE00000212, at ¶ 1) Additionally, "Proprietary Information received hereunder shall be protected by [Aeroflex] during the term of this Agreement and for a period of five (5) years from the date of expiration or termination of this Agreement." (D.I. 340 Ex. 1, BAE00000213, at ¶ 8)

By March 6, 2002, the parties had also executed a manufacturing contract, by which Aeroflex agreed to manufacture BAE's FastJet gimbal ("2002 Subcontract"). (D.I. 340 Ex. 4) Among other things, the 2002 Subcontract contained the following "Data Rights" provision:

***Goods made in accordance with [BAE's] specifications and drawings shall not be furnished or quoted to any other person or concern. All specifications, drawings, tools, materials and other items furnished by [BAE] or the cost of which is charged against this order or necessary for the design, development, fabrication, assembly or testing of items specified in this Subcontract shall be kept confidential and shall be and remain the property of [BAE] and be returned to [BAE] immediately upon request or at completion of this order.***

(D.I. 340 Ex. 4, AERO\_E\_0072887.006, at § D, subpart C) (emphasis added) The 2002 Subcontract also includes an "Intellectual Property" provision, which states:

[Aeroflex] agrees that [BAE] shall be the owner of all inventions, technology, designs, works of authorship, mask works, technical information, computer software, business information and other information conceived, developed or otherwise generated in the performance of this Contract by or on behalf of [Aeroflex].

(D.I. 340 Ex. 4, AERO\_E\_0072885.003, at ¶ 18)

## II. THE PARTIES' CONTENTIONS

By its Motion, Aeroflex contends there is no genuine dispute that BAE knew of facts giving rise to its state-law claims no later than 2004, more than three years before BAE commenced suit against Aeroflex in October 2009. (*See generally* D.I. 351; D.I. 417 at 1-8; *see also* Tr. at 70-84, 103-05) Specifically, Aeroflex asserts that, as early as 2003, BAE:

- (i) received from Aeroflex the designs and specifications associated with the DART gimbal – reflecting the purported trade secrets at issue in this action – marked with Aeroflex, as opposed to BAE, proprietary legends;
- (ii) believed the designs and specifications created by Aeroflex and the trade secrets they reflected were owned by BAE;
- (iii) knew Aeroflex believed, to the contrary, that such materials belonged to Aeroflex and could be used by Aeroflex on non-BAE projects without BAE's permission; and
- (iv) was aware Aeroflex was considering use of such materials on at least one non-BAE project.

(*See* D.I. 351 at 1-2) Because it is undisputed that a three-year statute of limitations applies to the remaining state-law claims, and because BAE did not file suit within three years of knowledge of its claims, Aeroflex insists that the statute of limitations has expired and judgment must be entered for Aeroflex.<sup>3</sup>

BAE responds that Aeroflex did not commit its first act of breach and misappropriation until May 2005, when Aeroflex [REDACTED]

[REDACTED] Moreover, BAE contends that it was unaware of Aeroflex's conduct –

---

<sup>3</sup>Because the Court has determined Aeroflex's Motion should be granted on statute of limitations grounds, the Court will not address Aeroflex's alternative laches and estoppel arguments. Furthermore, while much of this Memorandum Order discusses BAE's breach of contract claim, the same essential analysis applies to each of BAE's remaining state-law claims.

in particular, Aeroflex's supply to ITT of BAE's Critical Item Specification, Critical Design Review, and [REDACTED] gimbals based on BAE's FastJet gimbal – until 2007. (See D.I. 386 at 3, 9; see also D.I. 339 at 10-14) BAE concludes, therefore, that bringing suit against Aeroflex in 2009 was a timely action. Alternatively, BAE identifies what it believes are genuine disputes of material fact, including with respect to application of New Hampshire's discovery rule, which BAE asserts are a further basis for denying summary judgment.

