
Wednesday, December 6, 2017

5:00 — 7:00 **Welcome Reception**

Thursday, December 7, 2017

7:30 — 8:30 **Breakfast & Registration**

8:30 — 8:45 **Welcome & Introductions**
(Cundiff, Pooley, Weinlein)

8:45 — 9:15 **Keynote: Paying Attention to Trade Secrets [or Why Trade Secrets Deserve Our Attention]**
(Cundiff, Pooley)

9:15 — 10:45 **[Panel 1] Investigating the facts**
(Beck, Kahnke, Schaller, Smith, Wu)*

Trade secret disputes are fact intensive, fast-moving, and prone to misinformation and misconceptions about the facts. What seems like a “slam dunk” case at inception, for either side, can appear very different with further investigation. The parties typically have significant asymmetries in their access to relevant information and may face ethical issues and conflicts in trying to learn the facts. How can parties gain a realistic understanding of the facts early on, in or outside of litigation, and how can they best adapt to learning new information? This discussion will focus on what information is important to learn and how to go about learning it on both sides of a trade secret dispute, how and when a court can help, and pitfalls along the way. We will discuss ways to detect and anticipate potential misappropriation early; using forensics tools to prove/disprove misappropriation and document compliance; determining whether interim measures such as return of information will resolve the entire dispute; preserving evidence; and making and refining case assessments throughout the dispute.

Materials:

- [1.1] W. Schaller *et al.*, *Trade Secret “Triggers”: What Facts Warrant Litigation?* (2017)
- [1.2] W. Schaller, *Secrets of the Trade: Tactical and Legal Considerations from the Trade Secret Plaintiff’s Perspective* (2010)

10:45 — 11:00 **Morning Break**

Thursday, December 7, 2017 (Cont.)

11:00 — 12:30 [Panel 2] Identification of trade secrets
(Graves, Kleinberg (J), Marsh, Mulholland, Pooley*)

At the heart of every trade secret dispute is the question of “what’s the secret”? How can trade secret owners, litigants, and courts work to ensure that trade secrets are defined at an appropriate stage and that trade secret litigation does not become a trade secret fishing expedition?

Materials:

- [2.1] C. Graves *et al.*, *Draft Local Rules for Trade Secrets* (2017)
- [2.2] V. Cundiff, *Avoiding an Identity Crisis: Working with Courts to Establish a Path to Trade Secret Identification* (2017)
- [2.3] J. Pooley, Section 11.02, *Identification of Trade Secrets*, TRADE SECRETS (2017)
- [2.4] C. Graves & B. Range, *Identification of Trade Secret Claims in Litigation: Solutions for a Ubiquitous Dispute* (2006)

12:30 — 2:00 Lunch

2:00 — 3:30 [Panel 3] Corporate counsel roundtable: Best practices for protection and prevention
(Blakely, Chappell, Gupta, McBride, Passman*)

In order to prevent loss and contamination of what are likely a company’s most important assets, appropriate systems and tools should be applied in a way that meets the practical risks. This axiom is reflected in the law’s requirement that a trade secret holder exercise “reasonable efforts” in order to seek enforcement of its rights. What is the right approach, when needs and threats vary across industries and organizations? What are the areas of greatest threat and greatest payoff for internal security efforts?

Materials

- [3.1] CREATE.org, *Embedding Trade Secret Protection Across An Enterprise* (2017)

3:30 — 3:45 Afternoon Break

Thursday, December 7, 2017 (Cont.)

3:45 — 5:15 [Panel 4] Damages

(Almeling, Bratic, Cooper, Cox, Sammi)*

Unlike patent and other statutory IP, trade secret damages are grounded in tort principles, and tend toward the flexible and generous. This effect is sometimes amplified by the emotional themes of litigation. What rules should apply to make damage awards reasonably predictable and fair to all concerned? Can learning from other areas of IP be useful in developing sound procedures and methods of calculation?

Materials:

- [4.1] D. Almeling *et al.*, *Disputed Issues in Awarding Unjust Enrichment Damages in Trade Secret Cases* (2017)
- [4.2] E. Rowe, *Unpacking Trade Secret Damages* (2016)
- [4.3] J. Putnam, *Trade Secret Valuation: Should Georgia-Pacific Be On Your Mind?* (2016)

5:15 — 5:30 Public Interest Concerns: Whistleblower Immunity

(Sylvia)

5:30 — 5:45 Open discussion: Where are we now and where are we going?

