

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

I-MAB BIOPHARMA,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 22-276-CJB
)	
INHIBRX, INC. and BRENDAN)	REDACTED VERSION
ECKELMAN,)	
)	
Defendants.)	

Rodger D. Smith II and Anthony D. Raucci, MORRIS, NICHOLS, ARSHT & TUNNELL LLP, Wilmington, DE; Ching-Lee Fukuda, Tai-Heng Cheng and Vania Wang, SIDLEY AUSTIN LLP, New York, NY; Thomas A. Broughan III, SIDLEY AUSTIN LLP, Washington, DC; Brooke S. Böll, SIDLEY AUSTIN LLP, Los Angeles, CA; Erik B. Fountain, MCKOOL SMITH, P.C., Dallas, TX, Attorneys for Plaintiff.

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MEMORANDUM OPINION

September 30, 2024
Wilmington, Delaware

In this case, Plaintiff I-Mab Biopharma (“I-Mab” or “Plaintiff”) brings trade secret misappropriation claims against Defendants Inhibrx, Inc. (“Inhibrx”) and Brendan Eckelman (“Dr. Eckelman” and collectively with Inhibrx, “Defendants”). Presently pending before the Court are the following motions (collectively, the “Motions”): (1) Defendants’ motion for summary judgment on Ground No. 3: Plaintiff has failed to timely identify its trade secrets with sufficient particularity (the “Motion Regarding Ground No. 3”), (D.I. 349); (2) Defendants’ motion for summary judgment on Ground No. 4: there is no evidence that Defendants misappropriated any of the alleged trade secrets (the “Motion Regarding Ground No. 4”), (D.I. 350); and (3) Defendants’ motion for summary judgment on Ground No. 5: Plaintiff has failed to prove that the alleged trade secrets were kept confidential or derive independent economic value (the “Motion Regarding Ground No. 5”), (D.I. 351). I-Mab opposes the Motions. For the reasons set forth below, the Motions are DENIED.¹

I. BACKGROUND

A. Factual Background

I-Mab is a clinical-stage biopharmaceutical company that was founded in 2016; it is focused on the discovery, development and commercialization of innovative molecules for treating diseases such as cancer and autoimmune disorders. (D.I. 49 at ¶ 10; D.I. 158 at 64-65) This lawsuit arises out of arbitration proceedings between I-Mab and third-party TRACON Pharmaceuticals, Inc. (“TRACON”). (D.I. 332 at ¶ 1; D.I. 366 at ¶ 1) In late 2017, I-Mab was

¹ The parties have jointly consented to the Court’s jurisdiction to conduct all proceedings in this case, including trial, the entry of final judgment and all post-trial proceedings. (D.I. 89)

searching for a contract research organization to help it conduct U.S. clinical trials for one of I-Mab's drugs; about a year later, I-Mab and TRACON had executed agreements on that score, including a Bi-Specific Antibody Strategic Collaboration and Clinical Trial Agreement ("BsAb Agreement"). (D.I. 49 at ¶ 23; D.I. 333 at ¶ 1; D.I. 369 at ¶ 1; *see also* D.I. 8, ex. 1) To resolve contractual disputes and obligations that arose thereafter, I-Mab and TRACON entered into confidential arbitration proceedings. (D.I. 49 at ¶ 25; D.I. 333 at ¶ 2)

During the arbitration proceedings, on October 23, 2021, I-Mab served on TRACON a report from industry expert Dr. Nigel Burns (the "Burns Report"); the Burns Report addressed the value of certain pre-clinical molecules that I-Mab was required to nominate for development with TRACON pursuant to the BsAb Agreement. (D.I. 337, ex. 1 at ¶ 2) TRACON thereafter identified Dr. Eckelman as a potential expert for its side, and on November 3, 2021, Dr. Eckelman signed a Non-Disclosure Agreement ("NDA") with TRACON and TRACON's counsel. (*Id.* at ¶ 3; *id.*, ex. 2 at 48; *id.*, ex. 3) At the time, Dr. Eckelman was the Chief Scientific Officer of Inhibrx. (D.I. 332 at ¶ 3; D.I. 366 at ¶ 3)² Dr. Eckelman then agreed to be TRACON's expert in the arbitration. (D.I. 332 at ¶ 2; D.I. 337, ex. 1 at ¶ 4) On November 18, 2021, Dr. Eckelman signed an Agreement (the "Undertaking") to be bound by the Confidentiality Order in the arbitration (the "Confidentiality Order"). (D.I. 332 at ¶ 4; D.I. 366 at ¶ 4; *see also* D.I. 62, ex. B)³

² Dr. Eckelman co-founded Inhibrx in 2010. (D.I. 332 at ¶ 3; D.I. 366 at ¶ 3) Inhibrx is a protein engineering company that develops antibodies for use in, *inter alia*, the immuno-oncology field. (D.I. 157, ex. 24 at 17-18; D.I. 158 at 166-67, 176-78)

³ The Confidentiality Order permitted I-Mab and TRACON to supply confidential discovery material to experts in connection with the arbitration proceedings, provided that such an expert "is not currently an employee of . . . any competitor . . . of [I-Mab or TRACON], as far as the expert or consultant can reasonably determine[.]" (D.I. 62, ex. A at ¶ 8) And the

Following Dr. Eckelman’s execution of the Undertaking, TRACON’s counsel electronically provided Dr. Eckelman with a set of documents that Dr. Eckelman downloaded and reviewed. (D.I. 337, ex. 1 at ¶ 6; *id.*, ex. 7, Appendix C, at ¶¶ 1-3; D.I. 372, ex. 36 at ¶¶ 50-53) Plaintiff asserts that these documents contained its confidential and proprietary information (i.e., the trade secrets at issue in this case). (D.I. 369 at ¶¶ 9-10) On December 22, 2021, TRACON served Plaintiff with Dr. Eckelman’s expert report in the arbitration proceedings. (D.I. 333 at ¶ 11; D.I. 369 at ¶ 11; D.I. 337, ex. 1 at ¶ 7) On January 21, 2022, Plaintiff put TRACON on notice that it had improperly provided Dr. Eckelman with Plaintiff’s trade secrets. (D.I. 333 at ¶ 12; D.I. 369 at ¶ 12; D.I. 337, ex. 1 at ¶ 8)

The Court here writes primarily for the parties, and so any additional facts relevant to this Memorandum Opinion will be discussed in Section III below.