### **III. LEGAL STANDARDS**

#### **A. Summary Judgment**

“The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). The moving party bears the burden of demonstrating the absence of a genuine issue of material fact. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 415 U.S. 574, 586 n.10 (1986). An assertion that a fact cannot be – or, alternatively, is – genuinely disputed must be supported either by citing to “particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for the purposes of the motions only), admissions, interrogatory answers, or other materials,” or by “showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.” Fed. R. Civ. P. 56(c)(1)(A) & (B). If the moving party has carried its burden, the nonmovant must then “come forward with specific facts showing that there is a genuine issue for trial.” *Matsushita*, 415 U.S. at 587 (internal quotation marks omitted). The Court will “draw all reasonable inferences in favor of the nonmoving party, and it may not make credibility

determinations or weigh the evidence.” *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 150 (2000).

To defeat a motion for summary judgment, the non-moving party must “do more than simply show that there is some metaphysical doubt as to the material facts.” *Matsushita*, 475 U.S. at 586–87; *see also Podobnik v. U.S. Postal Serv.*, 409 F.3d 584, 594 (3d Cir. 2005) (stating party opposing summary judgment “must present more than just bare assertions, conclusory allegations or suspicions to show the existence of a genuine issue”) (internal quotation marks omitted). However, the “mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment;” and a factual dispute is genuine only where “the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” *Anderson v. Liberty Lobby, Inc.*, 411 U.S. 242, 247–48 (1986). “If the evidence is merely colorable, or is not significantly probative, summary judgment may be granted.” *Id.* at 249–50 (internal citations omitted); *see also Celotex Corp. v. Catrett*, 411 U.S. 317, 322 (1986) (stating entry of summary judgment is mandated “against a party who fails to make a showing sufficient to establish the existence of an element essential to that party’s case, and on which that party will bear the burden of proof at trial”). Thus, the “mere existence of a scintilla of evidence” in support of the non-moving party’s position is insufficient to defeat a motion for summary judgment; there must be “evidence on which the jury could reasonably find” for the non-moving party. *Anderson*, 477 U.S. at 252.

**B. Statute of Limitations**

The parties agree that BAE’s remaining claims are governed by New Hampshire law. (See D.I. 351 at 9; D.I. 386 at 10; D.I. 420 Exs. 6 & 7) The parties further agree that, under New

Hampshire law, a three-year statute of limitations applies to claims for trade secret misappropriation, breach of contract, conversion, and unjust enrichment. (See D.I. 351 at 9; D.I. D.I. 386 at 10; D.I. 420 Exs. 6 & 7; N.H. Rev. Stat. Ann. § 350-B:6 (“[A]n action for [trade secret] misappropriation shall be brought within 3 years after the misappropriation is discovered or by the exercise of reasonable diligence should have been discovered.”); N.H. Rev. Stat. Ann. § 508:4, I (“Except as otherwise provided by law, all personal actions . . . may be brought only within 3 years of the act or omission complained of . . . .”))

The discovery rule exception to the three-year limitations period provides that:

when the injury and its causal relationship to the act or omission were not discovered and could not reasonably have been discovered at the time of the act or omission, ***the action shall be commenced within 3 years of the time the plaintiff discovers, or in the exercise of reasonable diligence should have discovered, the injury and its causal relationship to the act or omission complained of.***

N.H. Rev. Stat. Ann. § 508:4, I (emphasis added); see also *id.* § 350-B:6 (misappropriation actions “shall be brought within 3 years after the misappropriation is discovered or by the exercise of reasonable diligence should have been discovered”) (emphasis added); *Conrad v. Hazen*, 140 N.H. 249, 251, 665 A.2d 372 (N.H. 1995).

#### IV. DISCUSSION

The undisputed facts establish that BAE did not file the instant law suit within three years of the later of either discovering its causes of action or after BAE should have discovered, by the exercise of reasonable diligence, its causes of action. BAE’s discovery of its causes of action either did or should have occurred no later than September 2006, making its filing of the instant lawsuit in October 2009 untimely. No reasonable juror could conclude otherwise.

