

Trade Secret Law Evolution Podcast
Greenberg Traurig, LLP
Episode 73

Speaker 1 ([00:00](#)):

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Jordan Grotzinger ([00:20](#)):

Welcome everybody to the 2024 year in review. It is January 29th, 2025, and this has become a tradition of the podcast. I welcome my friend and my partner and the most recurring co-host Greg Bombard in our Boston office. How are you buddy?

Greg Bombard ([00:42](#)):

Very good. Very good to be back. And 2024 was a really busy year for Trade Secrets, so this is going to be a good episode.

Jordan Grotzinger ([00:50](#)):

I hope so. And on that note, let's jump right in. The first case was out of the Seventh Circuit in 2024 and this involved parties that competed in the market for two-way digital mobile radios or DMRs. By the way, I believe we addressed this case in a prior episode last year, but since this is the year in review episode, this one is worth noting because it's significant.

([01:17](#)):

In the mid-2000s, the plaintiff was the industry leader for professional grade DMR radios and the defendant wanted to compete at the same level as the Seventh Circuit summarize the events, "Instead of continuing to compete fairly, the defendant decided to steal the plaintiff's trade secrets and copyrighted code. The defendant's goal was to leapfrog the plaintiff to become the world's preeminent provider of DMR radios."

([01:45](#)):

To execute this plan, the defendant lured a plaintiff engineer in Malaysia to the defendant with \$2.5 million worth of defendant stock. The engineer then recruited two additional plaintiff employees to join the defendant. The former plaintiff employees collectively downloaded a high volume of technical documents from confidential databases at the plaintiff and brought those documents to the defendant.

([02:12](#)):

The court said, "The stolen files included the plaintiff's source code for its DMR radio project. Segments of the stolen code were later directly inserted into the defendant's products. Proof of the theft and copying included the fact that minor coding errors in the plaintiff's code appeared in exactly the same spots in the defendant's code."

([02:35](#)):

The defendant sold its competing DMR radios worldwide and attended trade shows in the United States where it advertised the DMR radios that employed stolen plaintiff technology. Here are the court's

holdings with respect to the trade secret claim only. There were other claims not relevant to this podcast. The main holding was that the Federal Defend Trade Secrets Act has extraterritorial reach.

[\(03:03\)](#):

The Seventh Circuit affirmed this principle and noted that there is a presumption against extraterritoriality, but that presumption can be rebutted if, "The statute gives a clear affirmative indication that it applies extraterritorially." The court reasoned as follows, Congress added the Defend Trade Secrets Act to the Economic Espionage Act of 1996 or EEA, to assess whether the Defend Trade Secrets Act applies extraterritorially.

[\(03:38\)](#):

The court examined the entirety of the EEA. The EEA provides that, "This chapter also applies to conduct occurring outside the United States if... An act in furtherance of the offense was committed in the United States." And this chapter includes the civil provisions of the Defend Trade Secrets Act.

[\(04:05\)](#):

In addition, Congress evidenced its intent for the Defend Trade Secrets Act to have extraterritorial reach because the Defend Trade Secrets Act itself states that it is, "The sense of Congress that... Trade secret theft occurs in the United States and around the world... Trade secret theft whenever it occurs harms the companies that own trade secrets and the employees of those companies. [Chapter 90]... Applies broadly to protect secrets from theft." Sorry about all the ellipses, but I want to be accurate.

[\(04:45\)](#):

The court then affirmed that the defendant Trade Secrets Act extraterritorial reach applied in this case as follows. For the extraterritorial scope of the defense Trade Secrets Act to apply, there has to be, "Act in furtherance of misappropriation" in the United States. The defendants "Advertisement, promotion and marketing of products embodying the stolen trade secrets at numerous trade shows in the United States," was an act in furtherance of the misappropriation.

[\(05:18\)](#):

In fact, these acts were "Completed domestic acts of misappropriation," which are more than sufficient to satisfy the act in furtherance of requirement. Also, a completed act of domestic misappropriation is not necessary to apply the Defend Trade Secrets Act extraterritorially. Instead, all that is necessary is, "An act in furtherance of the," the misappropriation.

[NEW_PARAGRAPH]The extraterritoriality of the Defense Trade Secrets Act does not, "Impose a specific causation requirement," meaning that domestic act in furtherance does not need to be the proximate cause of the harm caused by a foreign misappropriation. As to damages, the court held that the plaintiff was entitled to \$135 million in compensatory damages as follows, the plaintiff was entitled to the greater of either, "One, the defendant's total profits from the theft as unjust enrichment subject to apportionment or two, the sum of the plaintiff's own actual losses and any additional amount of unjust enrichment not accounted for in those actual losses, which in this case includes the defendant's avoided R&D costs close."

