

Monday, November 9, 2020

11:15 — 11:25 Check-in

11:25 — 11:30 **Welcome and Introductions**
(Cundiff, Pooley, Weinlein)

11:30 — 1:00 **[Panel 1] Caselaw Synergies: Six Recent Trade Secret Cases Raising Issues for Dialogue Over the Next Two Days**
(Almeling, Cundiff*, Galli, Marsh, Morton, Nix, Schultz, Skoff)

Trade secret disputes can raise fascinating substantive issues and unusual procedural challenges, often on a fast track. Our Sedona WG12 drafting teams are developing thoughtful in-depth recommendations exploring many of these issues “one at a time.” But it is rare for a trade secret dispute to present just a single issue, and no trade secret protection program can exist in a vacuum. This panel’s dialogue leaders will “tee up” synergies and invite audience participation, exploring the following key recent trade secret cases that raise multiple issues often impacting multiple stakeholders:

- Identifying and Managing Trade Secrets With Employees and Others: *TLS Mgmt. & Mktg. Svcs. v. Rodriguez-Toledo*. (Almeling, Marsh)
- Protecting Trade Secrets in Litigation: A Study in Managing Information: *Uniloc v. Apple*. (Nix)
- Reasonable Measures to Protect Trade Secrets vs. Improper Means of Acquiring Them: *Compulife v. Newman*. (Galli)
- Litigating Trade Secrets Disputes Across Borders: *Motorola v. Hytera*. (Schultz)
- How Decisions About Injunctive Relief and Damages Can Intersect Each Other and the Public Interest: *Epic v. Tata* (decisions on injunctive relief and damages). (Morton, Skoff)

Materials

- 1.1 WG12 Commentary on the Proper Identification of Asserted Trade Secrets in Misappropriation Cases (Oct. 2020 ed.)
- 1.2 *Uniloc v. Apple* (Fed. Cir. 2020)
- 1.3 *Compulife v. Newman* (11th Cir. 2020)
- 1.4 *TLS Mgmt and Mktg Svcs v. Rodriguez Toledo* (1st Cir. 2020)
- 1.5 *Epic v. Tata* (W.D. Wisc. 2016)
- 1.6 *Epic v. Tata* (7th Cir. 2020)
- 1.7 *Motorola v Hytera* (N.D. Ill. 2020)

1:00 — 1:15 Break

- 1:15 — 2:45 [Panel 2] Tailoring Remedies to the Misappropriation: Equitable Relief, Damages, or Both**
(*Battle, Bohrer**, *Bone, Candido, Elkon, Gale (J), Gerardi, Lynde, Morton, Parsons (ret. (J)), Slights (J), Standish (J), Weibust*)

This panel will explore the when and how the presentation on harm and damages may rise to the level of an adequate remedy of law or weigh against the finding of irreparable harm that may prevent entry of preliminary injunctive relief. It will include breakout sessions:

- 1.) exploring the issue through the lens of each of the following stakeholders:
 - a.) the movant (*Candido, Bone, Slights*)
 - b.) the respondent (*Gale (J), Lynde, Morton, Weibust*)
 - c.) the court (*Gerardi, Standish(J), Battle*)
- 2.) exploring the issue from the perspective of what may happen at the end of the case (*Bohrer, Elkon, Parsons (J)*)

Materials

- 2.1 WG12 Commentary on Equitable Remedies in Trade Secret Litigation (Nov. 2020 ver.)
- 2.2 WG12 Commentary on Monetary Remedies in Trade Secret Litigation (Nov. 2020 ver.)

2:45 — 3:00 Break

- 3:00 — 4:30 [Panel 3] Trade Secret Issues Across International Borders**
(*Beeler (J), Busey, Cooper, Harts, Holz, Kay**, *Pooley, Schultz, Wang (J)*)

This panel will explore the following topics:

- 1.) extraterritorial reach in trade secret cases (*Beeler (J), Harts, Kay*, Schultz*)
- 2.) trade secret protection vis-à-vis China (*Pooley*)
- 3.) cross-border discovery issues in trade secret cases (*Busey, Cooper*, Holz, Kay, Wang (J)*)

Materials

- 3.1 WG12 Commentary on Trade Secret Issues Across International Borders: Extraterritorial Reach (Nov. 2020 ver.)
- 3.2 WG10 Primer on Cross-Border Discovery Issues in U.S. Patent and Trade Secret Cases (Nov. 2020 ver.)

4:30 — 5:15 Open discussion: What's next for WG12? How can I get more involved?

Tuesday, November 10, 2020

11:15 — 11:25 Check-in**11:25 — 11:30 Welcome and Introductions***(Cundiff, Pooley, Weinlein)***11:30 — 1:00 [Panel 4] Leveraging Internal Assets in the Governance and Management of Trade Secrets***(Andler (ret. (J)), Beck, Bowbeer (J), Galli*, Marsh, McBride, McCarthy, Miller, Milligan, Steele, Yates (J))*

This panel will explore the topics of the governance and management of trade secrets and protecting trade secrets throughout the employee life cycle. It will include breakout sessions:

- 1.) balancing employer interests in protecting trade secrets v. employee interests in employment mobility *(Andler (ret. (J)), Galli, Marsh*, Milligan*)*
- 2.) balancing “prescriptiveness” – i.e., are the WG12 commentary drafts too prescriptive, not prescriptive enough, or just right? *(Bowbeer (J), Miller*, Steele)*
- 3.) coverage of inbound trade secret risk/risk of infiltration/risk of contamination – do the WG12 commentary drafts sufficiently address and provide recommendations on these issue? *(Beck, McBride*, McCarthy, Yates (J))*

Materials

4.1 WG12 Commentary on Governance and Management of Trade Secrets (Nov. 2020 ver.)

4.2 WG12 Commentary on The Employee Life Cycle Relating Trade Secrets (Nov. 2020 ver.)

1:00 — 1:15 Break**1:15 — 2:45 [Panel 5] Inevitable Tension: Reconciling Public Court Access with Protecting Trade Secrets in Litigation***(Barry, Fink, Hayes, Hedges (ret. (J)), Kahnke, Miller (J), O’Toole, Ostroff*)*

This panel will explore the topic of implementing appropriate protections to preserve the existence and value of trade secrets while litigating them and allowing both parties to appropriate litigate their cases. It will include breakout sessions on:

- 1.) the access to the trade secret(s) at issue by the other party’s in-house counsel, experts, and employees
 - a.) breakout session 1 *(Barry, Fink*)*

- b.) breakout session 2 (*Hayes, O'Toole**)
- 2.) the right to public access to the courts
 - a.) Breakout session 3 (*Hedges (J), Ostroff**)
 - b.) Breakout session 4 (*Miller (J), Kahnke**)

Materials

- 5.1 WG12 Commentary on Protecting Trade Secrets in Litigation About Them (Nov. 2020 ver.)
- 5.2 WG2 Commentary on Best Practices Addressing Protective Orders, Confidentiality & Public Access in Civil Cases (Mar. 2007 ed.)

2:45 — 3:00 Break**3:00 — 4:30 [Panel 6] Judicial Roundtable***(Beeler (J), Bowbeer (J), Graves*, Kleinberg (ret. (J)), Slight (J), Standish (J), Yates (J))*

This panel brings together judges from key state and federal courts experienced in trade secret cases to bring their judicial perspectives to the trade secret issues raised throughout this Meeting.

Materials

[N/A]

4:30 — 4:35 Closing Statements*(Weinlein)*