
Example: Patents vs. Trade Secrets

PATENT

- Lasts 20 years from the filing
- Protects inventions; strict liability
- Must be disclosed
- Federal law
- Must be registered by the government
- Enforcement – possibly fewer initial hurdles

TRADE SECRET

- Lasts forever as long as the secret
- Only protects against stealing; not independent creation or reverse engineering
- Does not need to be disclosed
- State & federal laws
- No registration required
- Enforcement – need to define IP

- **Trade Secret Definition:** A trade secret is information that has independent economic value because it is not reasonably ascertainable and is protected by reasonable measures taken to maintain its confidentiality. Note that the “independent economic value” requirement is a low bar; it just needs to have some value. But, of course, there can be levels of trade secrets that have different values, and the reasonable measures taken should correspond with the level of importance.
- **Trade Secret Catalog:** Take an annual inventory of confidential information and identify all potential trade secrets. Assess whether the information has been made public or can be independently derived or reverse engineered and the policies and practices used to ensure confidentiality. Depending on the company, annual may be adjusted to a shorter time frame – quarterly, semi-annually) – also, there are a number of companies that have software platforms that assist in cataloging and tracking trade secrets. We have demoed a few of them and can recommend/connect where appropriate.
- **Warning Labels:** Use a written label or sticker (digital logos or watermarks) to classify and protect documents containing trade secrets. It can be as simple as using a stamp labeled "Confidential" on each page of any trade secret document. Consider placing a label on the front cover of any trade secret document with a warning for criminal penalties under the Economic Espionage Act.
- **Restricted Access:** Only people who need to know the trade secret to do their jobs should have access to such information. Create passwords for any computer-stored trade secret information. If you have physical copies of trade secrets, ensure they are not accessible to employees lacking a need to know or persons outside the company. For example, store such materials in limited-access servers, files, or rooms. Internationally, make sure you are protecting your information.

- **Confidentiality Agreements:** Ensure that all employees, consultants, independent contractors, and business partners execute confidentiality agreements. If you need to give trade secret information to someone inside or outside of your company, always ensure they sign a confidentiality agreement.
- **Information Protection Team:** Trade secret activities should be coordinated through an information protection team with an identified leader who ensures all policies and procedures are followed. This person should coordinate with IP/tech and HR to provide intake and exit employee interviews are conducted, and appropriate agreements are required.
- **Corrective Actions:** Put a system in place if there is a problem with your trade secret protection policies. If a problem arises, how will you fix it? Corrective action should not simply deal with that specific incident but also address the root cause to improve the company's trade secret protection.
- **International Considerations:** Other countries are not required to respect U.S. policies on trade secret protection. If you are conducting business internationally, make sure you are protecting your information.