[\(06:40\)](#):

The court held that the \$135 million of damages award was an unjust enrichment award, which should have been subject to apportionment. However, the plaintiff also proved over \$150 million of damages from its own lost profits and the defendant's head start a sum that is not subject to apportionment. And the court held, it was harmless error not to apportion the \$135 million award because the plaintiff was alternatively entitled to more without the need to apportion.

[\(07:15\)](#):

Finally, the court held the punitive damages provision of the Defend Trade Secrets Act is constitutional. It said, "Here, as in section 1981A and other federal statutes like the Sherman Act, RICO and patent and trademark laws authorizing double or triple damages, Congress has made a specific and reasonable legislative judgment about punitive damages and cases like this one. There is no reason to search outside the text of the Defend Trade Secrets Act for legislative guidance in analogous contexts."

[\(07:49\)](#):

The \$271.6 million punitive damages award, "Here complies with the Defend Trade Secrets Act statutory limits," because it is double the compensatory damages award. And as we've discussed in prior episodes, the punitive damages provision of trade secret law federally and at the state level provides for double damages where the misappropriation is willful.

[\(08:18\)](#):

So, the takeaways. One, the key takeaway from this decision is that the Defend Trade Secrets Act has extraterritorial reach. Critically, although there was a complete act of misappropriation in this case, a plaintiff need only show an act, "In furtherance of," the misappropriation in the United States to take advantage of the extraterritoriality provision.

[\(08:42\)](#):

Ultimately, this is a fairly light burden given the extent to which foreign companies sell in the United States. Trade secret plaintiffs up against international companies should pay special attention to any potential foreign damages. If there are acts in furtherance of a misappropriation in the United States, the decision is likely going to lead to an increase in discovery and discovery disputes over foreign sales of products that use or incorporate the trade secrets.

[\(09:11\)](#):

Secondly, one potentially overlooked holding in the decision is that the act in furtherance does not need to be causally linked to the misappropriation in order to obtain global damages. In other words, a plaintiff does not have to show that the US-based Act is the proximate cause of the damages it seeks. This creates a relatively low bar for obtaining foreign profits and may expose the defendants to greater damages awards. I'm going to exhale now, and Greg, I love you to take the second case.

Greg Bombard [\(09:43\)](#):

This case that we were just discussing is really interesting and made our list of some of the top trade secret cases of 2024 because it's the First Circuit level case to discuss this issue of the extraterritorial effect of the Defend Trade Secrets Act. And it really is interesting, it borrows that language and act in furtherance of the offense from the criminal section dealing with economic espionage. Obviously, in civil cases we don't have an offense. We have a claim.

[\(10:17\)](#):

So, it's an interesting read. It's consistent with some other district court cases that came before it. It'll be interesting to see if other circuits follow the same reasoning, but this is the first stake in the ground on the extraterritorial effect of the Defend Trade Secrets Act from a circuit level.

[\(10:36\)](#):

Let's turn now to a district court case that made our list. This case is interesting because of damages, apportionment issues. So, in this case, it's out of the Northern District of California, a busy trade secret jurisdiction. And in this case, the plaintiff and defendant compete in the market for employee review software.

[\(10:59\)](#):

The plaintiff's largest customer was bank until the defendant won a bid and claimed that bank as its customer. However, when it won the bid, the defendant had not yet created a product that could meet the bank's needs. To create the product, a product manager for the defendant with the approval of her supervisors obtained access to a free trial of the plaintiff's software. And then, shared her login credentials with her team.

[NEW_PARAGRAPH]"Together they used plaintiff's software, took screenshots and compiled notes about the system," said the court. In total, plaintiffs asserted that defendants misappropriated nine distinct trade secrets and the plaintiff's damage expert at trial testified the defendant enjoyed \$8.9 million worth of a head start and \$2.8 million of avoided development costs.

[\(12:05\)](#):

Critically, that damage opinion did not apportion those amounts as between the nine trade secrets. Instead, the expert testified, "Apportionment was not required in software as a service." He acknowledged that if, "The jury were to find that only one of the identified trade secrets was misappropriated, they would have no way of figuring out from his calculation what the damages would be for a misappropriation of that one secret."