B. Procedural Background

I-Mab commenced this action on March 1, 2022. (D.I. 2) The operative First Amended Complaint (“FAC”), filed on May 12, 2022, contains two causes of action, both for trade secret misappropriation against both Defendants: Count I, which alleges a violation of the federal Defend Trade Secrets Act (“DTSA”), and Count II, which alleges a violation of the Delaware

Confidentiality Order further emphasizes that “[u]nder no circumstances shall an expert or consultant who is a competitor or an employee of a competitor of a Party . . . be provided access” to confidential discovery material. (*Id.*) The Confidentiality Order defines a “[c]ompetitor” as “a person or entity endeavoring to engage in the same or similar line of business, provide the same or similar services, sell the same or similar products, and/or operate in the same markets, as well as any person or entity who are actually engaged in any of these activities.” (*Id.*) On June 2, 2023, following an evidentiary hearing on the matter, the Court issued a Memorandum Opinion; in that opinion, the Court found that, based on the record before it, I-Mab and Inhibrx were competitors at the time that Dr. Eckelman signed the Undertaking with respect to at least I-Mab’s and Inhibrx’s development of PD-L1x4-1BB bispecific antibodies (and that Dr. Eckelman could have reasonably determined this). (D.I. 191)

Uniform Trade Secrets Act (“DUTSA”). (D.I. 49 at ¶¶ 175-201) Plaintiff asserts that Defendants misappropriated nine trade secrets (that correspond to molecules designed to treat cancer) that are referred to herein as Trade Secret 1, Trade Secret 2, Trade Secret 4, Trade Secret 5, Trade Secret 6, Trade Secret 7, Trade Secret 8, Trade Secret 9 and Trade Secret 10. (*See, e.g.*, D.I. 49 at ¶¶ 50, 59-70; D.I. 337, ex. 6 at 7-23)⁴

Defendants filed the instant Motions on June 14, 2024. (*See* D.I. 336) The Motions were fully briefed as of July 24, 2024. (D.I. 386) Trial is set for October 28, 2024. (D.I. 301 at 2)

II. STANDARD OF REVIEW

The Court incorporates the legal standards regarding summary judgment set out in its September 19, 2024 Memorandum Opinion, (D.I. 408 at 3-4), and will make use of them in resolving the Motions.

III. DISCUSSION

To establish a violation of the DTSA or DUTSA,⁵ Plaintiff must plead and prove: (1) the existence of a trade secret, which is information with independent economic value derived from not being generally known or ascertainable that the owner has taken reasonable measures to keep secret; and (2) misappropriation of that trade secret, which is the knowing improper acquisition, use, or disclosure of that trade secret. *Battaglia Mgmt., Inc. v. Abramowicz*, C.A. No. 23-615-

⁴ Plaintiff has dropped Trade Secret 3 from the case. (D.I. 367 at 7 n.6; D.I. 409)

⁵ The DTSA and DUTSA are substantively identical for present purposes, so the Court will assess Plaintiff’s two claims together. *See Battaglia Mgmt., Inc. v. Abramowicz*, C.A. No. 23-615-GBW, 2024 WL 3183063, at *3 n.3 (D. Del. June 26, 2024); *Truinject Corp v. Galderma S.A.*, 694 F. Supp. 3d 491, 502 (D. Del. 2023) (noting that federal courts “analyze parallel state and federal claims of trade secret misappropriation together”) (internal quotation marks and citation omitted).

GBW, 2024 WL 3183063, at *3 (D. Del. June 26, 2024); *Dow Chem. Can. Inc. v. HRD Corp.*, 909 F. Supp. 2d 340, 346 (D. Del. 2012), *aff'd*, 587 F. App'x 741 (3d Cir. 2014); *see* 18 U.S.C. §§ 1836(b)(1), 1839(3), 1839(5); Del. Code Ann. tit. 6, §§ 2001(2), 2001(4). With the Motions, Defendants argue that they are entitled to summary judgment on Plaintiff's trade secret misappropriation claims because Plaintiff has failed to prove certain of these elements. The Court will take up the Motions in turn.

A. Motion Regarding Ground No. 3

With their Motion, Defendants assert that Plaintiff has failed to identify its trade secrets with reasonable particularity during discovery and in Plaintiff's expert's report, and that this warrants summary judgment in Defendants' favor.⁶ In this regard, a plaintiff must identify its alleged trade secrets with a "reasonable degree of precision and specificity . . . such that a reasonable jury could find that plaintiff established each statutory element of a trade secret." *Dow Chem.*, 909 F. Supp. 2d at 346.⁷ The plaintiff's identification "must be particular enough as to separate the trade secret from matters of general knowledge in the trade or of special knowledge of persons skilled in the trade." *Id.*; *see also Zunum Aero, Inc. v. Boeing Co.*, CASE NO. C21-0896JLR, 2024 WL 3822780, at *5 (W.D. Wash. Aug. 14, 2024) (same).⁸

⁶ The Court previously denied Defendants' motion to dismiss the FAC, which argued that, *inter alia*, the FAC failed to "sufficiently allege the trade secrets at issue with the requisite specificity." (D.I. 97 at 22; *see also id.* at 23-24)

⁷ The existence of a trade secret is a question of fact. *See, e.g., Howmedica Osteonics Corp. v. Howard*, Case No. 19-19254 (EP) (AME), 2022 WL 16362464, at *17 (D.N.J. Oct. 28, 2022).

