

PROTECTING TRADE SECRETS IN INDIA IN THE ABSENCE OF A REGIME

Siddharth Mathur
Department of Law
Teerthanker Mahaveer University, Moradabad, Uttar Pradesh, India

ABSTRACT: *The one of the feature of trade secret law is that it fits into the extensive framework of contract, innovation, competition and intellectual property rights. The trade secret doctrines are closely linked to the domain of criminal law and tort although subject to different rationalizations. The remedial part of the law is inconsistent with the cause of action. The varied nature of trade secret calls for its holistic comprehension as a form of intellectual property. An incentive based approach in granting legal protection to trade secret harnesses the inventions, idea, and utility patent. The article will discuss about the evolution and development of trade secret law in India.*

KEYWORDS: *Intellection of Trade Secrets, Undisclosed Information, Intellectual Property Rights, Non-Disclosure Agreements, Non-Compete Clauses, Incremental Innovation*

INTRODUCTION

Laws on intellectual property are normally territorial in nature, but the protection of trade secrets varies from jurisdiction to jurisdiction. Commercial secret law safeguards commercial and technical knowledge that is not widely known in trade and prohibits other individuals from unauthorised commercial usage. The strategy behind trade secret security is to promote production and study by providing the business knowledge originator with protection and upholding acceptable legal ethics standards. Any formula, system, pattern or collection of knowledge that is used in one's company and gives people the ability to gain an edge over rivals is commonly a trade secret. Broadly speaking, there are three aspects common to all trade secret concepts. Firstly, it is not necessarily available to the public, secondly, it gives economic gain by protecting privacy and confidentiality, and finally, it is the target of rational attempts to preserve its secrecy. Trade secrets serve as an opportunity for moderate technological advancement that does not follow the copyright and patent law requirement of non-obviousness. Inventions protected as trademarks, utility models, industrial designs of artistic or literary works are frequently held as trade secrets before they are used or released during the signup process or award of an intellectual property right in dispute. Reverse engineering, such as computer programme microchips, biotechnology, computer-aided designs and thus kept as trade secrets, is likely to be a significant part of technologically relevant technology, new or revolutionary and cutting-edge technology. The exclusivity of security encourages invention, creativity and replication by giving the owner the ability to deter free riders and to recover his investment. Trade secrets play a vital role in the security of inventions and the development of rights for the use of emerging technologies. The security of trade secrets includes patterns, formulas, plans, physical equipment, prototypes, software, procedures and know-how.¹

DISCUSSION

Historical Background

Intellectual property undertakes technical and scientific research and, by retaining confidentiality and trust, offers legal protection against competitors. Legal exclusivity includes complexity and esoteric specialism in the use of knowledge and concepts for commercial advantage. In free-market economies, the intangibility of property rights becomes increasingly relevant as profit margins are maintained. As intellectual property, intellectual property have the power to turn intangible value into economic development. Unfortunately, it has been shifted from the home of intellectual property rights law by the unfavourable treatment given to trade secrets. Intellectual property laws are tuned to introduce openness and probity in the management of information, while trade secrets are veiled in confidentiality and secrecy, an important reason for the same. Trade secrets are given confidentiality under legal immunity that makes grounds for injunctive relief for improper use and disclosure through the recovery of damages. In addition, violation of confidentiality draws criminal charges. The magnitude of the world-wide acceptance of trade secrets can be measured by the fact that most of the world's operating inventions are covered as trade secrets rather than by patents.

Mechanism and Modalities of Trade Secrets

Under 'undisclosed information,' the TRIPS Agreement acknowledges trade secrets, but remains silent on the process and modalities. In government procedures, the scope and methodology vary and range including privacy laws to unfair competition and violation of contracts. As below, the influential ways to defend trade secrets are outlined: 1

- Employment Agreement

Businesses have suitable confidentiality, non-disclosure agreement (NDA) and non-compete clause (NCC) in agreements with workers, depending on their needs. These may include the type of information that is expected to be revealed, the manner in which should also be used and post-termination limitations on disclosure.