[\(12:38\)](#):

At the close of the plaintiff's case, defendants successfully moved for a judgment as a matter of law on two out of the nine asserted trade secrets. The jury deliberated with respect to the remaining seven trade secrets and found that the defendant misappropriated only one of them. So, if you're keeping track at home, we've got misappropriation of one out of the nine asserted trade secrets. This was Trade Secret 6 and the jury awarded \$11.7 million in unjust enrichment damages and \$14 million in punitive damages.

[\(13:15\)](#):

On that record, the Northern District of California ruled as follows. First, it ruled the plaintiff established that Trade Secret 6 was a protectable trade secret. One of the issues was whether Trade Secret 6 was identified or described with sufficient particularity because it was identified as, "The system's administrative tool," mechanisms by which the administrative tool and the end user's tool interact.

[\(13:44\)](#):

The Northern District of California ruled that that description was sufficient. There was sufficient evidence for a jury to find that that Trade Secret 6 was kept secret. This is in spite of evidence that some YouTube videos and promotional videos showed some portions of what was claimed as Trade Secret 6. But the court ruled that those videos did not show the full capabilities of Trade Secret 6.

[\(14:15\)](#):

The court concluded the secrecy analysis of its opinion with this, "In short, how secret was Trade Secret 6? International spy secret? Junior high diary secret? No. Secret enough? Yes." Similarly, a jury could also have reasonably concluded. The plaintiff took sufficient measures to maintain Trade Secret 6 as a secret. The court used this classic, "Absolute secrecy is not required." And the evidence showed that plaintiff took seriously its efforts to maintain the secrecy of Trade Secret 6, because users had to log into the system to see the trade secret.

[\(14:59\)](#):

And plaintiffs used confidentiality provisions in its terms and conditions and its employment agreements. The court ruled those efforts were reasonable and "More comprehensive and effective security measures," were not necessary. Finally, with respect to Trade Secret 6, a jury could also have found that Trade Secret 6 had actual or potential independent economic value.

[\(15:24\)](#):

The court ruled, "This is not a high standard." Defendant attempted to argue that Trade Secret 6's relationship to other alleged trade secrets would purportedly eliminate its economic value because, "Plaintiff never explained what aspect of Trade Secret 6 was valuable independent of the features that it supported." But the court ruled that this presented a false dichotomy because Trade Secret 6 could have independent economic value and enable the other valuable features.

[\(16:00\)](#):

As the court said, "You don't throw away your drill when you lose your drill bits." So, that's Trade Secret 6. With respect to the damages, the court had an interesting opinion with respect to the apportionment of damages and this is really why this opinion makes our list this year. First, the court ruled, the plaintiff's damage expert assumed that the jury would find all nine trade secrets misappropriated. And that he gave, "No way," for the jury to calculate damages for any single individual trade secret. Instead, the expert, "Testified that damages would roll over to whatever trade secrets remained," in the event that less than all of the trade secrets were found to have been misappropriated.

[\(16:49\)](#):

The plaintiff tried to support this by arguing the jury could have awarded the full amount of damages based on the fact that Trade Secret 6 was allegedly, "Value driver." Its experts never conducted any such analysis, and the court ruled, "Plaintiff did not provide a reasonable basis for quantifying the importance," of Trade Secret 6.

[\(17:14\)](#):

The court came up with yet another interesting analogy, this one about buying trading cards. In the court's example, the buyer agrees to buy a nine-card set of cards for a million dollars in large part because one of the cards is exceedingly rare, but when he goes to purchase the cards, it turns out that two of the nine are missing, and the seller still offers to sell the rare card alone for a million dollars.

[\(17:41\)](#):

The other seven cards must have some value, but they're now being offered for sale at the same original price as the nine cards set. Do I have any reasonable basis for my million-dollar ask the court ruled. No. Sure. Trading card six is the value driver of the set. No set could exist without it. Still the nine-card set is worth a million dollars and seven cards other than trading cards six have value. So, how much do we know with certainty trading cards six is worth? Not a million dollars. Without apportionment, "Any price would still be speculative guesswork."

[\(18:23\)](#):

So, what are our takeaways from this? This decision serves as an important reminder with respect to the apportionment of damages as between multiple trade secrets, if more than one trade secret is asserted at trial. The failure to properly apportion can, in this case, undo the entire damages award and undo a significant damages of work.

