

Trade Secrets Protection in Digital Environment: A Global Perspective

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ABSTRACT

Trade secrets arising out of research and development activities in industries belong to the industry financing and providing other supports to its research and development activities. The infringements of the secret information of the companies and research labs are punishable under the Laws of protection of Intellectual Property Rights (IPR's). Article 39 of Trade Related Aspects of Intellectual Properties (TRIPs) agreement of World Trade Organization (WTO) explicitly recognises the significance of "protection of undisclosed information through the System developed as another category of IPR –the Trade Secrets." The present paper reviews choice of trade secrets protections vis-a-vis the patent protection. It then reviews the current status of trade secrets protection as per TRIPs, the possible misappropriations/ violations particularly in digital environments along with status of trade secret protection in selected countries including India whereof typical example court cases are cited. Other country reviewed is USA wherein the appropriate 6 factor test is used to determine whether information is trade secret or not? Status of this IPR is also outlined in UK, Brazil, Japan, China and Korea etc based on which specific recommendations are made for useful exploitation of the trade secrets in the corporate sector, small and medium enterprises and research and development laboratories.

Keywords: *Trade Secret, Confidential information, IPR Protection, Legislation, Trade rules & Laws, TRIPs, Intellectual Property Rights.*

INTRODUCTION

With the advent of INTERNET, in the current scenario, the world has become a global village. Accordingly, the protection of intangible assets has become a matter of overriding importance for all corporates, Small and Medium Enterprises (SME's) and creative individual/groups involved in any of intellectual properties oriented research and other economy oriented works. While estimating the net worth of a company, in many cases one may find that the value of its intangible assets may exceed far beyond that of its tangible assets. This difference in value is result of the market assessment of the intangible assets such as trademarks, copyrights, patents, designs and trade secrets etc. The patents, trademarks and copyrights have been the most popular forms of intellectual property since long past. However, there are other forms of intellectual properties which are gaining importance since past few decades in the developing countries- designs and geographical indications being the most popular of them [2]. Another new form of intellectual property which has gained recognition in the past two decades is "Trade Secrets". They are rapidly becoming IP of choice in certain cases mainly due to their advantages in information economy.

1. What are Trade Secrets?

The precise language by which a trade secret is defined varies by jurisdiction. However, there are three factors that, although subject to differing interpretations, are common to all such definitions. A trade secret is

information that: is not generally known to those in the relevant industry; confers some sort of significant economic/commercial benefits on its holder; and is the subject of reasonable efforts in arriving at and to maintain its secrecy through reasonable steps [3].

The modern definition of trade secret encompasses specific informations that can be used in the operation of a business or other enterprise, are sufficiently valuable to arrive at and need to be kept secret to afford an actual or potential economic advantage over other competitors. Some States in the US have adopted the Uniform Trade Secrets Act (UTSA), which is a model law drafted by the National Conference of Commissioners on Uniform State Laws to better define rights and remedies of common law trade secrets. It has been adopted by 45 States [4] there. UTSA provides protection for trade secrets if certain legal requirements are met. The primary requirements for UTSA are that the 'information not be generally known in the trade, independently derives economic value- whether actual or potential, and that the trade secret holder takes reasonable measures under the circumstances to protect the information as a trade secret.

Example items for protection by way of trade secrets are customer lists/customer databases; computer software programmes , libraries and other utilities; technological know-how, idea, business methods, schemata for limiting access (special servers for sensitive data), alarm systems if too much trade secret information is being copied, mandatory encryption of all electronic transmissions, other internet transmissions, self locking programming if the programming is not updated every so often, biometric keys etc. It is equally important to chalk out how long and what ways a valuable trade information be kept secret and appropriate methods, procedures and check lists be implemented and maintained for each type of secret information. One has to appreciate that it is far better to prevent misappropriation than to seek redressal of grievances in the courts, a very lengthy and expensive process. Standard procedures are also implemented about when to make a secret information converted into confidential information and finally to declassify it as a general information.