⁸ A plaintiff's identification of trade secrets with reasonable particularity is important, in that it provides defendants with the information they need to prepare a rebuttal, and it helps courts and juries, since they will likely lack the "requisite expertise to define what the plaintiff leaves abstract." *InteliClear, LLC v. ETC Glob. Holdings, Inc.*, 978 F.3d 653, 658 (9th

According to Defendants, during fact discovery, Plaintiff “limited its ‘identification’ [of the alleged trade secrets] to listing broad categories of data [such as CMC data, some potency data, some toxicity data, some pharmacokinetic data, and financial and business data regarding the molecules at issue] and never identified an actual trade secret.” (D.I. 336 at 15) In support, Defendants cite to two pages of Plaintiff’s supplemental response to Defendants’ Interrogatory No. 2 (“Rogg No. 2”); Rogg No. 2 required Plaintiff to “[i]dentify and describe in detail each” Trade Secret. (D.I. 337, ex. 6 at 6, 24-25 (*cited in* D.I. 336 at 15)) These two pages address Trade Secrets 1 through 4; for each of these four trade secrets, Plaintiff identified additional documents accessed by Dr. Eckelman that contain certain kinds of data relating to the molecules at issue. (*Id.* at 24-25) Defendants fault Plaintiff here for: (1) merely identifying generic descriptions of trade secrets; and (2) failing to clearly identify the listed information that constituted the trade secrets (since much of the identified information is public, according to Defendants). (D.I. 336 at 15-16)

Defendants posit that Plaintiff knew that its discovery response on this front was problematic, and that this led Plaintiff to “completely re-wr[i]te the description of its trade secrets” in its expert Dr. Kenneth Grabstein’s January 19, 2024 report (the “Grabstein Report”). (*Id.* at 16) But Defendants argue that even the Grabstein Report’s further disclosures are deficient because:

- Dr. Grabstein “simply describes arbitration exhibits that contained ‘binding, potency, in vivo efficacy, CMC, pharmacokinetic, and toxicity data’ and thus Plaintiff has failed to point to “the precise pieces of data” that constitute

Cir. 2020); *see also* *Olaplex, Inc. v. L’Oréal USA, Inc.*, 855 F. App’x 701, 712 (Fed. Cir. 2021) (“The requirement of reasonable particularity matters . . . because[] without particularity (pre-trial and at trial), there is an inadequate basis for a fair adjudication of what information was actually used by the defendants.”).

the trade secrets. (*Id.* at 16-17 (citing D.I. 337, ex. 7 at Appendix C, at ¶ 13));

- The categories of data identified in the Grabstein Report were not the same as those disclosed in Plaintiff's contentions produced during fact discovery. (*Id.* at 17 (citing D.I. 337, ex. 23 at 142-43)); and
- “[M]uch of the data within these claimed categories was publicly available, requiring Defendants to compare and contrast.” (*Id.* (citing D.I. 337, ex. 23 at 141-43))

The Court is not persuaded that summary judgment must be granted on this ground.

Courts assessing similar summary judgment motions have explained that “at summary judgment it is the defendant who bears the [initial] burden of showing that there is no genuine dispute of fact as to whether the plaintiff has defined the trade secrets with sufficient particularity.”

MicroVention, Inc. v. Balt USA, LLC, Case No. 8:20-cv-02400-JLS-KES, 2023 WL 4316880, at *6 (C.D. Cal. May 3, 2023); *see also Masimo Corp. v. Apple Inc.*, Case No. 8:20-cv-00048 JVS (JDE), 2023 WL 2633961, at *9 (C.D. Cal. Feb. 10, 2023) (“At the summary judgment stage, Apple bears the burden of showing no genuine dispute of fact that Plaintiffs have not defined their trade secrets with sufficient particularity.”); *AgroFresh Inc. v. Essentiv LLC*, C.A. No. 16-662 (Mn), 2019 WL 9514551, at *1 (D. Del. Sept. 6, 2019) (concluding that “genuine issues of material fact remain as to whether [p]laintiff can prove the existence of trade secrets” with respect to the defendant’s summary judgment motion, which asserted that the plaintiff “failed to establish—with the required particularity—that [] four categories of information are trade secrets”). Defendants have not met their initial burden here.

To explain why, the Court first addresses Defendants’ complaint that Plaintiff’s “disclosures during discovery were insufficient.” (D.I. 386 at 7; *see also* D.I. 336 at 15-16) As was noted above, in their briefing, Defendants focus on Plaintiff’s supplemental response to

Rogg No. 2—a response discusses three of the nine trade secrets still at issue in this case (Trade Secrets 1, 2 and 4). (D.I. 337, ex. 6 at 24-25 (*cited in* D.I. 336 at 15)) In doing so, the response cites to four additional specific documents that Dr. Eckelman purportedly accessed (Exhibits C-14, C-16, C-17 and C-59), identifies the types of data relating to each trade secret that were in those four additional documents, and provides pincites indicating where in the documents this data can be found. (*Id.*) The Court does not understand how this supplemental response (especially coupled with Plaintiff’s prior response providing additional information regarding each trade secret, and the FAC’s allegations on this score), (*id.* at 7-24; D.I. 49 at ¶¶ 59-69, 97-105, 111-59), failed to identify Trade Secrets 1, 2 and 4 with particularity, *see, e.g., Elmagin Cap., LLC v. Chen*, 555 F. Supp. 3d 170, 178 (E.D. Pa. 2021) (denying defendant’s motion for summary judgment that the plaintiff failed to sufficiently identify its trade secrets, where the plaintiff’s “descriptions, together with voluminous exhibits, including e[-]mails, notes, and powerpoint presentations discussing the [trade secrets] and how they are constructed, sufficiently identify its [trade secrets]”); *Motorola, Inc. v. Lemko Corp.*, No. 08 C 5427, 2012 WL 74319, at *18 (N.D. Ill. Jan. 10, 2012) (same, where the plaintiff “has done more than merely identifying broad areas of technology” and where although the plaintiff “has identified a large number of items, it has referred to particular documents, files, inventions, and aspects of its technology, not simply general methods or areas of its business”) (internal quotation marks and citation omitted.). And if there *is* some explanation as to how or why the response to Rogg No. 2 was wanting in this regard, then it was on Defendants to *make that explanation clear* in its summary judgment briefing. This Defendants failed to do.⁹

⁹ Defendants did make a (somewhat) more specific effort to explain their position in one instance—i.e., where they asserted that Plaintiff’s response to Rogg No. 2 was deficient

