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Trade Secrets 2026

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USA – Texas: Trends and Developments

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USA – TEXAS

Trends and Developments

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Trade Secrets in Texas: Why the Lone Star State is a Go-To Forum

Trade secret litigation in the United States has emerged as a powerful IP tool – often the most powerful IP tool – to shape one's market and achieve business goals. There is a host of reasons for this:

- the flexibility plaintiffs have in defining trade secrets at issue;
- the availability of unjust enrichment damages, which are not available in patent cases and which frequently dwarf the other available forms of damages common to trade secret and patent cases (lost profits and reasonable royalty);
- the sweeping preliminary and permanent injunctive relief available, and the frequency with which it is granted;
- the enactment of the federal Defend Trade Secrets Act, with its global reach, enhanced injunctive remedies, and access to federal courts; and
- the ubiquity of circumstances giving rise to trade secret actions, including employee departures, joint ventures, supplier and customer relationships, and failed M&A deals.

Effective trade secret litigation can reshape markets, determine dominant players, and effect significant transfers of wealth.

It is natural, then, that trade secret litigation is on the rise in the United States. The sheer numbers continue to grow, rising to more than 1,600 cases filed nationwide in 2025. The volume of strategic trade secret cases has increased significantly, as well. In the not-too-distant past, patent infringement actions were the IP tool most commonly used to achieve strategic ends, while trade secret cases were predominantly reactive, with plaintiffs' primary goal being the recovery of lost property. No more. Recognising the inherent advantages of trade secret litigation, more and more companies are weaponising their trade secrets – ie, pursuing meritorious or otherwise colourable trade secret claims to achieve strategic business ends, rather than merely to recover the property that was allegedly stolen.

Also natural is that Texas state and federal courts are seeing an ample share of these disputes. It is common knowledge that Texas is a destination venue for patent disputes, hosting two of the three busiest patent infringement dockets in the country. Less well known is that Texas is also a destination venue for trade secret disputes. At the federal level, three of the five judges with the largest trade secret dockets over the last decade sit in Texas – Judges Albright and Pitman in the Western District, and Judge Mazzant in the Eastern District. Texas state courts teem with trade secret actions, too; the Texas Business Court's jurisdiction was recently expanded to encompass trade secrets, and Texas district courts remain a hotbed for these disputes. This article explores the factors that led to the growth in volume and significance of trade secret cases in Texas.

Background

Traditional intellectual property tools – patents, copyrights, and trade marks – cover specific innovations, but they are often not the best way to protect today's

technological advances. For example, patents protect inventions, but they require public disclosure, can take years to secure, and do not cover abstract ideas, business methods, or many software concepts. Copyrights protect original expression, but not the underlying ideas, methods, or systems that often represent a company's crown jewels. Trade marks protect a company's brand, but do not cover proprietary processes, formulas, algorithms, or customer information.

Trade secrets fill these gaps. They offer immediate protection, require no registration, and can last indefinitely so long as they continue to meet the standard for protection: they must be secret, they must be valuable (in whole or in part) because they are secret, and the owner must take reasonable steps to keep them secret. For companies in fast-moving industries where waiting years for a patent may not be viable, trade secret protection can be the difference between maintaining a competitive edge and losing it. Indeed, trade secrets are not just a useful complement to traditional intellectual property; sometimes they offer the only viable protection.

At the same time, employee movement is at an all-time high. When employees leave, they often take with them a deep knowledge of their former employer's most sensitive information, like client lists, product roadmaps, proprietary methods, and strategic plans. Historically, companies relied on non-compete agreements to manage this risk, effectively preventing former employees from taking that knowledge to a competitor.

But many jurisdictions have significantly limited or outright banned non-competes. For example, California expressly prohibited them with limited exceptions effective January 2024. Cal. Bus. & Prof. Code § 16600.1. Other states, including Minnesota and Wyoming, have followed suit. Minn. Stat. § 181.988; Wyo. Stat. Ann. § 1-23-108. Moreover, the prevalence of remote work in most industries today exposes companies in states like Texas, where non-competes are enforceable, to the laws of states where they are not. And while the Federal Trade Commission's recent effort to ban non-competes nationwide subsided and remains dormant, it could easily and quickly revive with a new administration. The result is that companies can no longer rely on broad non-compete agreements to protect sensitive information when an employee walks out the door.