[\(18:46\)](#):

Obviously, apportionment has between trade secrets can be difficult, especially when those trade secrets are interrelated and no plaintiff wants to artificially limit the recovery by apportioning a value that's too low. And no plaintiff wants to suggest that the jury can pick and choose misappropriation of one and not the whole. But the risk of coming away empty-handed like the plaintiff may in this case is too great to not at least consider this issue at trial.

[\(19:19\)](#):

To avoid an outcome like this, trade secret owners can craft damage theories in a way that allows a jury to apportion damages in the event that less than all of the trade secrets are found to have been misappropriated. It may be prudent to present alternative theories including one in which the full value of the damages can be rolled into the trade secrets found to be misappropriated. The key is to give the jury the tools necessary to award you the greatest possible amount that could survive post-trial scrutiny.

[\(19:53\)](#):

Obviously, trade secret defendants will want to ensure that they challenge any of the plaintiff's damages theories, including the apportionment theory through cross-examination of an expert witness. While it's unlikely that an expert is going to outright admit that he failed to give the jury the necessary tools to apportion the damages, it's certainly possible to tease out some weaknesses in cases where the plaintiff's expert has not been careful on this issue. This may also be a basis for pre-trial motion practice and that's something to consider as well.

Jordan Grotzinger [\(20:30\)](#):

Thanks, Greg. That incomplete card set analogy is interesting, and it's interesting how the court said that it's completely speculative to assess the value with missing cards even though there's only one real value driver.

Greg Bombard [\(20:45\)](#):

That sort of gave me pause, which doesn't matter at all. But it's interesting.

Jordan Grotzinger [\(20:48\)](#):

And let's see how that plays out. The next case was a case out of the Virginia State Court of Appeal. And in that case, the plaintiff and the defendant competed in the business of business process management or BPM, which allows their customers to, "Build complex software applications," in a simpler fashion.

[\(21:10\)](#):

The defendant hired a, "Spy," someone... And I'm going to put the word spy in quotes because it was in the court's opinion. Someone with knowledge of the plaintiff's software to better learn how the plaintiff's system worked. The defendant recorded the spy's demonstrations and determined the strengths and weaknesses of the plaintiff's platform.

[\(21:33\)](#):

The defendant also secretly obtained access to free trials of the plaintiff's software and hid its identity from the plaintiff. At trial, the court prevented the defendant from introducing into evidence the number of people with access to the plaintiff's software and from showing its software to the jury because the software was housed on a computer other than the computer produced in discovery.

[\(21:58\)](#):

The court, however, did let the plaintiff present evidence of the defendant's, "Software on a different computer than that used in discovery." The trial court, "Instructed the jury that plaintiff could prove its damages simply by establishing defendant's sales during the relevant timeframe. Upon plaintiff proving defendant's total sales, the burden would shift to defendant to prove damages, sales were unrelated to its wrongdoing."

[\(22:29\)](#):

With this ultimately wrong as we'll see, standard, the court then also prevented the defendant from proving that its sales, "Were unrelated to its wrongdoing." The jury ultimately found that the defendant

misappropriated the plaintiff's trade secrets and awarded \$2 billion in damages which accounted for all of the defendant's sales for the relevant time period.

[\(22:53\)](#):

The court held as follows. One, the plaintiff showed that its information was a protectable trade secret with a qualification, and let me break it down. The plaintiff went into great detail at trial describing with particularity each trade secret whether information is generally known or not readily ascertainable is a question of fact for the jury, the court said, and the jury properly considered the question.

[\(23:19\)](#):

The plaintiff presented evidence that it protected its trade secret information through agreements, access limitation, firewalls, multifactor authentication systems, encryption and password change requirements. So, those were the reasonable measures. The defendant's difficulty in obtaining access to the plaintiff's system was further evidence that the plaintiff properly guarded or took reasonable measures to protect its trade secrets.

[\(23:48\)](#):

The Court of Appeals did not disturb these holdings, but it remanded the case for other errors. The Court of Appeals overturned the trial court's grant of a motion and eliminate to instruct the jurors that the number of people with access to the plaintiff's software is not relevant. While the number of people with access to the software is not dispositive, it is a relevant consideration in a trade secret case. Why? Very simply, the more people who know the less secret stuff is.

[\(24:17\)](#):

So, the number of people with access to an alleged trade secret is relevant. But as the court said, not dispositive. The trial court, the Court of Appeals said, "Improperly shifted the burden on damages to the defendant." And the Court of Appeals said as follows, "The trial court erroneously relieved the plaintiff of its burden to prove causation resulting in the \$2 billion windfall to plaintiff." The plain language of the Virginia Uniform Trade Secrets Act requires that the plaintiff prove damages caused by the misappropriation.

