



IP: 3D printing can create trade secrets misappropriation opportunities

Fisher/Unitech, Inc. v. Computer Aided Tech., Inc. serves as an early example of claimed misappropriation of 3D printing industry trade secrets

BY BRYAN J. VOGEL

Though trade secret questions have not yet taken up as much of the conversation surrounding 3D printing and IP litigation, 3D printing is ripe for trade secret conflicts. In general, increased employee mobility has produced more risk of disclosure for all trade secret owners. When it comes to 3D printing and its related technologies, the industry's rapid expansion and consolidation make those with 3D printing experience particularly enticing targets for recruitment — and creates more opportunities for potential misappropriation of 3D printing industry trade secrets.

Trade secrets 101

The law broadly defines what can qualify as a trade secret. Anything from a formula, practice, process, design, instrument, pattern, or compilation of information may be a protectable trade secret, but certain conditions must be met. Though specific definitions and requirements vary, trade secret protection attaches when whatever is claimed as a trade secret is not generally known in the industry, the owner or holder of the trade secret has made appropriate efforts to keep it secret, and the trade secret confers a competitive advantage. Some form of trade secret protection exists in all 50 states. Most states use some version of the Uniform Trade Secrets Act and the few that don't offer similar protection based on common law.

As a result, trade secret litigation can be less expensive and burdensome than other forms of IP litigation. Unlike patent litigation, proof of a protectable trade secret does not require a showing of usefulness, novelty or non-obviousness. Unlike copyright — where registration isn't mandated but ensures the full complement of damages — the amount of a trade secret recovery does not hinge on notice under a statutory scheme. Instead, courts look to a variety of factors to determine whether the claimed information is in fact a trade secret, including the extent to which the information is known outside the business, the measures taken to guard its secrecy and the ease or difficulty with which

the information could be acquired by others. Once established, proving misappropriation requires a showing that someone other than the trade secret owner knowingly acquired the secret directly or indirectly through improper means or through breach of a duty to keep it secret.

Trade Secrets and 3D Printing

Trade secret actions have become increasingly popular, especially as the fate of most technology companies rests on their intellectual property assets. Together with the growing consolidation in 3D printing and increased market demand for individuals with 3D printing industry experience, these factors mean 3D printing companies may be at significant risk for trade secret misappropriation.

The decision in *Fisher/Unitech, Inc. v. Computer Aided Tech., Inc.* serves as an early example of claimed misappropriation of 3D printing industry trade secrets. There, plaintiff Fisher/Unitech, a certified reseller of Stratasys 3D printers and software, and defendant Computer Aided Tech., Inc. (CATI), a certified reseller of Objet 3D printers and software, became competitors after Stratasys and Objet merged. As a result of the merger, both CATI and Fisher lost their previously exclusive reseller status and began selling both Stratasys and Objet printers. To address its knowledge gap about its new Stratasys product line, CATI recruited named defendant Rodger Reaume, a Fisher salesperson. Prior to his departure from Fisher, Reaume allegedly appropriated documents containing confidential information, including sample price quotes for product bundled and potential applications of the involved technology for particular customers. He then allegedly transferred the information onto his CATI-supplied laptop.

Fisher sued Reaume, CATI, and its president for trade secret misappropriation. Fisher also sought to enforce a non-compete provision of the employment agreement it held with Reaume. The district court entered

a temporary restraining order prohibiting dissemination and use of Fisher confidential information and prohibiting Reaume from contacting customers about whom he knew confidential information. The parties agreed to convert the TRO into a preliminary injunction, pending proof of the actual misappropriation. But the court in *Fisher/Unitech* refused to enforce the non-compete provision of Reaume's employment contract to ban Reaume entirely from selling Stratasys printers. In doing so, the court said that Reaume's knowledge of best practices gained through trial and error cannot be protected through a non-compete clause. As the 3D printing industry expands, disputes like the one in *Fisher/Unitech* help establish the value associated with proprietary, confidential information that provides a competitive advantage — and the risks associated with potential misappropriation of that information through employee acquisition or otherwise.

Conclusion

As the market for 3D printing grows, expect that expansion and demand for strategic insights from those working within the industry to put more and varied kinds of proprietary and confidential information at risk. Trade secret law will play an important part in protecting the competitive advantage produced by 3D printing advancements — and limiting just what secrets get kept.

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