- Trade Secret Policy

Based on their importance and sensitivity, trade secret policies depend on company secrets and employees are therefore warned of breaches.

- Non-Disclosure Agreements (NDAs)

When exploring any market opportunities and ventures, companies enter into NDAs with third parties. In this way, it is possible to exclude third parties from sharing any trade secrets.

- Adequate Documentation

Sufficient evidentiary value databases of trade secret knowledge are kept. At regular intervals, but those are reportable and update.

- Security Systems

Entry to trade secrets and classified information is limited to the selection of staff subject to security controls. In the case of an electronic world, corporations use acceptable software programmes, virus scans, firewalls and many other encryption and authentication technologies

to protect their trade secrets. It is important to bear in mind that it is not mandatory for a trade secret to have been novel or real; it is just a secret.

Data Exclusivity

- Importance

Test data confidentiality rakes up contentious trade secret security issues. In order to provide the subject with sufficient credence, the logical aspects of data exclusivity must be delineated. In recent years, the idea of shielding undisclosed data that has high commercial value has gained traction. Earlier, under common law, this data was protected as trade secrets. Data exclusivity is a transitional term in the context of publicly undisclosed details for the security of exclusive test data. This is the product of data security in the form of trade secrets based upon its ideals of good faith and justice. The exclusivity of data also falls under the patent security domain, which requires an innovation to be unique, to have an innovative phase and to be capable of industrial application.

The Indian Government also introduced data exclusivity policies and laws by nominating the Satwant Reddy Committee in February 2004, owing to tremendous pressure from MNCs. It took three years for the Committee to investigate the different angles and dimensions of data exclusivity from even a regulatory perspective. Finally, in 2007, in proposing two alternative models to be adopted in the case of pharmaceuticals, the Committee presented its study suggesting three years of data exclusivity in the case of agrochemicals. The suggestions of the Satwant Reddy Committee came under extreme flak and the Satwant Reddy Committee Report was held in abeyance despite significant opposition. The present position is that, while India is prepared to protect the data, no exclusivity in this matter is permitted. India has taken advantage of Article 39.3 of the TRIPS Agreement, which gives the Member States significant scope to fulfil their duty to protect test data against unfair competition practises.

Judicial Approach on Trade Secrets

In many occasions, the Indian courts delineated the principle of trade secrecy. In this sense, in *American Express Bank Ltd v Priya Puri*, the Delhi High Court decision is substantial. As "formulae, technical know-how or a particular mode or method of business adopted by someone with an employer that is unknown to others," the Court State trade secrets. Such knowledge has a fair effect on the interests of corporate economic and expansion. "Similarly, in the case of *Anil Gupta v Kunal Dasgupta*, the Delhi High Court also ruled whether "the notion developed and developed by the complainant is the product of the work done by the complainant on material that may be accessible for the use of everyone,² But the fact that the plaintiff used his brain and thereby produced a result in the form of a concept is what makes it secret. In *Niranjan Shanker Golikari v Century Spinning & Manufacturing Co Ltd*, the Supreme Court accepted these concepts. Where a company producing cord style yarn was offered collaboration by a foreign manufacturer on the condition the company. ³ The contract was held to be true by Justice Shelat. Accordingly, the defendant was prohibited from working anywhere else during the tenancy of the contract. The Supreme Court's verdict was "The injunction issued against him is limited in terms of time, nature of employment and place, and therefore cannot

² *American Express Bank Ltd v Priya Puri* (2006) III LLJ540 (Del).

³ *Niranjan Shanker Golikari v Century Spinning & Manufacturing Co Ltd* (1967) 2 SCR 378: AIR 1967 SC 1098.

be said to be too broad or excessive or unnecessary in order to protect the interests of the respondent company.'

CONCLUSION

As there are no special laws codifying the concepts of trade secret law, trade secret security in India is still at an evolving level. This is contrary to the worldwide movement towards codifying the rules of common law for the protection of privacy. In practise, the court's interpretation of the common law strategy to protect trade secrets was found to be inconsistent. Therefore, in the sense of the IPR, proper legislation on trade secrets and confidentiality is not only a good idea, but a matter of utmost necessity.