

CHICAGO LAWYER

TRADE SECRETS

Trade secret litigation is growing and the U.S. District Court for the Northern District of Illinois is one of the top three forums for litigants throughout the country.

While the increase is due to multiple factors, the ability of artificial intelligence to take and use public data for various purposes and the difficulties in maintaining patent protections are also key reasons. Lex Machina and LexisNexis recently published their annual analysis on trade secret trends, which provides insights for litigants and practitioners alike.

PATTERNS IN DEFEND

TRADE SECRETS ACT CASES

The Defend Trade Secrets Act (DTSA) was enacted in 2016. It provides a federal cause of action for plaintiffs and a uniform set of laws compared to the statewide patchwork. Notably, the act provides automatic federal jurisdiction for trade secret cases. Federal courts are the primary forum for these cases and, with nearly 10 years of data from the dockets, patterns have emerged.

Federal trade secret cases increased 30% (from nearly 1,100 to 1,550) between 2022 and 2025. The Northern District of Illinois ranked third in the total cases filed in that timeframe, trailing the Central District of California and the Southern District of New York.

The average case took a little more than two years to reach summary judgment and three years to trial. Plaintiffs obtained a temporary restraining order approximately 62% of the time it was requested and won preliminary injunctions on the merits with an approximately 55% success rate. Trade secret cases reached a settlement in just 65%, according to Lex Machina. Defendants won in just 4% of reported cases and plaintiffs claimed victory 15% of the time. However, when removing consent and default judgments, plaintiffs' winning percentage fell to 4%. The remaining 16% of cases are procedural resolutions such as contested dismissals or transfers.

CHANGING THE

TRADE SECRET LANDSCAPE

AI is a major disruptor in trade secret law because it is making existing trade secrets vulnerable and creating new legal obstacles. Recent litigation highlights a new threat. Competitors are using "prompt injection" techniques to extract



DISRUPTING THE LANDSCAPE

Trade secret cases spike in the age of AI

BY JENNIFER KENEDY & JORDEN RUTLEDGE

training data and hidden instructions on how AI behaves, making it easier to steal its secrets.

Additionally, courts are dealing with whether information can still be a trade secret if AI can recreate it in seconds. One element to qualify as a trade secret is that the secret cannot be "readily ascertainable" by proper means. Courts would frequently apply sweat equity to this equation and hold that secrets are not "readily ascertainable" when they are "developed with a substantial amount of time, effort, and money." *Yeiser Research & Dev. LLC v. Teknor Apex Co.*, 281 F. Supp. 3d 1021, 1046 (S.D. Cal. 2017). Proprietary code or customer lists that would take months to build may suddenly lose their trade secret status if AI makes them readily ascertainable by proper means in minutes. What is "readily ascertainable" is a fast-moving target in the AI age.

On the other hand, unlike patent or copyright protections, there is no human authorship requirement to qualify as a trade secret. Therefore, trade secrets can be created with the assistance of AI and be protectable as long as the secret is not otherwise "readily ascertainable." This is a murky area of law that will likely increase the convoluted fact patterns common to litigation.

Courts also have become more skeptical of broad descriptions of what qualifies as a trade secret. The 7th U.S. Circuit Court of Appeals recently rejected a plaintiff's claim that defined its purported secrets in "vague and generic language that describe[d] the software's function"

as opposed to its methodology. *NEXT Payment Sols., Inc. v. CLEAResult Consulting, Inc.*, 163 F.4th 1091, 1096 (7th Cir. 2026). It's clear that litigants must provide granular specificity or face automatic dismissal.

According to Lex Machina, 2025 saw a sharp rise in "nuclear" damage awards in the tens of millions of dollars in *Zunum Aero, Inc. v. Boeing Co.*, 2025 WL 2364602, that stemmed from employees taking proprietary code to competitors during job transitions. The stakes are getting higher and cases are playing out in the Northern District of Illinois.

To position for success, trade secret holders should proactively reassess their protection programs, carefully document and define their alleged secrets with the required level of specificity and anticipate how AI may affect "readily ascertainable" analyses. Those who adapt their compliance, contracts and litigation strategies to this rapidly changing landscape will be best equipped to preserve and enforce their most valuable confidential assets. [CL](#)

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