The undisputed record evidence establishes that BAE knew each of the following in

2003:

- When Aeroflex delivered drawings to BAE in May 2003, the drawings contained Aeroflex restrictive legends, designating them as proprietary to Aeroflex, not BAE. (See D.I. 354 Exs. 19, 26; Tr. at 75, 89)
- On May 6, 2003, Aeroflex sent DART drawings bearing Aeroflex proprietary markings to BAE. In correspondence two days later, Aeroflex stated that the [REDACTED] that were provided to you via e-mail on May 6th are Proprietary to Aeroflex. Authorization is granted for BAE to provide these drawings” to third parties, for limited purposes approved by Aeroflex and subject to conditions set by Aeroflex. (D.I. 354 Ex. 26 at BAE 00676051-52; see also Tr. at 53) BAE’s DART Program Manager, Bob Delaney, replied to this email by saying, “Thanks, we will proceed as outlined below [in Aeroflex’s previous email]. Request authorization to [REDACTED]
- On May 9, 2003, BAE made another, similar request to Aeroflex for authorization to provide [REDACTED] a request Aeroflex granted). [REDACTED]
- BAE’s project engineer, Armando Corella (see D.I. 385 Ex. B), testified that, when he was present at Aeroflex’s facilities in 2003, Aeroflex declined to give him access to [REDACTED]

The undisputed evidence also shows that BAE engaged in internal discussions about Aeroflex’s conduct and position:

- On March 19, 2003, BAE employee Norman Wilcox reported to BAE colleagues Bob Delaney, Armando Corella, and Alan Shitara, “One thin[g] I didn’t mention was the Aeroflex drawings have a[n] Aeroflex proprietary statement and ownership stamp. Under our contract we own the rights, and should get a CAD version. Will we also get a letter authorizing our use in future procurements?”

Will Aeroflex be precluded from supplying the design to other companies?" (D.I. 354 Ex. 28 at BAE00461719; *see also* Tr. at 75-76)

- On May 7, 2003, an internal BAE email from Wilcox to Bob Delaney discusses the "Aeroflex Proprietary Note," states that BAE needs "a written release" and "a blanket release" from Aeroflex, and expresses opinion that "this Aeroflex note **is not cons[iste]nt with our contract** with them." (D.I. 354 Ex. 24 at BAE00676127 (emphasis in original); *see also* Tr. at 76)
- Also on May 7, 2003, BAE subcontract administrator, Daniel Puglisi, wrote in another internal email: "**We need written authorization from Aeroflex to use their drawings.** I will request that they do so today." (D.I. 354 Ex. 24 at BAE00676127 (emphasis in original); *see also* Tr. at 76)
- On June 25, 2003, BAE's Delaney inquired of BAE's Puglisi:

I have a question in regards to what we "own" from the Aeroflex gimbal. Would you please review our subcontract and SOW [Statement of Work] and advise on what we our rights are to this design? I assume Aeroflex retains the ownership of the design, but, for example, can I take copies of the Aeroflex drawings (required to be delivered per the SOW) and provide to other vendors for bid?

(D.I. 354 Ex. 22 at BAE00676665; *see also* Tr. at 77, 91)

- On July 2, 2003, BAE's Puglisi replied to Delaney, by quoting the entire Data Rights provision of the 2002 Subcontract, concluding "this clearly shows that we own the design and all associated drawings and specifications." (D.I. 354 Ex. 23 at BAE00676605; *see also* Tr. at 77, 91) Delaney shared Puglisi's email with several other BAE employees, including Delaney's boss, writing:

I would like to discuss the position noted below [in Puglisi's email] is to ensure we have a common understanding. This position is more biased in our favor than I was expecting, and seems to negate/ignore any Aeroflex rights. It's important that we have a clear position on this.