Moreover, the Court notes that if Defendants believed that Plaintiff's discovery responses were insufficient, then they should have raised this issue with Plaintiff (and the Court, if necessary) during the discovery phase of the case. *See IntelIClear, LLC v. ETC Glob. Holdings, Inc.*, 978 F.3d 653, 662 (9th Cir. 2020) ("Federal cases analyzing whether a plaintiff's trade secrets are described with 'sufficient particularity' typically arise in the battleground of discovery."). But Defendants apparently "never contested the sufficiency of those responses." (D.I. 367 at 10) Defendants retort that they "objected that the asserted trade secrets were vague and overly broad and that it is I-Mab's burden, not Defendants' to prove the elements of misappropriation[.]" (D.I. 386 at 6) In support of this claim (i.e., that they contested this issue during discovery), Defendants cite to a particular page of their supplemental response to Plaintiff's Interrogatory No. 12. (D.I. 387, ex. 4 at 10 (*cited in* D.I. 388 at ¶ 35; *see also* D.I. 386 at 6 (citing more generally to Defendants' supplemental responses to Plaintiff's interrogatories nos. 12-14))) But the Court has reviewed this page, and it finds no specific instance there where Defendants were arguing that the description or identification of the asserted trade secrets was vague and overly broad. In fact, in this very supplemental response, Defendants provide quite detailed substantive answers about each of the trade secrets—answers that seem to indicate that Defendants *were* fairly on notice of the trade secrets' identity. (D.I. 387, ex. 4 at 6-35) In the end, Defendants' complaints about Plaintiff's discovery responses on this topic do not support

because, during Dr. Grabstein's deposition, he testified that he did not see any CMC data, toxicity data or pharmacokinetic data on one page of one exhibit (Exhibit R-034) that was among the many exhibits Plaintiff had identified as containing trade secret information regarding Trade Secret 1. (D.I. 336 at 16 (citing D.I. 337, ex. 22 at 64)) However, Plaintiff's response also had identified 10 other pages of Exhibit R-034 that purportedly contained such data. (D.I. 337, ex. 6 at 9) The Court is not convinced that this snippet of testimony about one page of one exhibit relating to one trade secret warrants summary judgment to the effect that Plaintiff failed to identify its nine trade secrets with sufficient particularity.

Defendants’ motion. *Cf. Dana Ltd. v. Am. Axle & Mfg. Holdings, Inc.*, No. 1:10-CV-450, 2013 WL 603104, at *3 (W.D. Mich. Feb. 19, 2013) (explaining that while defendants were aware of the “broad scope” of plaintiff’s trade secret claims, they failed to “use discovery to ascertain the precise scope of that claim” and that this decision amounted to a “strategic” one, such that defendants “should not now be heard to complain that they lacked notice of the scope of [p]laintiff’s trade secrets claim”).¹⁰

The Court turns next to the Grabstein Report. With respect to Defendants’ first complaint—i.e., that the report provided additional detail beyond Plaintiff’s prior identification of the trade secrets—it is of course permissible for an expert to “expand upon previously

¹⁰ Defendants also cite to a case that they say stands for the proposition that a “motion to compel is not necessary because plaintiff bears the burden to identify trade secrets[.]” (D.I. 386 at 6) In that case, *X6D Ltd. v. Li-Tek Corps. Co.*, CV 10-2327-GHK (PJWx), 2012 WL 12952726 (C.D. Cal. Aug. 27, 2012), the defendants had at least sent a letter to plaintiffs six months before defendants filed their summary judgment motion; the letter stated that plaintiffs’ trade secret identification failed to clearly refer to tangible trade secret material, and it informed plaintiffs that defendants believed the appropriate course was to file a summary judgment motion on the issue (while inviting plaintiffs to persuade defendants that plaintiffs would comply with their disclosure obligations). *X6D Ltd.*, 2012 WL 12952726, at *8. There is no evidence here that Defendants sent a similar letter in this case, or that they otherwise raised this issue with Plaintiff during discovery in such a specific way.

The Court acknowledges that, regardless of what occurred during discovery, Plaintiff will bear the ultimate burden to identify its trade secrets at issue with specificity at trial. That said, the Court’s point here is simply that if a plaintiff has attempted to identify those trade secrets during fact discovery—and a defendant never raises the lack-of-specificity issue during the discovery period—then this could be a hint that a later summary judgment challenge on this front from the defendant might be flimsy. After all, parties to complex litigation matters like this one are not wallflowers. If the identification of a key trade secret truly was insufficiently specific, it would seem a strange scenario were the defendant not to seek further specificity from the plaintiff during fact discovery (including via discovery-related motion practice, if necessary). For one thing, it would be a risky choice: the defendant would be giving up one of its few avenues to actually obtain the further specificity it says it needs on this score, prior to trial. Most defendants would take that discovery-related path—again, if there truly was a problem with the plaintiff’s identification in the first place.

disclosed theories.” (D.I. 367 at 10) (citing *TQ Delta, LLC v. ADTRAN, Inc.*, Civil Action No. 14-954-RGA, 2021 WL 3728919, at *4 (D. Del. Aug. 23, 2021) (noting, in the context of a patent infringement case, that it is permissible for an expert to “expand[]” on a previously disclosed non-infringement theory)). Defendants provide no reason why this concept would not apply to a trade secret misappropriation claim too. (D.I. 386 at 7); *see, e.g., Talon Indus., LLC v. Rolled Metal Prods., Inc.*, Civil Action No. 15-4103 (CCC), 2022 WL 3754800, at *10 (D.N.J. Aug. 30, 2022) (rejecting the defendant’s argument on summary judgment that the plaintiff failed to define its trade secrets with adequate particularity, where the plaintiff specified what its trade secrets were in discovery responses, and where its expert then further identified specific drawings and schematics that were “[c]onsistent with” the earlier explanation); *Blueradios, Inc. v. Kopin Corp., Inc.*, Civil Action No. 1:16-cv-02052-JLK, 2022 WL 4549674, at *13 (D. Colo. Aug. 3, 2022) (denying a defendant’s summary judgment motion that had argued that the plaintiff failed to describe its trade secrets with sufficient particularity, where the plaintiff sufficiently did so “in its interrogatory responses and through its technical expert”); *cf. Dow Chem.*, 909 F. Supp. 2d at 347 (noting that the Court would focus its analysis on plaintiff’s discovery responses as to whether the plaintiff had sufficiently specified the alleged trade secrets, where the plaintiff made “no effort to identify trade secrets in any greater detail than what is identified in its discovery responses”).¹¹