[\(24:51\)](#):

It was therefore wrong to permit the plaintiff to meet its burden on damages by proving defendant's total sales for the period in question irrespective of whether those sales were proximately caused by the misappropriation. Not only was the trial court's instruction inconsistent with the Virginia Uniform Trade Secrets Act, it was inconsistent with Virginia Case law and the third restatement of unfair competition on which the trial court purported to rely.

[\(25:22\)](#):

For the non-lawyer folks out there, restatements are a collection of legal principles written down that sometimes statutes and laws are based on or vice versa. The court also held the defendant should have been allowed to present evidence to the jury that not all of the \$2 billion in sales was attributable to the trade secrets.

[\(25:41\)](#):

The trial court misread an answer to an interrogatory to come to this erroneous conclusion. Here are the takeaways. Primary takeaway is that causation is key. The plaintiffs nearly universally have the burden to prove proximate cause for damages, and such a requirement is consistent with other laws built into the Virginia Uniform Trade Secrets Act and all other versions of the Uniform Trade Secrets Act, of course, it's uniform.

[\(26:09\)](#):

And also, the Federal Defend Trade Secrets Act, which is largely based on the Uniform Trade Secrets Act. Even if that were not the case, the defendant should then be able to adequately defend itself by disproving proximate cause. The trial court's double error here that is shifting the burden and preventing the defendant from meeting that shifted burden made the Court of Appeals job relatively easy.

[\(26:33\)](#):

Nothing that the Court of Appeals did is surprising and it doesn't create new law or traps for future litigation. Rather, this decision merely confirms that trade secret plaintiffs under the Uniform Trade Secrets Act have to satisfy their statutory burden to prove proximate cause.

Greg Bombard ([26:51](#)):

This case when it came out caused a lot of ink to be spilled because of just the sheer size of the damage award. And it really is interesting reading the appeals court analysis of this and the characterization of how the award was calculated, that this jury instruction ultimately caused an incorrect assessment of damages according to the appeals court. But this is a strategy that many plaintiffs have historically and probably would continue to employ to point to the defendant's revenues and try to shift the burden to the defendant to prove which of those revenues are not attributable to the trade secret.

[\(27:32\)](#):

So, it's a very interesting case for defendants and it'll be interesting to see if it serves as precedent in other cases involving the disgorgement of a defendant's profits. All right. Our last case in the 2024 greatest hits is a federal circuit case that arises out of an appeal from a District of Massachusetts case, close to home for me.

[\(27:56\)](#):

In this case, the plaintiff and the defendant are each manufacturers of insulin pump devices. The plaintiff manufactured a wearable insulin pump since the early 2000s and the defendants started to develop an insulin pump patch soon after the founding of the defendant in 2011. Then, in 2017, the defendant hired four of the plaintiff's employees.

[\(28:24\)](#):

In 2023, reports surfaced that a third-party medical device company sought to acquire the defendant. And soon thereafter, the plaintiff filed suit in the District of Massachusetts in which it alleged theft of trade secrets under the Defend Trade Secrets Act. The plaintiff sought a temporary restraining order and a preliminary injunction to block any technical communications between the defendant and the potential third-party acquirer.

[\(28:56\)](#):

Now, of course, an injunction like that is going to effectively block the acquisition. The district court in that case entered the requested injunction. It found that there was, "Strong evidence," that the plaintiff was likely to succeed on the merits of its trade secret claim. Because of evidence of misappropriation, the District Court's order found that there was irreparable harm because largely of the potential acquisition which would be, "A source of capital," for the defendant. And thereby, increase competition with the plaintiff.

[\(29:36\)](#):

So, the district court entered an injunction that enjoined the defendant from, "Manufacturing, marketing, or selling any product that was designed, developed or manufactured in whole or in part

using or relying on the trade secrets of the plaintiff." The defendant appealed to the Federal Circuit and the Federal Circuit reversed the injunction.

[\(30:02\)](#):

We try hard on this podcast not to characterize these rulings, but I think anyone would fairly read this opinion and say, the Federal Circuit did not like the district court opinion in this case for the following variety of reasons. The first is, the Federal Circuit faulted the district court for failing to analyze the statute of limitations. The DTSA provides... The plaintiff's claim may not be commenced later than three years after the date on which the misappropriation with respect to which the action would relate is discovered or by the exercise of reasonable diligence should have been discovered.