Trade secret law has filled that void by targeting the theft and use of competitively sensitive information. The Defend Trade Secrets Act of 2016 accelerated the increase in litigation by making trade secret misappropriation a federal cause of action, opening the doors of federal courts to plaintiffs nationwide. It also dramatically expanded the geographic reach of US trade secret law: an action under the DTSA can target conduct anywhere in the world, so long as there is some genuine tie to interstate commerce in the United States (eg, the misappropriation occurred outside the USA but products arising from it are sold in the USA). The DTSA also gave plaintiffs a powerful new tool: the ex parte seizure order. In exceptional circumstances, a court can authorise law enforcement to seize property, like devices, servers, and files, before the defendant even knows a lawsuit has been filed. Although granted sparingly, this tool can meaningfully impact a case where there is a real risk that evidence will be destroyed or concealed once a defendant receives notice that a case has been filed.

Critically, the DTSA does not displace state trade secret law. Plaintiffs can and regularly pursue both DTSA claims and state law claims in the same case, effectively doubling their remedial toolkit and preserving flexibility in how they frame their case. In states like Texas, where the Texas Uniform Trade Secrets Act (TUTSA) provides its own robust protections and remedies, that combination gives plaintiffs considerable leverage from the moment a complaint is filed.

Adding considerably to that leverage is the fact that trade secret damages are among the most robust in intellectual property law. Unlike patent or copyright claims, which are often based on the plaintiff's own losses, trade secret damages are designed to capture the consequences of misappropriation from both sides of the equation. In other words, plaintiffs can recover their own losses, like lost profits or lost business opportunities, but also the defendants' gains. Where a competitor, failed acquiror, or joint venture partner, for example, has used stolen information to build a product, win a contract, or enter a new mar-

ket, unjust enrichment can dwarf the plaintiff's direct losses. Courts have also endorsed avoided development costs as a measure of damages, essentially asking what it would have cost the defendant to develop the information legitimately, a theory that can produce substantial awards even where direct proof of lost profits is difficult to establish.

In cases of wilful and malicious misappropriation, both the DTSA and most state trade secret statutes also authorise exemplary damages of up to two times the actual damages, along with attorneys' fees. That enhancement can dramatically increase exposure in an already high-value case and sends a clear deterrent signal. Combined with the possibility of parallel criminal liability under the Economic Espionage Act for the most egregious cases, the consequences of misappropriation can be severe.

Injunctive relief is also another powerful remedy. A plaintiff that makes a credible showing of misappropriation may be able to stop the defendant's continued use of the trade secrets and, in some cases, restrict what the defendant can do with employees, products, or business relationships affected by the misconduct. And a preliminary injunction can reshape the entire dispute – it can block a product launch or sideline a key hire pending resolution of the case. For plaintiffs, it is often the most valuable remedy in the toolkit, not because of what it awards, but because of what it stops.

Collectively, when warranted, this potent combination of remedies can deliver more pressure on an opponent than any other form of IP. It thus serves as a powerful weapon, not only to obtain the return of stolen intellectual property, but also to legitimately put transformative pressure on a competitor, failed suitor, self-dealing partner, or other market participant.

Why has Texas become a hotbed for trade secret claims?

Texas courts are a natural destination for trade secret actions because they have a wealth of experience with complex trade secret and technology cases, embody the view that juries should decide colourable cases, and have built high-functioning court systems with streamlined procedures that make it easy for lawyers across the country to file and prosecute actions in Texas.

As noted, the Texas federal bench is one of the most experienced trade secret benches in the country, with three of the five busiest trade secret judges nationwide. Although Judge Albright announced that he will be stepping down from the Western District of Texas bench at the end of summer 2026, the factors drawing plaintiffs to the Western District of Texas, and other federal courts in Texas, remain. For example, Texas federal judges handle a substantial number of patent and other technology cases, making them a strong fit for tech-heavy trade secret cases.