¹¹ Defendants provide just one example of how, in their view, Plaintiff “completely re-wrote” the description of its trade secrets in the Grabstein Report in a manner going “well beyond” the earlier identification. (D.I. 336 at 16) In its response to Rogg No. 2, Plaintiff had noted, *inter alia*, that “Exhibit R-034 contains I-Mab’s CMC data, toxicity data, and pharmacokinetic data concerning [Trade Secret 1].” (D.I. 337, ex. 6 at 9 (citing Ex. R-034 at 61, 72-81)) Then, in the Grabstein Report, Dr. Grabstein noted that “[REDACTED]

” (*Id.*, ex. 7 at Appendix C, at ¶ 23) The Court is

Defendants’ remaining complaints about the Grabstein Report do not win the day either. While Defendants cite to a single paragraph of the report in asserting that Plaintiff “has failed to point to the precise pieces of data that constitute trade secrets[,]” (D.I. 336 at 16-17 (citing D.I. 337, ex. 7 at Appendix C, at ¶ 13)), that paragraph simply notes that certain documents that were in Dr. Eckelman’s possession (i.e., documents listed in a chart in the report’s previous paragraph) contained certain of Plaintiff’s confidential and proprietary data regarding Trade Secret 1. But the Grabstein Report then continues on with 34 pages of discussion regarding the very documents listed in that chart. (D.I. 337, ex. 7 at Appendix C, at ¶¶ 14-99) As for Defendants’ gripe that the Grabstein Report identified categories of data that were not the same as those disclosed during fact discovery, Defendants’ sole support for this proposition is five lines of deposition testimony, in which their expert agrees that “Dr. Grabstein had disclosures in [his report] that were not in the material [that Defendants’ expert referenced in his own report].” (D.I. 336 at 17 (citing D.I. 337, ex. 23 at 142-43)) Defendants have failed to back up this claim with sufficient record support. Lastly, although Defendants cite to a piece of their expert’s deposition testimony to argue that “much of the data within the[] claimed categories was publicly available, requiring Defendants to compare and contrast[,]” (*id.* (citing D.I. 337, ex. 23 at 141-43)), they fail to elaborate in any helpful way on this point. In any event, the point only seems to implicate a dispute of fact between the parties.¹²

uncertain how or why this citation to certain “binding data” differs from the earlier reference to “CMC data, toxicity data, [or] pharmacokinetic data”; Defendants certainly did not explain how it does. The Court is therefore not persuaded that this single example demonstrates that the Grabstein Report “completely re-wrote” all of Plaintiff’s identified trade secrets.

¹² Plaintiff retorts that Dr. Grabstein *did* explain how Plaintiff’s trade secrets differ from what it had publicly disclosed about its molecules. (D.I. 367 at 11 (citing D.I. 337, ex. 7 at Appendix C, at ¶¶ 60, 280))

In sum, then, Defendants have not met their initial burden of demonstrating that Plaintiff failed to identify its trade secrets with sufficient particularity. Thus, the Motion Regarding Ground No. 3 is denied.

B. Motion Regarding Ground No. 4

Under the DTSA and DUTSA, a plaintiff can prove misappropriation of a trade secret by showing that the defendant: (1) acquired a trade secret through “improper means” (which includes misrepresentation); or (2) disclosed or used the trade secret without consent. 18 U.S.C. § 1839(5)-(6); Del. Code Ann. tit. 6, § 2001(1)-(2); *see also Oakwood Lab ’ys LLC v. Thanoo*, 999 F.3d 892, 907-08 (3d Cir. 2021). Whether a defendant misappropriated a trade secret is a question of fact. *REVZIP, LLC v. McDonnell*, Case No. 3:19-cv-191, 2023 WL 3260662, at *25 (W.D. Pa. May 4, 2023).

With the Motion Regarding Ground No. 4, Defendants contend that summary judgment should be granted because Plaintiff has failed to prove that Defendants misappropriated the alleged trade secrets. (D.I. 336 at 17-22; D.I. 386 at 8-11) Plaintiff, for its part, asserts that there is ample evidence in the record to establish at least a genuine issue of material fact as to whether Defendants did so through both “improper means” and via disclosure or use of the trade secrets without consent (either of which is sufficient to demonstrate misappropriation). (*See* D.I. 367 at 13-18)

In the Court’s view, there is at least a genuine dispute of material fact as to whether Defendants misappropriated the trade secrets at issue through improper means. On this front, Plaintiff asserts that Dr. Eckelman acquired the asserted trade secrets because he signed an Undertaking agreeing to be bound by the Confidentiality Order—an order that prohibited Plaintiff’s competitors from becoming experts and receiving its confidential information. Thus,

under Plaintiff's theory of the case, Dr. Eckelman (who is alleged to have been a competitor at this time) made a misrepresentation (through his signing of the Undertaking) that "granted [him] a key to wrongfully acquire I-Mab's trade secrets." (*Id.* at 14-15)

Defendants argue that Plaintiff cannot prevail as to this theory. Their argument goes as follows:

- (1) Dr. Eckelman signed the NDA before he signed the Undertaking, and he was not required to represent whether he was a competitor in order to sign the NDA.;
- (2) After Dr. Eckelman signed the NDA, but before he signed the Undertaking, TRACON furnished Dr. Eckelman with the BsAb agreement and the Burns Report. These documents also contained Plaintiff's confidential information that is at issue in this case. But this information was not improperly acquired, because Dr. Eckelman did not make any misrepresentation before he received these documents.; and yet
- (3) Plaintiff has made no attempt to demonstrate which trade secrets were obtained by alleged improper means (i.e., after Dr. Eckelman signed the Undertaking) and which trade secrets were previously obtained through proper means (i.e., in the time period after Dr. Eckelman signed the NDA but before he signed the Undertaking).

(D.I. 336 at 19-20; D.I. 386 at 9-10) The Court is not persuaded, however.