2. Trade Secret and the Patents

Trade secret and patents both are the forms of intellectual property rights having some positive and negative aspects in regard to protecting results of research and development works. In the processes of deciding whether to pursue trade secret protection or patent protection for implementation of a new idea, inventor or owner must make some brief experimentation about the pros and cons of these types of protections. It also depends on the inventor, the type of invention and the owner who wants the protection [5] and to what extent.

Trade secrets are mainly considered in two ways. First, trade secrets may concern inventions or manufacturing processes or related findings that do not meet the patentability criteria and therefore can only be protected as trade secrets. This may consist of mainly the case of customers' lists or manufacturing processes that may not be sufficiently inventive to be granted a patent. Second, trade secrets may concern inventions that would fulfill the patentability criteria and could therefore be protected by patents. In the latter case, the owner has a choice: to patent the invention or to keep it as a trade secret. Table.1 compares the trade secrets and patents on feature by feature basis to enable the owner decide the route of protection for the matter.

Feature	For a Trade Secret	For a Patent
Duration of Protection in general	Unlimited, until made public by a 3 rd party through its own R&D/ independent investigations where after the protection loses meaning	20 years as per TRIPs
Registration Cost	No Registration Cost	Much cost to obtain in wider territories
Licensing	May be licensed under an Agreement	May be licensed under an Agreement
Effect	Immediate	Takes time; mostly w.e.f date of grant
Any Compliance to Government	Not Required	Required like annuity fees, in use/production
Exclusive Right	No	YES
Third Party Reverse Engineering possibilities	May be	NO

Table1. Chart Showing the Comparison of Trade Secret versus Patent Protection.

Various software and methods that are used in computer related inventions may also be protected as trade secret rather than as patents. Many people prefer to protect their algorithms etc as trade secrets. Main features of the trade secrets and patents protection are further elaborated as fig1 below for consideration to decide the suitable form of protection

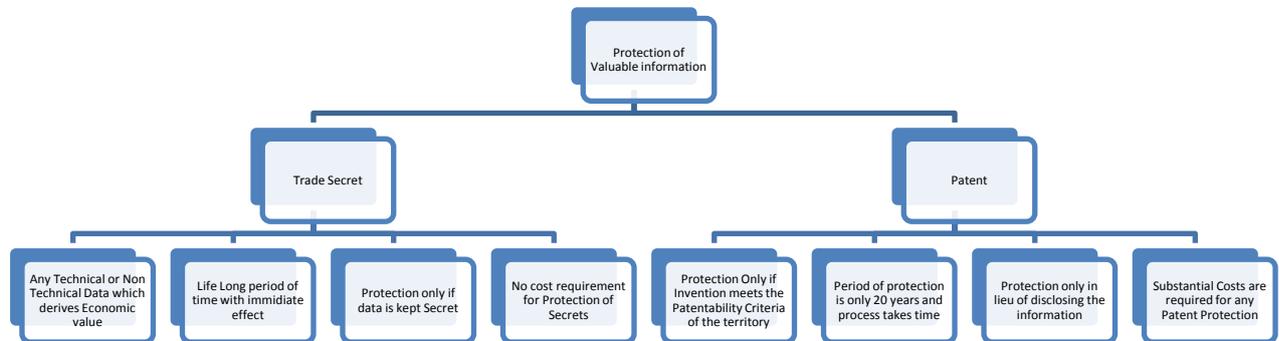


Fig 1: Main features of Protection of ideas using Trade secrets versus the Patent route.

3. Trade Secrets under TRIPs

Under the Trade Related Aspects of Intellectual Properties (TRIPs) Agreement of World Trade Organization (WTO), 'trade secrets' are referred to as 'undisclosed information' [1]. The Agreement defines trade secrets as below-

"An information is a trade secret if: it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question [6]. It has commercial value because it has unique advantages in the real world, and it has been subject to reasonable steps of protection under the circumstances, by the person lawfully in control of the information to keep it secret for a competitive advantage".

