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TRADE SECRETS

A CRACK IN THE SHIELD

9th Circuit rejects "reasonable particularity" requirement in Defend Trade Secrets Act

BY JENNIFER KENEDY & JORDEN RUTLEDGE

The 9th U.S. Circuit Court of Appeals recently took aim at a procedure frequently compelled by Illinois and other courts under the federal Defend Trade Secrets Act (DTSA). The act requires a trade secret plaintiff to first identify the secret with "reasonable particularity" before it is entitled to discovery of a competitor-defendant's confidential information.

This rule was adopted by the Northern District of Illinois and created by the natural tension between the plaintiff's need to keep their trade secret confidential and the defendant's need for some specificity regarding the alleged misappropriated information to mount a defense. As recently stated, "[f]ailure to define such trade secrets in discovery contributes to confusion, hinders effective responses by the defense, and disrupts the orderly progression of litigation." *RVassets Ltd. v. Marex Capital Markets Inc.*, 2025 WL 1928056, at *3 (N.D. Ill. July 14, 2025). Mutual clarity regarding the nature and scope of the alleged trade secret alleviates much of this tension and confusion.

In a recent ruling, the 9th Circuit explicitly rejected this rule, creating an apparent rift between that court and numerous district courts, including Illinois courts, in how they treat the DTSA. In *Quintara Biosciences, Inc.,* the 9th Circuit was reviewing a trial court that attempted to solve this "delicate problem" by ordering plaintiff to disclose with "reasonable particularity" each of its allegedly misappropriated trade secrets at the outset of discovery, *Quintara Biosciences, Inc. v. Ruifeng Biztech, Inc.*, 149 F.4th 1081, 1085 (9th Cir. 2025). Finding the plaintiff failed to meet this particularity requirement, the trial court struck most of plaintiff's trade secret allegations.

The 9th Circuit disagreed with that ruling, noting DTSA "does not require a plaintiff to identify with particularity its alleged trade secret from the start." Instead, the court treated the particularity requirement as an issue of fact, better addressed at summary judgment or trial, not as a prerequisite for discovery. The 9th Circuit discussed and distinguished California's Uniform Trade Secrets Act, which *does* require identifying trade secrets with "reasonable particularity" as a prerequisite for "commencing discovery relating to the trade secret," Cal. Civ. Proc. Code Sec. 2019.210. Noting that the case did not include a California-specific count, the court found no reason to read such a provision into the DTSA and rejected other courts' contrary approaches.

One such "other court" that follows this contrary approach is Illinois. While Illinois does not have a statute requiring particularity before trade-secret discovery, Illinois federal courts do require "reasonable particularity" by plaintiffs before discovery can commence. The Northen District of Illinois recently explained this rationale, noting "[p]recise identification and definition are crucial to resolving central issues and to ensuring the discovery process remains proportional and focused." The court continued, "[w]ithout clear articulation, discovery efforts may become unduly burdensome and inefficient," and that failure "to define such trade secrets in discovery contributes to confusion, hinders effective responses by the defense, and disrupts the orderly progression of litigation." Plaintiffs in Illinois are required to identify their trade secrets with "reasonable particularity" in order "to compel discovery of its adversary's trade secrets.," *AutoMed Techs., Inc. v. Eller,* 160 F. Supp. 2d 915, 926 (N.D. Ill. 2001).

Practically, the Illinois approach puts trade secret plaintiffs, such as those in *Quintara,* at a disadvantage by requiring them to disclose their secrets or risk dismissed claims or stricken pleadings. These risks attendant to disclosure can be mitigated by appropriate protective orders, and there appears to be no reason to require this "particularity" in a public filing as opposed to a special interrogatory response. But nevertheless, trade secret plaintiffs face an additional, and sometimes determinative, burden by being required to make this showing. The 9th Circuit's decision in *Quintara,* evinces a split in authority and an opportunity for the appropriate litigant to argue against additional disclosure concerning their trade secret. Until the 7th Circuit opines on the issue, litigants can point to that decision as persuasive authority against any such particularity requirement.

Only a few federal appellate courts have touched the issue. When they have, it has been minimal. The 9th Circuit's *Quintara* decision provides the most detailed examination on the topic and may signal the direction the trade-secret winds are blowing. Litigants should be mindful about arguments for and against this additional disclosure, how to prevent the disclosure from hitting the public record and whether to set this issue up for potential appeal. CL

Jennifer Kenedy is a partner and chief risk officer at Troutman Pepper Locke. Kenedy has been lead trial counsel in trade secret misappropriation and other bet-the-company litigation nationwide. Email her at **jennifer.kenedy@troutman.com**

Jorden Rutledge is an associate at Troutman Pepper Locke. He is on the firm's AI committee. He writes on trade secrets and artificial intelligence. Email him at **jorden.rutledge@troutman.com**

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