Lawyers value that experience. They also know that statistics show that federal judges in Texas are less likely to resolve trade secret claims at the pleading or summary judgment stage than judges in other regions. For example, in the Eastern District of Texas, 8% of motions to dismiss are granted in DTSA cases, whereas other jurisdictions grant them at a substantially higher rate – in the Northern District of California, for example, more than 40% of motions to dismiss DTSA claims have been granted. See Lex Machina statistics. Similarly, in the Western District of Texas, 21% of summary judgment motions in DTSA cases have been granted, compared with 40% in the Northern District of California. Id. In addition to shaping how trade secret cases are decided (eg, by written motion or jury trial with witnesses), these trends affect settlement of Texas cases: defendants may feel increased pressure to engage with these claims early and seriously.

Plaintiffs are also aware that Texas juries that find liability routinely award substantial damages, and that those awards consistently hold up on appeal. For example, in *Computer Sciences v Tata Consultancy*, the Court entered a permanent injunction and awarded more than USD56 million in actual damages and more than USD112 million in exemplary damages, a result the Fifth Circuit later upheld. *Comput. Sciences v Tata Consultancy*, 3:19-cv-00970, Dkt. 532 (N.D. Tex. June 13, 2024); 24-cv-10749, Dkt. 93 (5th Cir. 2025). Likewise, in *ResMan v Karya*, the court entered a permanent injunction and awarded more than USD62 million in combined unjust enrich-

ment and exemplary damages against the defendants following a jury trial. *ResMan, LLC v Karya Prop. Mgmt., LLC*, 4:19-cv-00402, Dkt. 343 (E.D. Tex. Aug. 12, 2021). And in *Wellogix v Accenture,* the plaintiff secured more than USD44 million in actual and exemplary damages, which the Fifth Circuit also affirmed. *Wellogix, Inc. v Accenture LLP*, 3:08-cv-00119, Dkt. 339 (S.D. Tex. Nov 4, 2011);*Wellogix, Inc. v Accenture LLP*, 715 F.3d 867 (5th Cir. 2013).

Underlying these results is a flexible, fact-specific approach to trade secret damages. The Fifth Circuit has recognised that "[d]amages in misappropriation cases can take several forms: the value of plaintiff's lost profits; the defendant's actual profits from the use of the secret; the value that a reasonably prudent investor would have paid for the trade secret; the development costs the defendant avoided incurring through misappropriation; and a reasonable royalty". *Wellogix*, 715 F.3d at 879 (internal citation and quotation omitted). When it comes to exemplary damages, the Fifth Circuit has adopted a similarly flexible approach, looking to both the reprehensibility of the defendant's conduct and the ratio between punitive and compensatory damages. Id. at 885 (citing *BMW of N. Am., Inc. v Gore*, 517 U.S. 559, 576-582 (1996)). Even when the reprehensibility factor does not favour enhancement, the Fifth Circuit has demonstrated a willingness to uphold exemplary damages that are less than compensatory damages. See, eg, id. at 886 (upholding an USD18.2 million punitive damages award where the compensatory damages award was USD26.2 million and the reprehensibility factor was neutral).

This flexibility in awarding damages, however, is not absolute. Damages awards cannot be speculative and must be appropriately tethered to the defendant's proven misappropriation at trial. A recent Fifth Circuit decision arising from a Texas trade secret case illustrates this principle. In *Trinseo Europe GmbH v Kellogg Brown & Root, L.L.C.*, the Fifth Circuit affirmed the Southern District of Texas's decision to vacate a USD75 million jury verdict. 165 F.4th 399, 408 (5th Cir. 2026). There, the plaintiff presented a damages model assuming all ten asserted trade secrets were misappropriated, without separately valuing the individual trade secrets or offering the jury a way to do so if it found fewer than all ten were misappropriated. The jury, however, only found four of the ten qualified as trade secrets. Recognising that damages must track the proven misappropriation, the district court vacated the reasonable royalty and unjust enrichment damages awarded by the jury. Id. On review, the Fifth Circuit affirmed, reiterating the principle that damages must be tied to the proven misappropriation. Id. at 412-13. While Texas courts' flexible damages approaches remain intact, *Trinseo* serves as a practical reminder to plaintiffs to develop a well-supported damages case tied to the value of their stolen intellectual property, especially when a mixed verdict is possible.