In the present age of digital knowledge and fast growing competitive world of industrialization and liberalization, every research and development lab, innovation oriented small/medium enterprise and corporate house has certain information with regard to technological know-how, idea, business methods, clients list etc. over which it has exclusive monomania that it wants to protect. To exemplify, the formula for making coke is considered to be the most well guarded trade secret in the world. It is understood that the company has kept the Coca-Cola formula, in a bank vault in Atlanta which can be opened only by a resolution of the company's board and is known to only two employees at the same time. The public has no access to the names of those employees and they are not allowed to fly on the same air plane. Trade secrets offer a means of securing information by the company for eternity. The formula for 'Coca-Cola' is a trade secret since it is the essence of the drink [7].

4. Misappropriation of Trade Secrets

Owners of trade secrets have the right to prevent other persons from using or transferring the trade secrets without permission. Misappropriation of trade secrets is an actionable offense and comprises of acquisition, disclosure, or use of a trade secret of another without authority or consent. Misappropriation means acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means; or disclosure or use of a trade secret of another without express or implied consent by a person who used improper means to acquire knowledge of the trade secret; or at the time of disclosure or use, knew or had reason to know that his knowledge of the trade secret was derived from or through a person who had utilized improper means to acquire it; and acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use [8].

In order to prove misappropriation, it must be shown that the accused person knew, or should have known, of the trade secret, and has had a specific opportunity to acquire it. It is important, therefore, that in the first instance the trade secret was identified along with those in knowledge of the same and it was protected in order to obtain a remedy for its misappropriation. In the case of mistaken acquisition of a trade secret, if the person

does not have the knowledge of his/her mistake at the time of use of the disclosure, such a person should not be held liable because he/she has no knowledge whether the information was really a trade secret or not?

One remedy under some circumstances, where an injunction against the use of the trade secret would be unreasonable is that a court can order a royalty to be paid to the owner of the trade secret. In addition to an injunction, a court can order that monetary damages be paid to the owner of the trade secret, as measured by the economic loss caused by the misappropriation. Willful and malicious misappropriation could also lead to punitive damages. As per "Limitation Clause", any legal action for misappropriation must be commenced within three years after it is committed or from the date it should have been discovered reasonably. Failure to bring legal action within this period of time means the loss of the opportunity to recover damages for the misappropriation of the trade secret, or to obtain an injunction against its further use.

5. The Protection of Trade Secrets:

Everyone employed in a certain company or in R&D lab is required to submit on an oath that he/she will maintain a trade secret as secret information. Only a few employees are trusted in a company/R&D team who can maintain the secrets. The legal rights during the period of secrecy of any know-how or other processes are granted to only the owner. Violation of a trade secret may occur typically when a trade secret becomes disclosed as an unsolicited idea, when an employee competes with the employer, during negotiations for the sale of the business, or when a person without any contract or relationship with the business owner takes away the secret for his personal gains or to harm the owner. [9]

In order to safeguard trade secrets and avoid violation of trade secrets protection, the secret informations are protected by certain agreements. Contracts like Non-Disclosure Agreement (NDA) and Non-Compete Agreement (NCA) are the foremost frameworks used to avoid violation of trade secrets protection [10].

Non-Disclosure Agreement (NDA) - A non-disclosure agreement (NDA) is a confidentiality agreement that can be used to protect trade secrets. Often, during the course of business negotiations, deals and operations, a secret information may be disclosed to employees or business partners. The NDA contract requires that the information be kept a secret. The provision of the contract usually requires the signature of the person(s) receiving the information and legally bounds such person(s) to keep the information confidential/secret. If someone who has signed a NDA and uses such a secret without proper authorization, the owner can request a court to stop the violation and obtain compensation for the damages as well as expenses incurred on court proceedings.

