

Business Insights in Trade Secret Management

The hunt for trade secrets in the secret of Life (Sciences)

Kora Knuchel
Vice President, IP & Legal
Bruker Switzerland AG

Company and Sector Specificities

1. Can you briefly describe your business and to what extent the protection of trade secrets is a crucial issue for you?

Bruker operates at the forefront of the life sciences industry, crafting state-of-the-art instruments that serve as indispensable tools in laboratories, pharmaceutical companies, and biotech firms. As a publicly listed global entity, our reach extends across continents, bringing cutting-edge technology and innovation to every corner of the globe. Bruker manufactures cutting edge mass spectrometers that are used to enable research such as researching proteins in order to develop more targeted medicines or diagnosing/curing diseases. The mass spectrometers help drive deeper research into the proteome to get in depth data which helps to solve the puzzle of why we get certain diseases and how can we best treat them.

Our trade secrets, the lifeblood of our competitive edge, lie in our unique machine-building processes and data derivation workflows. These proprietary methods have been honed through years of experience and continuous refinement, enabling us to deliver superior performance and results.

A significant part of our trade secrets encompasses specialized knowledge on calibrating machines to analyze various types of disease tissues and blood samples. This expertise, accumulated over years of field experience, allows us to achieve detailed data and related analytical results, thereby contributing to advancements in life sciences.

Operating in the high-stakes realm of science and engineering, we understand the immense value of intellectual property in our competitive landscape, which includes patents, trademarks, trade secrets, and copyrights. We are committed to safeguarding our intellectual assets, recognizing that they are not just integral to our success, but also instrumental in driving progress in the life sciences sector.

Internal Policies and Relationships

2. What does your company consider when deciding to protect confidential information with trade secrets?

As a multinational corporation, Bruker recognizes the challenges and opportunities that come with operating across diverse jurisdictions. Consequently, we have adopted a flexible approach to our trade secret policy, tailoring it to the specific needs of our various departments and teams. For instance, the needs regarding trade -secrets of the software team are different than the hardware team which are even more different than the “wet-labs” teams developing processes to be run on machines.

In the dynamic landscape of corporate growth, Bruker continually expands its horizons through strategic acquisitions. In these instances, we try to ensure the seamless integration of our trade secret protection framework into the newly acquired entities, thereby safeguarding their intellectual assets. For instance, it is important to train and educate the

newly acquired businesses on the importance of protecting their trade secrets in order to avoid misalignment on how IP is managed across various Bruker entities.

Our approach to managing intellectual property hinges on a critical evaluation of each innovation. We first assess its patentability. If an innovation is deemed patentable, we typically secure a patent. However, if it is not, we weigh the potential value of maintaining it as a trade secret against the risk of public disclosure. In cases where we opt not to retain the information as a trade secret, we consider a defensive publication to prevent others from obtaining a patent.

Employee Engagement in Trade Secret Protection

Our commitment to protecting trade secrets extends to our employees, with a comprehensive program that spans their entire tenure at Bruker. Key positions include a trade secret addendum in their employment agreement, reinforcing the importance of confidentiality from the outset. We supplement this contractual obligation with regular training on trade secrets, ensuring our employees are well-equipped to uphold these standards.

Access control measures are stringently enforced, and annual refresher courses on trade secret protection are conducted. Upon departure from the company, employees are reminded of their ongoing obligations regarding trade secrets, further solidifying our culture of confidentiality.

We place a high emphasis on ethical conduct, particularly concerning the handling of trade secrets. When onboarding a new employee, we exercise due diligence to ensure that no trade secrets from their previous employment are inadvertently or intentionally brought into our organization.

We explicitly instruct new hires not to disclose any confidential information or trade secrets from their former employers. This directive is communicated clearly to underscore its importance and the potential consequences of non-compliance.

We further inform them that any violation of this policy could result in the termination of their employment with our company. This approach not only safeguards our organization but also upholds the integrity of our employees and respects the intellectual property rights of other entities.

