

## **CHECKLIST: Protecting Trade Secrets**

Trade secrets are often used to protect technology that changes extremely fast. Although a patent would provide twenty years of protection, the time and effort it takes to get the patent is wasted if the technology may only be current for the next two to three years. Therefore, the most economical way to protect such inventions is to keep them secret.

Keeping the secret provides an additional benefit—a company can sue a person who misappropriates a trade secret. The company must show that the trade secret can be described particularly enough that it is separated from matters of general knowledge in the trade; the trade secret derives some independent economic value; the secret is not generally known to the public; and the company has used reasonable efforts under the circumstances to maintain the secret. Therefore, efforts used to protect the secret serve a second purpose—providing part of the grounds to sue for misappropriation. Below is a list of measures that will help protect trade secrets; use this list to audit your current protections and to plan for more stringent measures.

*Yes/no*

- Require employees to sign nondisclosure agreements (NDAs) or confidentiality agreements.
  
- Have a written trade secret protection plan, and communicate and enforce it within the company.
  
- Tell employees which information is regarded as a trade secret.
  
- Communicate expectations of secrecy and company procedures to employees who have access to the trade secret.
  
- Maintain logs of the nature and scope of the trade secret.
  
- Mark documents as "trade secret" or "confidential".
  
- Monitor the number of hard copies that exist documenting the trade secret.

- \_\_\_ Prohibit the photocopying of trade secret documents.
- \_\_\_ Restrict access to company employees who must have it in order to carry out their specific duties.
- \_\_\_ Keep hard copies of secret materials in a locked vault, safe, or cabinet.
- \_\_\_ Protect against physical access to the trade secret, including the use of security systems and security personnel, and escorts and visitor badges for visitors.
- \_\_\_ Limit the trade secret to as few physical locations, branches, or office buildings as feasible.
- \_\_\_ Prohibit the removal of the trade secret from the company's restricted areas.
- \_\_\_ Don't show a trade secret to any person who has not signed an NDA or confidentiality agreement.
- \_\_\_ Maintain logs of who has access rights to the trade secret.
- \_\_\_ Require persons seeking access to show photo identification.
- \_\_\_ Limit access on a "need-to-know" basis.
- \_\_\_ Require the use of passwords for access to soft copy trade secret material.
- \_\_\_ Limit the availability of the trade secret within computer systems.
- \_\_\_ Attach electronic sensors to trade secret documents.
- \_\_\_ Transport trade secret materials under lock.
- \_\_\_ Always shred documents disclosing a trade secret before discarding them in the trash.
- \_\_\_ Conduct exit interviews with employees on their departure from the company and remind them of the trade secret status of information.
- \_\_\_ Bring suit for theft of trade secrets, including a prompt request for injunctive relief.
- \_\_\_ Don't sell a product that discloses the details of a trade secret or enables a user to reverse engineer the product.
- \_\_\_ Don't distribute technical literature, service manuals, or other material that discloses your trade secret.

- \_\_\_ Don't allow anyone to publish any aspect of a trade secret as part of a press release, professional journal article, on the Internet, in marketing information, or in any other way.
- \_\_\_ Don't make any foreign or international patent applications that disclose the trade secret.
- \_\_\_ Avoid identifying a trade secret in government filings, including SEC filings.
- \_\_\_ Get a judge to seal court proceedings before disclosing a trade secret at trial and in any hearing.
- \_\_\_ Get a judge to seal all court records and filings involving the trade secret, including complaints, motion papers, and bankruptcy filings.