Non-Compete Agreements (NCA)- When an employee joins any company/R&D lab for service and after sometimes he/she leaves the company to join other company, then it may be a condition that the trade secret will not be disclosed to the competitor company. So, at the time of joining of the first company itself, the employee signs a Non-Compete Agreement for such a situation. Employees, who sign a Non-Compete Agreement (NCA), become bound not to work for a direct competitor as such and also for a certain amount of time even after leaving the first company. Such a time period varies from company to company but generally it can be 1 to 5 years long. It is important to note that courts use a rule of reason in deciding whether a Non-Compete Agreement is legal. In other words, the terms of a Non-Compete Agreement must be reasonable as to the duration, territory, and scope of the activities.

6. The Trade Secrets in Digital Environments

Trade secrets become significant in the overall context of knowledge management and knowledge sharing strategy of a company. It should be obvious that trade secrets are potentially critical and vulnerable area of IPR, especially in today's electronic environment. Looking into the fact that large companies today being fully computerized and networked handle voluminous size of information and data stored in high-density electronic media, such as RAID's, DAT's, CDs, USB Memory sticks, etc. it is no longer necessary to physically carry information. IT-based communication systems, file sharing technologies, etc. make it easy to quickly transmit information in high volume [11] anywhere in the world and at any time. The digital world is no friend to trade secrets. On the other hand, digital media can also capture digital trails. In many cases, forensic analysis can reveal whether and when information was accessed, copied, transferred, modified or deleted etc for trapping or exonerating those suspected of misappropriating the trade secrets.

Some digital tools, such as encryption, multi-level passwords and intranets, can protect information more securely than non-digital safeguards [12]. Economic Espionage Act ("EEA") and the Computer Fraud and Abuse Act ("CFAA"), [3, 4] of USA can provide new remedies to such owners of trade secrets aggrieved of

fraudulent activities of the adversaries. They prescribe how digital tools can be used for early warning and capturing evidence of misappropriation.

7. Guidelines for Valuation of License Fee for Use of Trade Secrets

Valuation of the license fee for use of trade secrets is subject to the investment made by the owner, in achieving/arriving at the trade secret, possible extent of use by the licensee, resulting likely benefits to the latter party and other important considerations which vary from case to case. A typical case below may clarify the above in a particular context.

In the case of *Prasar Bharati Vs. Ten Sports* in first quarter of year 2004; Prasar Bharati had filed an writ petition in the Supreme court of India New Delhi to get right from M/s. Ten Sports to broadcast in the Indian territory the India- Pakistan Cricket match scheduled to be held in the Pakistan. Ten Sports acquired total rights for broadcasting the event from the Pakistan Cricket Board since the match was in Pakistan. Prasar Bharati requested for the trade secret of descrambling key from Ten Sports in this regard. Initially Ten Sports denied to share the above trade secret. During the proceedings, it emerged that Prasar Bharati had booked about Rs.65 crore worth advertisements up to the day of hearing in the honorable court. Looking into the national importance of India Pakistan cricket match to the Indian people, the court ordered the Prasar Bharati to pass on this sum to M/s Ten Sports who after receiving the same will provide to Prasar bharati the descrambling key for terrestrial broadcast of the event all over India.

8. International Perspective for Legal Protection of Trade Secrets

(A) The Indian Prospective

“Intellectual Property Laws” is a diverse field for protecting the intangible assets. It is fully emphasized in the R&D, company’s having secret informations, manufacturing and service units and in trade related issues. The IPR laws are quite well laid out and are in practice in developed countries like in West European Countries, United States, Japan, Canada, and Australia etc. However, in a developing country like India, there is somewhat lack of awareness about the IPR’s and their consequential effects in the economic and business sectors.

Except for law of contract, there is no specific law in India that protects trade secrets and confidential information [13]. Nevertheless, Indian courts have upheld the trade secret protection under law of contracts on basis of principles of equity, and at times, upon a common law action of breach of confidence, which in effect amounts to a breach of contractual obligation. Trade secret in the Indian perspective seems to be below satisfactory level, as there is no full-fledged enactment of framework for the protection of trade secrets. This form of intellectual property is a new entrant in India, but is nevertheless a very important field of IP. India has not had much experience in relation to trade secret matters and the courts while determining a case, would have a diverse array of persuasive value precedents from all systems of law. There is need of a dedicated legislation, which would concretize trade secret protection in India. Trade secrets are fast becoming intellectual property of choice for many corporate bodies, SME’s and R&D labs and therefore an effective legislative intervention for it is felt even more expedient.