(Cundiff, Pooley)

Friday, December 8, 2017

7:30 — 8:30 **Breakfast & Registration**8:30 — 10:00 **[Panel 5] Injunctive relief***(Cundiff*, Elkon, Milligan, O'Toole, Yee)*

Trade secret disputes often bring demands for immediate equitable relief at every stage of the dispute. If the trade secrets are released “into the wild” they may be destroyed and no amount of money may provide adequate compensation. “Equitable relief,” however, comes in many sizes. “Remediation” — prompt return of trade secrets, careful forensics eradication, and sometimes auditing or monitoring to establish compliance can be an early solution for some disputes. Other disputes may call for the imposition of more aggressive activity restraints and inspections both at an early stage and at the conclusion of the dispute. Extreme cases may even call for the shutdown of an entire line of business. In this section, we will consider the uses of equitable solutions, how parties and courts can craft case-specific remedies, and how to ensure that, while offering the virtue of flexibility, “equity is not whim.”

Materials:

- [5.1] V. Cundiff *et al.*, *Getting The Remedy Just Right: Making Sure That “Equitable” Relief Really Is* (2017)
- [5.2] V. Cundiff *et al.*, *Injunctive Relief Panel Hypothetical — Something’s Not Right Here: Now What?* (2017)

10:00 — 11:15 **[Panel 6] Cross-border trade secret litigation***(Chanin*, Ng, Nuttall, Rowe, Waggoner)*

One of the major issues leading to the enactment of the Defend Trade Secrets Act is the fact that misappropriation disputes are increasingly multi-jurisdictional. The DTSA recognizes that international misappropriation can injure the affected industry everywhere it conducts business. Yet claims of misappropriation across borders can run into conflicting legal regimes and obligations, contradictory or inconsistent approaches to preserving and obtaining evidence, and practical challenges to enforcing “final” judgments beyond borders. What tools are available to assess and obtain resolution of international trade secret disputes? When is and should international discovery be available? Should remedies be global, and is a remedy that is limited to territorial borders workable in the trade secret arena? Conversely, does a worldwide remedy provide a windfall to the victim?

Materials:

- [6.1] J. Chanin *et al.*, *Cross Border Investigations, Litigation and Enforcement Considerations* (2017)
- [6.2] Kobre & Kim, *Hazards of Cross-Border Internal Investigations: A Regional Comparison* (2017)
- [6.3] M. Schultz *et al.*, *The Way Forward on Improving IP Systems Globally: The Example of a Trade Secrets Law Best Practices Dialogue* (2017)
- [6.4] E. Rowe & D. Mahfood., *Unpacking Trade Secret Damages* (2016)
- [4.2] E. Rowe, *Unpacking Trade Secret Damages* (2016)

Friday, December 8, 2017 (Cont.)

11:15 — 11:30 **Morning Break**

11:30 — 1:00 **[Panel 7] Judicial roundtable: Case management**

(Bowbeer (J), Kleinberg (J), Rushing (J), Standish (J), Beeler (J))*

Trade secret cases present special challenges for management by trial courts. The parties frequently present their evidence and arguments in an atmosphere of highly charged emotions, affecting all aspects of the proceeding and particularly settlement. Personal and business stakes are often very high, and are imbued with legitimate conflicting interests. Because of the inherent fragility of secret information, preliminary injunctive relief and other pretrial preventative orders can be critical to maintain rights. Identification of secrets, management of discovery (including confidentiality orders), consideration of expert testimony, and extraterritorial application of laws and judicial mandate are among the special issues that courts must confront. What practices and learning from other areas of the law might help inform approaches and outcomes?

Materials:

[7.1] V. Cundiff & T. Counts, *Crafting an Initial Case Management Order in a Trade Secrets Case* (2017)

[2.1] C. Graves *et al.*, *Draft Local Rules for Trade Secrets* (2017)

1:00 — 1:05 **Closing Statements**

(Weinlein)

1:05 — 2:00 **Grab and Go Lunch (provided)**