(D.I. 354 Ex. 23 at BAE00676605; *see also* Tr. at 78)

The undisputed evidence further shows that on December 4, 2003, Aeroflex's Bill Brown, a signatory to the 2002 Subcontract and head of the Aeroflex division that made the DART gimbal and signatory, contacted BAE's Dan Puglisi with the following:

What are you[r] plans for procuring an additional Gimbal & ECU? ***We have an other program coming up that could possibly utilize some of this material.*** I will have the drawing package put together for you . . . . Please note that ***we will be supplying the top level drawings only. Many of the detail components were developed with internal Aeroflex funds and remain proprietary to Aeroflex.***

(D.I. 354 Ex. 31 at BAE 00679584-85 (emphasis added); *see also* Tr. at 53, 80, 92) In this communication, Aeroflex advised BAE that it might use the drawings it had created in conjunction with the BAE project for "another program." Aeroflex further advised BAE that Aeroflex would only provide "the top level drawings" it had prepared in connection with the BAE project. Finally, Aeroflex advised BAE that "[m]any of the detail components" were developed with Aeroflex funds and, in Aeroflex's view, "remain proprietary to Aeroflex."

Puglisi then forwarded Brown's email to BAE's Delaney. Puglisi wrote to Delaney: "FYI. Lets wait to see what the level of detail is on the drawings they send to us and if they are unsatisfactory I will proceed further. Since they ate their shorts on this program it may be hard to argue the point that they made the detail components on their nickel." (D.I. 354 Ex. 31 at BAE00679584)

In January 2004, Aeroflex's Brown and BAE's Delaney met. Delaney has testified that he told Brown at the meeting that this "is BAE Systems-owned IP, and we had paid for it and

contracted for it.” (D.I. 354 Ex. 25 at 43) Delaney further testified that, in response, Brown did not agree to remove the Aeroflex legends from the Aeroflex documents. (*Id.* at 45) Delaney added: “I don’t believe we asked him to do that. We just asserted our rights and told him what we were doing, which was we had to re-mark them for our BAE Systems proprietary logos.”

(*Id.*)

After these contacts, however, the record reveals no evidence of any effort by BAE to advise Aeroflex of BAE’s continuing belief that BAE owned all of the Proprietary Information or to take any action to stop Aeroflex from acting on what BAE knew was Aeroflex’s contrary view. (*See, e.g., id.* at 102-04) BAE did not tell Aeroflex to remove the Aeroflex proprietary markings from the documents or to refrain from using these materials without BAE’s permission.

Taking the evidence in the light most favorable to BAE, the Court concludes that there is no genuine dispute of material fact that the injuries of which BAE complains – breach of contract, misappropriation of trade secrets, unjust enrichment, and conversion – and their causal relationship to Aeroflex’s mis-labelling and misuse of BAE’s proprietary information, were – or should, in the exercise of reasonable diligence, have been – discovered by BAE by no later than September 2006. Accordingly, BAE had to file the instant lawsuit no later than September 2009.

In BAE’s view, Aeroflex only first committed its breach of contract and misappropriation when it sent BAE’s [REDACTED] in May 2005, an action BAE learned of only in 2007. [REDACTED] BAE contends, therefore, that in 2003 and 2004 “none of Aeroflex’s actions concerning the drawings would have put [BAE] on notice of any future breach or misappropriation.” (D.I. 386 at 15) Relatedly, in BAE’s view, Aeroflex “did not indicate an intent to use any of [BAE’s] proprietary gimbal components in its ‘other

program,” and “nothing . . . would have put [BAE] on notice that Aeroflex intended to build another DART-type gimbal.” (*Id.* at 16) Viewing the evidence in the light most favorable to BAE, the Court nonetheless concludes – based on all of what BAE indisputably did know in 2003 and early 2004, and what BAE did and did not do thereafter – that the exercise of reasonable diligence would have led BAE to discover its causes of action no later than September 2006.

The parties’ dispute – which arose by 2003 – was, at least in part, a dispute over ownership. The parties disagreed as to who owned, for example, the drawings. Under the circumstances presented here, BAE, by not taking action to disabuse Aeroflex of its incorrect view that Aeroflex owned the drawings, took a risk that Aeroflex would act on its misunderstanding and provide what was actually BAE proprietary information to third parties, without BAE’s consent. BAE was injured by Aeroflex’s assertion of ownership, even before Aeroflex provided BAE’s proprietary information to a third party, because Aeroflex’s assertion of ownership carried with it, inherently, an assertion that Aeroflex, as owner, could do with the drawings (for example) whatever it wished.

