

Professional Perspective

Trade Secret Litigation Boom Continues

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They may not be as recognizable as patents, as splashy as copyrights, or as creative as trademarks, but a lesser-known and more opaque form of intellectual property—trade secrets—offered a big return on investment in federal court cases in 2020.

State courts have for decades heard trade secret cases with smaller damages awards than the prevailing norm under a near-universally adopted Uniform Trade Secrets Act, with the exception of New York. With the 2016 passage of the federal Defend Trade Secrets Act (DTSA), however, bigger and more important cases were filed, and federal courts stepped in to remedy the theft of valuable and secret business information.

The additional firepower of the DTSA helped usher in a new period of increased filings for trade secret cases and attendant damages awards. Thus, while damages were awarded in trade secret misappropriation [in 52% of filed cases](#) over the past four decades, verdicts awarding nine figure and near-billion dollar damage awards have markedly increased.

Even with the Covid-19 pandemic, 2020 exemplified this trend with multiple verdicts reached. And, perhaps because of the diverse monetary remedies available, which include actual loss, unjust enrichment, and reasonable royalty damages, the result was huge awards for plaintiffs.

The stand-out cases highlighted below show that trade secrets deserve special emphasis in the basket of IP rights that companies should endeavor to protect and defend. Changes in the law, such as the introduction of a federal trade secret statute and narrowing of patentable subject matter, as well as increased job mobility and the free flow of information necessitated by remote work, have propelled trade secret cases to a new level. In this environment, batches of verdicts like the ones discussed below are likely to continue to shape litigation in 2021 and beyond.

Blockbuster Awards

In October 2020, in one of the very first jury trials to go forward after the Covid-related shutdowns, New York [federal jurors awarded TriZetto with \\$855 million](#) after finding that [Syntel misappropriated its trade secrets and infringed copyrighted software](#). The award included not only compensatory damages of approximately \$284 million for trade secret misappropriation itself, but also punitive damages of roughly \$569 million. The conduct underlying this award as alleged by TriZetto involved the downloading of hundreds of confidential key business documents, which Syntel used to compete against TriZetto and its parent. This case was in post-trial briefing at the time of this article as Syntel looked to skirt the giant verdict.

The Trizetto jury slightly out-awarded the jury in [Motorola Solutions, Inc. et al. v. Hytera Comm'ns Corp. Ltd](#) in February 2020. There, [Illinois federal jurors awarded Motorola approximately \\$764 million](#) in a trade secret misappropriation and copyright infringement case against Chinese rival Hytera. These damages included roughly \$346 million in compensatory damages and over \$418 million in punitive damages.

The alleged misappropriation involved the theft by Motorola's former engineers of thousands of confidential documents and millions of lines of source code before leaving to work for Hytera, which created a competing radio with that private information.

Other Notable Cases

On the smaller but still significant side, in March 2020, Florida federal jurors awarded Financial Information Technologies, Inc. roughly \$5.7 million in [a trade secret misappropriation case against iControl](#), which included [\\$3 million in punitive damages](#).

[The conduct](#) underlying the award as alleged by Financial Information Technologies, Inc. involved a former employee that provided the trade secret information to iControl, his new employer, for development of an electronics funds transfer payment transaction system for the beverage alcohol industry and related product suites.

Finally, in another post Covid lockdown case in November 2020, *AgroFresh Inc. v. Essentiv LLC*, Delaware federal jurors tacked on an additional \$1 million in damages for unjust enrichment caused by misappropriation of AgroFresh's trade secrets on top of damages awarded for patent infringement.

The trade secret misappropriation claims stemmed from the hiring by certain defendants of MirTech, a company with which AgroFresh had previously contracted to develop new technology.

Looking Ahead

As seen from the above, litigants on both sides of the aisle should continue to pay special attention to trade secrets, which can be more nebulous and amorphous than, say, patent infringement allegations, and thus open to significant maneuverability and subjectivity.

For plaintiffs, these claims should always be considered when they suspect another party has either pilfered their secrets, such as by an ex-employee, or they see a competitor rush into the marketplace with similar technology that appears based on their technology. As the plaintiff, if these suspicions are present, it is key to immediately begin exploring and developing facts that will get to trial. Indeed, according to annual reports from industry publications such as *Stout's 2020 Trends in Trade Secret Litigation Report*, trade secret plaintiffs tend to win at trial.

On the other hand, defendants on the receiving end of trade secrets claims, especially those seeking significant damages in addition to or in lieu of injunctive relief, should take them seriously and strategize their defense with an eye towards achieving dismissal prior to trial. Based on industry reports, trade secret defendants win more often during summary judgment and judgment on the pleadings stages. If defendants are less bullish on defeating the claims before trial, extra care should be given to theme and story development early on in discovery.

The trend of significant awards is unlikely to abate as we expect to see trade secret suits continue to provide monetary, as well as injunctive, recourse to companies whose valuable business information has been stolen. In fact, recent data suggest that trade secret misappropriation claims will only increase in view of the continued digitization of intellectual property, including technical, financial, and marketing information, as well as the ubiquity of employees working from home. This latter piece both increases the importance of monitoring and protecting trade secrets but also highlights the difficulties in doing so.

Moreover, changes in patent law, including the shrinking universe of subject matter eligible for patent protection, have resulted in a renewed focus on increasing and protecting trade secret portfolios. See e.g., *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66 (2012), *Alice Corp. Pty. v. CLS Bank Int'l*, 573 U.S. 208, 134 S. Ct. 2347, 189 L. Ed. 2d 296 (2014), and progeny. Each of these developments contribute to the proliferation of more trade secrets cases across the country, and likely more large verdicts.