Some Important Court Cases

(i) *Ciba Inc Vs. Sequent Scientific Ltd.*

The importance of clearly defining the ‘confidential information’ in a confidentiality agreement was discussed in a recent interim relief sought by M/s Ciba Inc against M/s Sequent Scientific Ltd. and Others. The matter in question involved a process of manufacture of a compound called as Tetrakis commonly known as PEPQ [14]. Ciba claimed that the said process was unique and had been developed in-house by Ciba, except for certain information that was available publicly. According to Ciba, the only other manufacturer of PEPQ in the world was Clariant Group. The process was disclosed by Ciba to Plama Laboratories, now known as Sequent Scientific Ltd., under a ‘confidentiality agreement’ in order to help it to develop a plant for the manufacture of PEPQ. Ciba claimed that the ‘confidentiality agreement’ provided for the non disclosure of any ‘confidential information’ received by Sequent from Ciba to any third party except with the prior approval of Ciba. Hence, on coming to know of Sequent transferring its entire undertaking along with all agreements and contracts to a third party without informing Ciba, Ciba filed a suit against Sequent for the breach of the ‘confidentiality agreement’.

Later, during the hearing of the interim relief, Sequent submitted that the definition, period of and extent of maintaining the ‘confidential information’ was not provided in the confidentiality agreement. In light of this, High Court of Bombay held (on 29.09.09) that Ciba had to clearly spell out the confidentiality agreement in order to determine the breach and violation of its ‘confidential information’, in absence of which, relief could not be provided to Ciba.

(ii) Coca Cola Vs. Gujarat Bottling Co Ltd

M/s Coca Cola entered into an agreement with M/s Gujarat Bottling Co Ltd. whereby Coca Cola granted to Gujarat Bottling Co Ltd a license to use the trademarks mentioned in the schedule to the agreement with Coca Cola [15]. The Agreement contained a negative covenant by means of which Gujarat Bottling Co Ltd could not manufacture, bottle, sell, deal in or otherwise be concerned with the products, beverages of any other brands or trademarks during the subsistence of the agreement with Coca Cola. But shares of Gujarat Bottling Co Ltd were later on sold to a closely associated subsidiary of Pepsi, which later gave a notice to Coca Cola for cancellation of the agreement. Coca Cola filed a suit (Suit No. 400 of 1995) in the Bombay High Court seeking various reliefs. In the said suit, Coca Cola took out Notice of Motion No. 316 of 1995 seeking interim relief. The Court laid down that it was difficult to appreciate how Pepsi could ask Coca Cola to part with its trade secrets to its business rival by supplying the essence/syrup etc., for which Coca Cola holds the trademarks, to Gujarat Bottling Co Ltd which is under effective control of Pepsi [16]. Following was observed by Supreme Court in this case.

‘There is a growing trend to regulate distribution of goods and services through franchise agreements providing for grant of franchise by the franchisor on certain terms and conditions to the franchisee [17]. In such agreements, a condition is often incorporated that the franchisee shall not deal with competing goods. Also stated there in is a condition restricting the right of the franchisee to deal with competing goods for facilitating the distribution of the goods of the franchisor and it cannot be regarded as to result in restraint of trade. Although the Court had refrained from entering into the question whether reasonable restraint is outside the purview of Section 27 of the Contract Act, the appeals, therefore, fail and are accordingly dismissed’.