BAE appears to suggest that because its contractual rights were so clear and undisputed, its obligation to pursue legal action to protect those rights was somehow diminished.<sup>4</sup> The Court

---

<sup>4</sup>*See, e.g.*, D.I. 386 at 15 (“Aeroflex’s alleged assertions of ownership were refuted by the terms of the 2002 Contract . . . . Under the unambiguous terms of the 2002 Contract, [BAE] owned the drawings, regardless of any Aeroflex markings . . . [and] [n]othing in the Aeroflex markings could change the terms of the 2002 Contract. Thus, none of Aeroflex’s actions concerning the drawings would have put [BAE] on notice of any future breach or misappropriation.”); Tr. at 48-49 (“The clear language of this [2002] contract says BAE owns it. BAE owns all those things [e.g., drawings and material]. You can’t do anything with it. . . . There is not one word in these contracts that suggests that Aeroflex retained the right to any drawing or any of that material.”); D.I. 339 at 6 n.7 (stating 2002 Subcontract “does not contain

disagrees. Plain and unambiguous contractual rights are important legal protections, which the Court must enforce. *See generally Westwood Development Partners, LLC v. Draper*, 2012 WL 1415456, at \*3 (Del. Super. Mar. 29, 2012) (“Under settled principles, if the relevant contract language is clear and unambiguous, courts must give the language its plain meaning.”) (citing *Westfield Ins. Group v. J.P.’s Wharf, Ltd.*, 859 A.2d 74, 76 (Del. 2004)). Of course, however, courts cannot enforce contractual provisions that injured parties do not bring to court in a timely manner. New Hampshire’s statute of limitations of three years – from actual discovery of the cause of action or from the date when the exercise of reasonable diligence would have resulted in actual discovery of the cause of action – provides ample opportunity for an aggrieved party, such as BAE, to file a complaint seeking judicial relief for breach of clear and unambiguous contractual provisions. An aggrieved party that fails to file such a complaint within the statutory period is deprived of its opportunity to obtain legal enforcement of its contractual right, no matter how clear such a right may have been. That is what has occurred here.

“[T]he discovery rule is not intended to toll the statute of limitations [for the whole period] until the full extent of the plaintiff’s injury has manifested itself.” *Furbush v. McKittrick*, 149 N.H. 426, 431 (N.H. 2003). Instead, “that the plaintiff could reasonably discern that he suffered some harm caused by the defendant’s conduct is sufficient to render the discovery rule inapplicable.” *Id.* Given the undisputed facts set out above – including, especially, Aeroflex’s assertion of Aeroflex’s rights in the purported trade secrets beginning in 2003 (through Aeroflex legends and otherwise) and Aeroflex’s provision of the purported trade secrets to ITT in 2005 – it is evident that BAE “could reasonably discern that [it] suffered some harm caused by

---

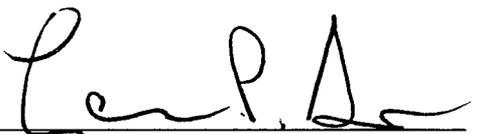
any provision that allows Aeroflex to use any of these materials [e.g., drawings] for anything”).

[Aeroflex's] conduct." Yet BAE waited until October 2009 to file suit. Again, then, Aeroflex is entitled to summary judgment.

**V. CONCLUSION**

For the reasons stated above, **IT IS HEREBY ORDERED** that:

1. Aeroflex's Motion (D.I. 350) is **GRANTED** with respect to each of the remaining claims asserted by BAE.
2. The following additional pending motions are **DENIED AS MOOT**: D.I. 302, 338, 344, 347, 352, 355, and 357 .
3. The trial in this matter scheduled to begin on May 21, 2012 is **CANCELLED** and all deadlines are **VACATED**.

  
UNITED STATES DISTRICT JUDGE