

Trade Secret Defense After a Turbulent Year in the Circuit Courts

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Commercial litigators handling Defend Trade Secrets Act ("DTSA") claims got a reminder in 2026: federal appellate courts are actively refining, and sometimes narrowing, how these cases are won and lost. Two Federal Circuit decisions, handed down within days of each other last Spring, deserve close attention from anyone defending a trade secret misappropriation claim.

The more consequential of the two is *Insulet Corp. v. EOFlow, Co.*, 176 F.4th 1347 (Fed. Cir. 2026). There, the Federal Circuit overturned a \$59 million damages award entirely on statute-of-limitations grounds. The court held that the DTSA's three-year limitations period, codified at 18 U.S.C. § 1836(d), begins running when a plaintiff knows, or through reasonable diligence should know, the facts sufficient to plead misappropriation. *Insulet*, 176 F.4th at 1354–55. It does not wait until the plaintiff develops a fully documented theory of the case. *Id.* Because the court found Insulet possessed sufficient facts more than three years before filing suit, the judgment was reversed. *Id.* at 1366. The underlying merits were never disturbed.

Judge Prost dissented, writing that "The majority errs in four main ways: (1) it conflates its application of the discovery rule with the inquiry-notice standard, (2) it adopts a framework not supported by the case law, (3) it encourages plaintiffs to race to the courthouse with undeveloped claims based on mere suspicion, and (4) it improperly substitutes our own fact findings for those of the jury." *Id.* At 1367. The disagreement focuses largely on the interpretation and application of the "access-plus-similarity" framework.

For defense counsel, the lesson is practical: build an accrual timeline at intake, before the first responsive pleading is due. A well-documented "what did plaintiff know and when" chronology is now one of the highest-value tools in the defense arsenal. It can moot a case entirely, regardless of the strength of the misappropriation allegations themselves. A plaintiff will argue that accrual should run from full knowledge of the misappropriation's scope, not bare suspicion. *Insulet* forecloses that reading, at least where the record shows the plaintiff had enough facts to plead a claim well before it says it knew.

The second decision favors plaintiffs. In *Versata Software, LLC v. Ford Motor Co.*, 176 F. 4th 1336 (Fed. Cir. 2026), the court held that a defendant need not know every individual element of a "combination trade secret" to face liability under the DTSA and its Michigan state-law counterpart. The defendant need only have acquired the trade secret under circumstances giving rise to a duty to maintain its secrecy. *Id.* at 1346-47. This undermines a defense theory long relied upon when the alleged trade secret is a novel arrangement of otherwise-known elements. Defense counsel's strongest counter remains procedural rather than substantive: press for early, particularized identification of each combination element so the duty-to-maintain-secrecy question is tested against a fixed record, not a moving target.

Versata also holds that trade secret plaintiffs may pursue unjust enrichment damages in addition to their actual losses, under both the DTSA and analogous state statutes. District courts may not categorically cap that recovery at the parties' licensing history. *Id.*, at 1343. Damages-phase strategy should thus treat unjust enrichment as a live theory in every case, not a fallback argument to raise only at summary judgment.

Meanwhile, there is now a split in the circuit courts as to how early a plaintiff must identify its trade secrets with particularity. The Fourth Circuit requires this at the pleading stage, in the complaint itself. *Sysco Mach. Corp. v. DCS USA Corp.*, 143 F.4th 222 (4th Cir. 2025). The Ninth Circuit permits plaintiffs to wait until the outset of discovery (though a plaintiff still has to meet the plausibility pleading standard). *Quintara Biosciences, Inc. v. Ruifeng Biztech, Inc.*, 149 F.4th 1081 (9th Cir. 2025). The other circuits, while all requiring eventual particularized identification, have not adopted as clear a timing rule as have now the Fourth and Ninth. A motion to dismiss built around particularity should be calibrated to the governing circuit's standard before it is filed. Something to check is whether the state trade secret statute (if a state claim is also pled) may require pre-discovery specific identification.

Finally, and significantly, in *dmarcian, Inc. v. DMARC Advisor BV*, 182 F. 4th 289 (4th Cir. 2026), the Fourth Circuit confirmed that the DTSA reaches foreign misappropriation. It reaches such conduct whenever the defendant commits an act in furtherance of the offense within the United States. That is a meaningfully low domestic-nexus threshold. It widens the range of cross-border conduct exposed to DTSA liability. For clients with international supply chains or manufacturing relationships, jurisdictional defenses should be reassessed with that lower bar in mind.

Taken together, these decisions reward defense counsel who front-load accrual and jurisdictional analysis at the outset of a matter. At the same time, the courts have made certain merits and damages defenses harder to sustain. Litigation counsel engaged in trade secrets litigation should treat the limitations and jurisdictional inquiry as first-order questions — not afterthoughts saved for summary judgment.