The Court notes that Defendants' counter-argument depends on the assertion that Dr. Eckelman *actually did receive* the BsAb Agreement and the Burns Report before November 18, 2021—i.e., the date on which Dr. Eckelman downloaded and saved 52 documents that contained I-Mab's asserted trade secrets, (D.I. 372, ex. 36 at ¶¶ 66-67; *id.*, ex. 51 at 97, 101-02), and the date on which he signed the Undertaking (allegedly misrepresenting Inhibrx's status as a competitor). But the record evidence is actually not clear that Dr. Eckelman *had in fact* received

the BsAb Agreement and the Burns Report prior to this date. (See D.I. 333 at ¶ 9; D.I. 369 at ¶ 9; *see also* D.I. 367 at 16)

In support of their claim that this did occur, Defendants cite to two pieces of evidence. (D.I. 333 at ¶ 9) First, they point to the deposition testimony of TRACON’s counsel, Miguel Lopez Forastier. But in this deposition, Mr. Lopez Forastier testified that he could not identify “with complete certainty” the particular documents that were sent to Dr. Eckelman between the time that Dr. Eckelman signed the NDA and when he signed the Undertaking; ultimately, Mr. Lopez Forastier indicated that Dr. Eckelman “probably” received the BsAb Agreement and “[p]erhaps” the Burns Report in this timeframe. (D.I. 337, ex. 2 at 54-55) Such equivocal testimony certainly does not definitively establish receipt in the key time period at issue. Second, Defendants cite to an Index that TRACON provided to Dr. Eckelman. But that Index reflects that TRACON provided the “BsAb Agreement” to Dr. Eckelman on “Nov[ember] 18, 2021”—i.e., the same date that Dr. Eckelman signed the Undertaking. (*Id.*, ex. 4 at IMAB-DE0021266)

Therefore, the record is decidedly unclear as to whether Dr. Eckelman acquired the trade secrets at issue before he signed the Undertaking. And so there are genuine disputes of material fact as to whether he acquired those trade secrets through improper means.¹³ Because

¹³ Even if the record had been clear that Dr. Eckelman received certain documents containing I-Mab’s alleged trade secrets before signing the Undertaking, there seems to be some question in the law (an issue that has not been briefed by the parties) as to whether that “prior exposure to trade secrets through [perhaps] proper means . . . creates a right of [the individual] to later re-acquire the same information without permission or approval[.]” *Chemence Med. Prods., Inc. v. Quinn*, CIVIL ACTION NO. 1:11-CV-1366-CAP, 2015 WL 12532179, at *6-7 (N.D. Ga. Aug. 5, 2015) (“In the case at bar, it is undisputed that Quinn accessed and transferred alleged trade secrets for months after the consulting relationship had ended. The fact that he had seen, accessed, written, and created the same information in the past during his ongoing consulting relationship with CMPI does not mean that he has an unlimited right of access to the

acquisition through improper means constitutes one way that a plaintiff can prove misappropriation, Defendants' motion asserting that Plaintiff cannot prove misappropriation must be denied.¹⁴ *Cf. Custom Hardware Eng'g & Consulting, Inc. v. Dowell*, 918 F. Supp. 2d 916, 938 (E.D. Mo. 2013) (explaining that misappropriation occurs in two ways, and that because there was evidence in the record that demonstrated a dispute of fact as to at least one of those ways, the defendant's motion for summary judgment must be denied).

C. Motion Regarding Ground No. 5

A trade secret is information that the owner has taken reasonable measures to keep secret, and it derives independent economic value (actual or potential) from being kept secret from another person who could obtain economic value from the disclosure or use of the information. *Oakwood Lab 'ys LLC*, 999 F.3d at 905; *see also* 18 U.S.C. § 1839(3); Del. Code Ann. tit. 6, § 2001(4). As noted above, whether information constitutes a trade secret is a question of fact. *See, e.g., Howmedica Osteonics Corp. v. Howard*, Case No. 19-19254 (EP) (AME), 2022 WL 16362464, at *17 (D.N.J. Oct. 28, 2022); *see also Warman v. Loc. Yokels Fudge, LLC*, Civil Action 19-1224, 2022 WL 17960722, at *11 (W.D. Pa. Dec. 27, 2022). With their Motion

information.”), *aff'd*, 685 F. App'x 701 (11th Cir. 2017); *see also Chmura Econ. & Analytics, LLC v. Lombardo*, Civil Action No. 3:19-cv-813, 2021 WL 3234607, at *17-18 (E.D. Va. July 29, 2021) (citing cases) (describing a split in the law regarding courts that treat the phrase “acquired by improper means” (in the DTSA and a state statute) to refer to the broader circumstances surrounding a person's access to, use of, and intentions regarding the information, and courts that look to how the information first came into a person's possession); *Herley Indus., Inc. v. R Cubed Eng'g, LLC*, No. 5:20-cv-02888, 2021 WL 4745230, at *6 (E.D. Pa. Oct. 12, 2021) (“[L]iability only attaches under [the DTSA] where the trade secret was acquired by improper means in the first instance.”).

¹⁴ With regard to Plaintiff's claim that Defendants improperly used the trade secrets, the briefing on this issue was not fulsome; in light of the state of the record, the Court is not comfortable granting summary judgment on Plaintiff's claim in this regard, either. (*See, e.g.,* D.I. 367 at 18 (citing D.I. 372 at ¶¶ 218-308))

Regarding Ground No. 5, Defendants argue that summary judgment is warranted on Plaintiff's claims for three reasons relating to this aspect of a trade secret claim: (1) Plaintiff has not produced admissible evidence regarding Plaintiff's co-owners' reasonable efforts to keep the trade secrets confidential; (2) Plaintiff has publicly disclosed its trade secrets; and (3) Plaintiff cannot show that the trade secrets derive independent economic value. (D.I. 336 at 22-27)

Below the Court explains why none of these arguments are winning ones.