[\(30:42\)](#):

The Federal Circuit's opinion points to 12 pages of analysis of the likelihood of success on the merits by the district court. But the Federal Circuit ruled the district court failed to rule on whether the statute of limitations applied. The Federal Circuit ruled the statute of limitations was, "A material factor deserving significant weight."

[\(31:09\)](#):

So, the district court's failure to analyze the issue constituted an abuse of discretion that required reversal. Now, one thing to note here, the suit again was filed in 2023 and the hiring of the plaintiff's employees was in 2017. So, it was about six years after the hiring of those employees. The Federal Circuit ruled that that was a material factor deserving significant weight in the district court's opinion.

[\(31:39\)](#):

Second, the Federal Circuit faulted the district court's definition of a trade secret. The district court's injunction order broadly defined the term trade secret as including, "Any and all confidential information of the plaintiff." And, "Any information that contains, derives from or incorporates such confidential information." The Federal Circuit called that definition, "Severely overbroad."

[\(32:10\)](#):

The Federal Circuit ruled that as a result of the broad definition, the district court's analysis of each trade secret was inadequate. "Finding that the plaintiff took measures to protect some unidentified set of information is not the same as finding that the plaintiff took reasonable measures to protect specific information alleged to be a trade secret."

[\(32:36\)](#):

The Federal Circuit also ruled the district court failed to analyze whether the asserted trade secrets could be readily ascertained by proper means such as reverse engineering, the plaintiff's product or from the plaintiff's own patent disclosures. Next, the Federal Circuit took issue with the district court's finding of irreparable harm. The Federal Circuit ruled that even in a case where there is a strong showing of likelihood of success on the merits, the plaintiff still must demonstrate irreparable harm.

[\(33:11\)](#):

Even with a strong merits case, the Federal Circuit ruled the district court could not presume irreparable harm. That's a fairly significant ruling here. There's a split of authority on this issue between different circuits, and the First Circuit was one of the circuits that suggested that it was possible to have a very strong showing of likelihood of success on the merits that would then diminish the importance of a showing of irreparable harm for a trade secret plaintiff, at least this Federal Circuit decision says, that's not the case that the plaintiff always must make a showing of irreparable harm.

[\(33:52\)](#):

With respect to the irreparable harm analyzed in the district court's opinion, the Federal Circuit ruled that the justification was, "Mere conjecture," and that justification was that the transaction would provide additional capital for the defendant and increased competition. The Federal Circuit ruled, "Neither a generalized fear of a larger competitor nor any theoretical sale that can be remedied with damages constitutes a recognizable irreparable harm."

[\(34:24\)](#):

To cap it off, the Federal Circuit ruled that the district court failed to engage with the public interest factor. The district court ruled on that factor that it, "Saw little impact one way or the other," but the Federal Circuit ruled, "That type of cursory analysis is generally deficient." For all of those reasons, the Federal Circuit reversed the district court's entry of an injunction. So, what are the takeaways?

[\(34:52\)](#):

Well, first, you have here the Federal Circuit laying out an exacting standard for the entry of a preliminary injunction based on alleged misappropriation of trade secrets. The opinion demands precise identification of specific trade secrets at issue and broad categories like, "Confidential information," will not suffice. The categories of trade secrets under this opinion need to be identified specifically, and the efforts taken to keep them secret need to be proven by the plaintiff to get an injunction.

[\(35:30\)](#):

In this case, it wasn't enough for the plaintiff to show the defendant's rapid development progress without showing that that rapid development progress was tied to the specific asserted trade secrets in the case. Another takeaway here, the statute of limitations. It remains an issue in any case in which the alleged misappropriation commenced more than three years before the suit was brought, and it remains an issue that needs to be analyzed as part of any relief the plaintiff is seeking.

[\(36:09\)](#):

And then, finally, with respect to irreparable harm, that remains an issue for plaintiffs. It's a difficult issue in injunction cases. The plaintiff needs to be ready to articulate and prove some specific harm that is not compensable through money damages. Often, defendants try to characterize harms as being potentially eating into their market share or affecting competitive issues. And as you can see from this opinion, that did not fly in this particular case because the court characterized them as either speculative or curable by money damages.

Jordan Grotzinger ([36:47](#)):

Thank you, Greg. That was a long episode for us, but I think it was a good robust summary of how the law in this space has evolved over the past year, which is, of course, the subject and basis of the title of this podcast. So, thanks very much, great to see you. I look forward to seeing you soon. And I hope this was useful, everybody. We'll see you in February.