Trade Secret Identification Process

Our Research and Development (R&D) teams, being the cradle of our innovative prowess, are a primary focus of our trade secret identification efforts. Our internal process for identifying trade secrets involves a thorough review of all innovations from an intellectual property perspective. If an innovation is not patentable, we evaluate its suitability as a trade secret. Upon affirmative determination, the trade secret register is updated, and appropriate access controls are implemented, ensuring the information remains confidential and secure. This meticulous process underscores our unwavering commitment to safeguarding our intellectual property.

External Policies and Relationships

3. How do you manage specific risks to the confidentiality of your information arising from external relationships? How do you share your trade secrets?

In my opinion, Non-Disclosure Agreements (NDAs) alone do not provide adequate protection for trade secrets, particularly when these secrets are disclosed to third parties. To fortify our protective measures, we incorporate a trade secret addendum alongside our standard Master Service Agreement (MSA) or similar contracts.

This addendum delineates the specific trade secrets being shared and explicitly communicates the legal obligations of the third party concerning these secrets. It is signed separately and in addition to the MSA or equivalent contract, thereby reinforcing its significance.

We strive to limit the number of such agreements to prevent dilution of our trade secrets' value. As for penalties, we reserve the right to pursue all civil and criminal penalties under the respective jurisdiction's law.

In these agreements, I distinguish between confidentiality agreements and trade secrets agreements due to the stark differences in the recipient's liabilities under each. While all trade secrets are inherently also confidential information, not all confidential information is trade secret. Therefore, a trade-secret agreement should spell out the liabilities of the receiving party and list out the specific trade secrets being shared whereas a confidentiality agreement can be more generic.

In a multinational context, my preferred strategy is to adhere to the trade secret regulations of the jurisdiction with the most developed body of caselaw and stringent penalties. In this instance, that jurisdiction is the United States. This approach ensures we maintain the highest standards of trade secret protection across all our operations.

4. Following the end of the business relationship, to what extent do you implement specific measures to ensure the protection of your trade secrets (e. g., deletion of confidential information)?

As previously articulated, I draw a clear line between confidential information and trade secret information. Each type of information is governed by distinct protocols.

For confidential information, I adhere to the obligations outlined in the mutually agreed-upon Non-Disclosure Agreement (NDA) with the respective third party. This ensures that all sensitive information is handled with the utmost discretion and respect for privacy.

In contrast, the handling of trade secret information is subject to a more enduring obligation. This commitment remains in effect until such time as the owner of the trade secrets elects to disclose them publicly. This approach underscores our commitment to maintaining the integrity and confidentiality of proprietary information.

Enforcement Measures of Trade Secrets – Best practices for monitoring potential misappropriation and resolving disputes

5. Do you implement any specific measures to monitor potential trade secret misappropriation?

While we do not have a formal monitoring mechanism in place, the relatively small number of players in our industry help provide us with indications of potential trade secret misappropriation. For instance, if an employee privy to our trade secrets transitions to a competitor, and subsequently, their products begin to bear a striking resemblance to ours within a brief period, it could serve as a potential red flag.

In exceptional circumstances, we can also resort to proactive measures such as dispatching an informative letter to the new employer of our former employee. This communication would serve to remind them of the employee's existing obligations pertaining to our trade secrets, thereby preventing inadvertent acceptance of misappropriated information. This approach underscores our commitment to safeguarding our proprietary knowledge.

6. How do you resolve potential disputes regarding trade secret misappropriation?

Our approach to safeguarding trade secrets is rooted in prevention. We invest in comprehensive training for our employees, continually reinforcing their obligations to protect proprietary information. Despite these precautions, should a misappropriation occur, we are prepared to seek legal recourse to claim damages.

However, the challenge lies in the timing. By the time a case reaches court, the trade secrets may already have entered the public domain. Despite this, the judicial system remains our most effective avenue for seeking redress for the damages incurred due to trade secret theft.

To date, our proactive measures have successfully averted the need for court proceedings in trade secret cases. However, I recall a case from my tenure at a law firm involving an employee from the semiconductor industry. The individual had taken documents from our client, created copies, and used them at their new employer, who was a direct competitor of our client. We successfully enforced criminal liability against the former employee and secured a favorable settlement worth millions of dollars against the competitor for accepting the misappropriated information. This case serves as a testament to the effectiveness of legal action in addressing trade secret misappropriation.