1. Defendants' argument regarding co-owners of trade secrets

Defendants' first argument relies on the fact that Plaintiff "shares ownership" of "several" of the alleged trade secrets with non-parties ABL Bio and I-Mab Shanghai. According to Defendants, Plaintiff has not provided any admissible evidence to show that these other owners have sufficiently maintained the trade secrets, and this is fatal to Plaintiff's claims. (*Id.* at 22-24)¹⁵ As the Court previously explained: (1) ABL Bio owns the sole rights to Trade Secret 1 in Greater China ("China") and Korea, and ABL Bio and Plaintiff are co-owners of Trade Secret 1 in the United States, (D.I. 408 at 8); and (2) as of April 2, 2024 (when Plaintiff underwent a corporate restructuring) (a) I-Mab Shanghai owns the rights to Trade Secrets 5, 6, 7, 9 and 10 in China, while I-Mab has ownership of these five trade secrets in the United States; and (b) I-Mab Shanghai has sole ownership of Trade Secrets 2, 4 and 8, (*id.* at 2-3, 8-9).

Defendants' argument as to I-Mab Shanghai is easily disposed of. The Court has

¹⁵ In their briefing, Defendants also referenced I-Mab Hangzhou as another third party co-owner of certain of the alleged trade secrets. (D.I. 336 at 23) But as the Court explained in its September 19, 2024 Memorandum Opinion, I-Mab Hangzhou now owns Trade Secret 3, which Plaintiff has dropped from the case. (D.I. 408 at 5 n.2, 8 n.5) Accordingly, the Court granted Defendants' motion for summary judgment that Plaintiff has no standing to assert Trade Secret No. 3. (*Id.* at 15 n.14) So the Court will not focus on any showing with respect to I-Mab Hangzhou herein.

ruled that the October 2024 trial should cover events occurring prior to, but not later than, April 2, 2024 (so that the fact that I-Mab Shanghai had not participated in discovery would not impact the matters to be addressed at trial). (D.I. 340; *see also* D.I. 408 at 3) Thus, because I-Mab Shanghai’s ownership interests in certain of the trade secrets at issue in this case only manifested due to the April 2, 2024 restructuring—but events and conduct following that date will not be at issue at the upcoming trial—any assertion that Plaintiff has failed to prove that I-Mab Shanghai has employed reasonable measures to maintain secrecy of these trade secrets does not need to be addressed at this stage. (D.I. 367 at 20 & n.11)¹⁶

As for ABL Bio, Plaintiff retorts that there *is* admissible record evidence demonstrating that the company was required to take reasonable measures to protect Trade Secret 1. Here Plaintiff points to a 2018 Collaboration Agreement between ABL Bio and Plaintiff (the “Collaboration Agreement”). The Collaboration Agreement requires ABL Bio to “take all proper and reasonable measures to ensure the confidentiality” of Plaintiff’s confidential information, including but not limited to “applying the same security measures and degree of care” to such information as ABL Bio applies to its own trade secret information. (D.I. 372, ex. 61 at § 8.1.4 (*cited in* D.I. 367 at 19)) The Collaboration Agreement also sets out additional contractual measures that ABL Bio must follow as to Plaintiff’s confidential information. (*Id.* at §§ 8.1.1, 8.1.2, 8.2.2, 8.3.1) Although Defendants assert that the existence of such an agreement does not necessarily mean that ABL Bio *actually complied* with the requirements set out therein,

¹⁶ Indeed, Defendants appear to concede this, when they note that Plaintiff’s reliance on an e-mail post-dating the April 2, 2024 restructuring (i.e., to demonstrate that I-Mab Shanghai had adopted policies and procedures to maintain secrecy of the relevant trade secrets) “is improper[,]” since the upcoming trial will focus on the time period prior to April 2, 2024. (D.I. 386 at 11 n.14)

(D.I. 386 at 11), that is an argument to make to the factfinder at trial. The existence of the Collaboration Agreement (and the fact that the Court has been provided with no evidence suggesting that ABL Bio actually breached any of these provisions), establishes at least a genuine dispute of material fact as to whether Plaintiff took reasonable measures to protect Trade Secret 1 (which is the only trade secret involving ABL Bio). *See, e.g., Howmedica Osteonics Corp.*, 2022 WL 16362464, at *19 (concluding that it is “inappropriate for [the court] to decide whether [p]laintiff took reasonable measures to protect its purported trade secrets” based on, *inter alia*, plaintiff’s evidence that it requires employees to sign confidentiality agreements).

Thus, this particular argument provides no basis for the Court to grant summary judgment.

2. Defendants’ argument that Plaintiff has publicly disclosed its trade secrets

Defendants next broadly contend that “[m]any” of Plaintiff’s trade secrets have been publicly disclosed, but Defendants only go on to specifically address Trade Secret 1.¹⁷ (D.I. 336 at 24-26; D.I. 367 at 21) Thus, this argument clearly provides no grounds to grant summary judgment with respect to Trade Secrets 2 and 4-10. (D.I. 367 at 21)¹⁸

As for Trade Secret 1, Defendants argue that certain related data was publicly disclosed in the following instances, (*see* D.I. 336 at 24-25):

- An April 8-12, 2019 presentation in Boston at the Essential Protein Engineering Summit (“Park”), (D.I. 337, ex. 28 at ¶¶ 102-03);

¹⁷ Trade Secret 1 relates to the L14B molecule. (D.I. 49 at ¶ 60)

¹⁸ Plaintiff pointed out this deficiency in its answering brief. (D.I. 367 at 21) In their reply brief, Defendants made a one-paragraph response relating to this entire motion, which did not address the point. (D.I. 386 at 11)

- A patent (WO 2020/107715A1) filed by ABL Bio and Plaintiff, (*id.* at ¶¶ 102-05);
- A paper published in the *Journal for Immunotherapy of Cancer* (“Jeong”), (*id.* at ¶ 106); and
- A poster from the November 12, 2021 Society for Immunotherapy of Cancer meeting, (*id.*; *see also id.*, ex. 30 at 101).¹⁹