(iii) Mr. Anil Gupta and Ors Vs. Mr. Kunal Dasgupta and Ors

The plaintiff conceived the idea of ‘Swayamvar’, a reality television show concerning match making. The plaintiff shared a concept note on this with the defendants. Later on the plaintiff came across a newspaper report informing that the defendants were planning to come out with a big budget reality matchmaking show using the plaintiff’s concept. The plaintiff sought injunction [18].

Court found that the material or information which was scanty in the public domain was used by the plaintiff to develop and evolve a typical business strategy. However, what made the concept confidential was the fact that the plaintiff had used his brain and thus produced a unique result applying the concept. The Court therefore granted an injunction. The court also said that transmitting or enabling the transmission by television of the programme entitled ‘Shubh Vivah’ match making be implemented within a period of four months from the date of the order. If the plaintiffs are not in a position to transmit on television its programme entitled ‘Swayamvar’ within a period of four months, defendants shall be at liberty to transmit its programme Shubh Vivah after expiry of four months. In case the plaintiff launches its programme ‘Swayamvar’ within a period of four months from the date of the order, the defendants are further restrained from transmitting or showing or exhibiting or televising their programme ‘Shubh Vivah’ or any other programme having its subject or theme of match making for a further period of two months [19].

(B) United State of America (USA)**(i) North American Free Trade Agreement (NAFTA)**

The North American Free Trade Agreement (NAFTA) is an agreement signed by the government of the member countries such as Canada, Mexico and United States, creating a trilateral trade bloc in North America. Member countries have agreed on the issue of protection and they follow the steps to ensure that member countries will protect trade secrets from unauthorized acquisition, disclosure or use. Remedies must include injunctive relief and damages.

In response to NAFTA, Mexico amended its 1991 Trade Secrets Law to permit private litigants to obtain injunctive relief [20]. The agreement came into force on January 1, 1994.

(ii) General Agreement on Tariffs and Trade (GATT)

On April 15, 1994, the major industrialized nations of the world, including the United States, concluded the Final Act resulting from the Uruguay Round of GATT (General Agreement on Tariffs and Trade). GATT was established by the World Trade Organization (WTO) who also promulgated Trade-Related Aspects of Intellectual Properties (TRIPs) Agreement.

Under GATT, "undisclosed information" must be protected against use by others if without the consent of the owner in case the use is contrary to honest commercial practices. Also, there is third-party liability for

misappropriation if third parties knew or were grossly negligent in not knowing that such information had been obtained dishonestly [21].

(iii) Uniform Trade Secrets Act (UTSA)

In the US, the Uniform Trade Secrets Act (UTSA) as amended in 1985, provides a widely accepted definition of a trade secret: information, including a formula, pattern, compilation, program, device, method, technique, or process, that derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use, and is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. In addition to the UTSA, whose adoption is voluntary with each of the States, the US Congress enacted a national Act to recognize certain forms of trade secret thefts as “criminal”. The Economic Espionage Act of 1996 makes illegal the misappropriation, copying or unauthorized possession of trade secrets [22]. United States uses the different Pattern called 6- factor test for trade secrets determination by which it can be determined whether the said information is trade secret or not. It is described in Fig.2 below- If answer to first two queries below is ‘NO’ and sufficiently HIGH to remaining 4 queries, the information is a trade secret.

Factors to determine if an information is a Trade Secret?

- ✓ Is it known outside the company?
- ✓ Is it widely known by employees and others involved within the company?
- ✓ Have measures been taken to guard its secrecy?
- ✓ What is the value of the information for your company?
- ✓ How much effort/money was spent in developing it?
- ✓ How difficult would it be for others to acquire, collect or duplicate it?

Fig.2 The 6 tier test for ascertaining if an information qualifies to be a ‘trade secret’

(C) United Kingdom

In the UK, a trade secret is some specific information known to only a few people, the disclosure of which to others would constitute a breach of confidence. The law that protects other kinds of confidential information from disclosure (Law of Confidentiality) also protects trade secrets in the UK.