But Defendants’ argument wholly ignores that Plaintiff’s expert Dr. Grabstein identified instances of public disclosure of certain data relating to Trade Secret 1, and then explained how Plaintiff’s trade secret was *broader or different* than these isolated public disclosures. (*See, e.g.*, D.I. 337, ex. 7 at Appendix C, at ¶¶ 59-60, 80-81; D.I. 372, ex. 32 at ¶¶ 44-47) Relatedly, Defendants’ expert Dr. Roland Newman acknowledged that some of Plaintiff’s information relating to Trade Secret 1 is not in the public domain; Dr. Newman also noted that he was not sure that he could identify anything that Plaintiff’s expert had described as confidential that was in fact publicly disclosed. (D.I. 372, ex. 41 at 128) This demonstrates that the record is rife with genuine disputes of material fact as to whether Trade Secret 1 has been publicly disclosed. *See, e.g., Baxter Healthcare Corp. v. HQ Specialty Pharma Corp.*, 157 F. Supp. 3d 407, 425-26 (D.N.J. 2016) (“Nor can the Court conclude that Baxter’s public disclosures of its HPLC protocols unquestionably provided sufficient public knowledge of its analytical technique to deprive it, on summary judgment, of the protection of trade secrecy[,]” where the plaintiff’s expert opined that there were “scant details” in the public disclosure and “numerous differences”

¹⁹ Defendants also mention that ABL Bio’s website further disclosed certain data, (D.I. 336 at 25), but the supporting citation does not make specific reference to what particular website is being discussed, or where/how the disclosure is said to be made there, (D.I. 337, ex. 28 at 46; *see also* D.I. 367 at 21 n.12). This conclusory assertion cannot be credited.

between the trade secret and what was in that disclosure, such that the court could not resolve this genuinely disputed evidence (and the credibility of the parties' affidavits) in the context of summary judgment); *see also Elmagin Cap., LLC*, 555 F. Supp. 3d at 179-80 (holding that the parties' "conflicting expert opinions create a factual issue [as to] whether [the plaintiff's trade secrets] are not generally known or readily ascertainable[.]" where plaintiff's experts opined that even if some of the relevant strategies' individual elements were known, "there are elements that are unique and the combination of these elements is not known").²⁰

3. Plaintiff cannot show that the trade secrets derive independent economic value

Defendants' final argument is that Plaintiff has failed to demonstrate that the trade secrets derive any independent economic value. In support of this argument, Defendants point to evidence that: (1) Plaintiff has discontinued using and developing certain trade secrets; (2) Inhibrx has not made Trade Secrets 2, 4, 7, 8, 9 and 10, is not pursuing Trade Secret 5 and has not developed Trade Secret 6; (3) Inhibrx terminated development of INBRX-105 (which Plaintiff correlates with Trade Secret 1) in January 2024; and (4) each of Inhibrx's molecules have different properties than Trade Secret 1. (D.I. 336 at 26-27) Furthermore, according to Defendants, Plaintiff's one-month delay in alleging that Dr. Eckelman had violated the Confidentiality Order shows that the trade secrets are not valuable. (*Id.* at 26-27)

This part of the motion is easily denied. As Plaintiff notes, it is exceedingly clear that Defendants' arguments are factually disputed. (D.I. 367 at 23-24) For example, Plaintiff

²⁰ Similarly, Defendants' assertion (relying on the testimony of their expert, Dr. Newman) that Plaintiff has disclosed enough information publicly to allow someone else to generate the same data, (D.I. 336 at 25 (citing D.I. 337, ex. 23 at 141-45)), is disputed in detail by Dr. Grabstein, (D.I. 372, ex. 32 at ¶¶ 9-21). Genuine disputes of material fact mean that summary judgment cannot be granted.

highlights its evidence showing that data from terminated programs are still valuable. (*See, e.g.*, D.I. 372, ex. 44 at 150-51, 232-33; *id.*, ex. 77 at INBRX103792) As for Inhibrx’s termination of the INBRX-105 program, Plaintiff asserts that: (1) the program “continued for years after the misappropriation[;]” (2) “Defendants made changes to the program based on the trade secrets”; and (3) there is a dispute as to whether that program *really has* been terminated (even if it has been, Dr. Grabstein opines that Defendants can still get value from Plaintiff’s trade secrets for future programs). (D.I. 367 at 23 (citing D.I. 372, ex. 32 at ¶¶ 96-115, 125-28)) Plaintiff also points to evidence suggesting that there is a dispute regarding Defendants’ assertion that Plaintiff’s trade secrets are not valuable to Inhibrx because Inhibrx’s molecules have different properties. (*Id.* at 24 (citing D.I. 372, ex. 74; *id.*, ex. 79 at INBRX138794; *id.*, ex. 49 at 57; *id.*, ex. 29 at ¶¶ 263-303)) For these reasons, factual disputes exist as to whether Plaintiff derives independent economic value from the trade secrets; thus, summary judgment is not warranted for this reason either. *See, e.g., Elmagin Cap., LLC*, 555 F. Supp. 3d at 180 (rejecting the defendants’ assertion that the plaintiff failed to prove that its strategies derive independent economic value, where there was evidence in the record that would permit a reasonable jury to infer that this was so).²¹

IV. CONCLUSION

For the foregoing reasons, the Court finds that Defendants’ Motions should be DENIED. An appropriate Order will issue.

²¹ In the Court’s view, any one-month delay in Plaintiff asserting that Dr. Eckelman violated the Confidentiality Order (i.e., after Plaintiff received his and other expert reports just prior to the winter holidays) does not mandate a finding that Plaintiff does not derive independent economic value from the trade secrets as a matter of law.

Because this Memorandum Opinion may contain confidential information, it has been released under seal, pending review by the parties to allow them to submit a single, jointly proposed, redacted version (if necessary) of the Memorandum Opinion. Any such redacted version shall be submitted no later than **October 3, 2024** for review by the Court. It should be accompanied by a motion for redaction that shows that the presumption of public access to judicial records has been rebutted with respect to the proposed redacted material, by including a factually-detailed explanation as to how that material is the “kind of information that courts will protect and that disclosure will work a clearly defined and serious injury to the party seeking closure.” *In re Avandia Mktg., Sales Pracs. & Prods. Liab. Litig.*, 924 F.3d 662, 672 (3d Cir. 2019) (internal quotation marks and citation omitted). The Court will subsequently issue a publicly-available version of its Memorandum Opinion.