(D) Brazil

In 1996, Brazil renovated its Intellectual Property Laws. Trade secrets are protected under the rubric of "Unfair Competition." Borrowing from U.S. law, a variant of the Section 757, it also considered the United States 6-factor test to determine whether a piece of information qualifies as a trade secret, Common knowledge, prevalent information in the public domain, or knowledge that is apparent/ oblivious to an expert in the field cannot qualify for protection under trade secrets. The trade secret owner must take positive steps to safeguard the secrecy of the information [23].

(E) Japan

Effective since June 15, 1991, Japan enacted a national trade secrets law. On the basis of this law, any "technical or business information" that has commercial value, which is not in the public domain, and which has been "administered" as a trade secret, will be protected for the purpose. Infringement occurs when a person procures a trade secret by theft, fraud, or extortion or when there is an unauthorized use or disclosure of a lawfully acquired trade secret for unfair competition. An injured party may obtain injunctive relief and damages [23]. The trade secret owner may also request destruction of all articles that have been manufactured as a result of the illegally obtained trade secret. In the Uniform Trade Secrets Act, statute has similarities for the same purpose. For example, there is a 3-year statute of limitations after discovery of the trade secret violation. There are no criminal penalties in the statute.

(F) China

The Law of the People's Republic of China (PRC) against Unfair Competition (Unfair Competition Law) was promulgated by the State Council in September 1993 and became effective on December 1, 1993. This is China's first trade secret law. The term "trade secrets" is defined for the technical information and management information that is undisclosed to the public, can bring economic benefits, is of practical value, and for which the rightful party has adopted measures to maintain its confidentiality. Article 10 of The Unfair Competition Law prohibits business operations from engaging in certain acts and the law also provides for the remedies in case of infringement of trade secrets.

(G) Korea

In 1991, Korea also amended its laws to provide statutory protection for trade secrets. This law, effective since December 15, 1992, was enacted during US litigation between GE and a Korean firm that had acquired GE trade secrets from a former GE employee.

9. The General Strategy

In many of the SME's and corporates, or R&D institutions, there are vast amount of information quite important regarding the development of the products or methods. However, for the business or development purposes, information has to be disclosed to other members. So there should be a Non-Disclose Criteria, by which one can protect such informations.

A confidential information can be divided into many parts and may be provided part by part to the required distinct members against consent to NDA by each one of them for the parts handed by them. One should not give the whole information regarding any business model or development to a single party. For example, if one person/firm/entity is required to dovetail the product functionality for sales purposes, then that entity has to be provided only that functionality information about the product which is required by it, rather than the manufacturing details of the entire product. As another example, suppose we have to share some software code to third party for the development. Then only the relevant module and functions related to that module should be provided to that party. Thus using this approach of divide and conquer, we can keep our important informations secret from third parties.

10. Conclusion

As businesses are growing and going global, it becomes expedient for those expanding their business in many countries to evolve and implement an effective framework for trade secret protection of crucial informations relevant to the manufacturing, services, trade and business. A judicious approach has been outlined in this paper how to decide when to follow either the patent route or the trade secret route for protection of informations arrived at through substantial intellectual labor and financial investments. From the current study, it emerges that developing countries like India are yet to acquire proper enactment to provide effective framework for protection of trade secrets. The case of certain other select countries is also reviewed. It is recommended that corporate sector and the innovative type of small and medium enterprises (SME's) should follow the specific agreement and other secrecy criteria for information protection by implementing proper framework for trade secrets. Though the court cases related to trade secrets have been amicably solved in countries like in India on the basis of principle of equity, it is a tedious and time consuming process. The current study also reveals that most corporate, SME's or individuals who have any trade secret and if it becomes essential to disclose the information for trade or business purposes, they should follow the Non Disclosure Agreement (NDA) and Non Compete Agreement (NCA) with their stake holders. Looking into the global scenario it is recommended that a proper 6 factor test be applied as in the case of USA for identifying whether an information is a trade secret or not and then the general strategy using "non-disclosure agreement" as well as "non-compete agreement" be applied part by part to specific sections of the trade secret information with specific set of concerned parties.

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