TUTSA claims

Trade secret plaintiffs also file frequently in Texas state courts. Indeed, Texas state courts hear more trade secret cases than any other state in the country. See CasePortal statistics. Trade secrets are protected in Texas under the Texas Uniform Trade Secrets Act (TUTSA). Tex. Civ Prac. & Rem. Code § 134A.001, et seq. TUTSA provides a broad definition of "trade secret" that is comparable in coverage to the definition under the DTSA:

- "Trade secret" means all forms and types of information, including business, scientific, technical, economic, or engineering information, and any formula, design, prototype, pattern, plan, compilation, program device, program, code, device, method, technique, process, procedure, financial data, or list of actual or potential customers or suppliers, whether tangible or intangible and whether or how stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing if:
  - (a) (A) the owner of the trade secret has taken reasonable measures under the circumstances to keep the information secret; and
  - (b) (B) the information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, another person who can obtain economic value from the disclosure or use of the information.

Id. § 134A.002 (6).

Also like the DTSA, TUTSA provides for injunctive relief against both actual and *threatened* misappropriation. Id. § 134A.003. This can be important at the outset of the case where plaintiffs want to prevent any misuse. Texas case law "supports the entry of an injunction upon a showing that a defendant probably, rather than actually, disclosed trade secrets", and that showing can be made by "proving that a defendant is in possession of the information and is in a position to use it". *TFC Partners, Inc. v Stratton Amenities, LLC*, 1:19-cv-58, Dkt. 16, at *6 (W.D. Tex. Jan. 30, 2019) (granting application for temporary restraining order) (internal citation and quotation omitted).

This relief can be particularly important in cases involving departing employees. When a former employee leaves for a competitor, a plaintiff may have reasons to suspect that its trade secrets are at risk even though it may lack concrete evidence that misuse has already happened. Texas courts recognise that this risk can be high. For example, "[w]here there is a high degree of similarity between the employee's former and future employer, it becomes likely, although not certain, that the former's confidential information will be used and disclosed in the course of his work". Id. at *7 (internal citation and quotation omitted). Under such circumstances, courts have found that plaintiffs are likely to prove misappropriation and granted injunctive relief. Id. This standard is significant because plaintiffs can seek injunctive relief early, before the competitive harm is irreversible.

Plaintiffs have also seen success in Texas state courts not only in obtaining injunctive relief against actual or threatened misappropriation, but also in securing substantial monetary awards. See, eg, *Eagle Oil & Gas Co. v Shale Exploration, LLC*, 549 S.W.3d 256, 286 (Tex. App. 2018) (affirming jury lost profits award of USD14.3 million). At the same time, plaintiffs asserting TUTSA claims should be thoughtful when also asserting common law claims. TUTSA "displaces conflicting tort, restitutionary, and other law of [Texas] providing civil remedies for misappropriation of a trade secret". Tex. Civ Prac. & Rem. Code § 134A.007 (a). However, TUTSA does not bar "other civil remedies that are not based upon misappropriation of a trade secret". Id. § 134A.007 (b)(2). The practical consequence is that plaintiffs must clearly differentiate those theories throughout the case, including at trial. *Title Source v HouseCanary* illustrates the risk in failing to do so. There, the court reversed an award of USD235.4 million compensatory damages and USD47.8 million in punitive damages where the jury was not asked to assess TUTSA and fraud claims separately. 612 S.W.3d 517, 534 (Tex. App. 2020). As a result, the Court could not determine whether the fraud award was based on different conduct or on a theory displaced by TUTSA. Id.

The Texas Business Court

One of the most significant recent developments in Texas trade secret law has been the expansion of the Texas Business Court's jurisdiction to encompass trade secret and intellectual property disputes not pre-empted by federal law. Since September 2025, the Texas Business Court now has jurisdiction over actions "arising out of or relating to the ownership, use, licensing, lease, installation, or performance of intellectual property", including trade secrets as defined by TUTSA, as well as actions arising out of TUTSA itself. Tex. Gov Code § 25A.004 (d)(4). This jurisdictional grant is significant because it opens a dedicated forum – staffed by judges experienced in complex commercial litigation – to plaintiffs bringing trade secret claims in state court.

The Business Court's jurisdiction is subject to a dual threshold: the suit must involve an amount in controversy exceeding USD5 million, and it must fall within at least one of the enumerated substantive categories set forth in the statute. Id. § 25A.004 (d). Cases can be filed directly in the Business Court or removed there by a party in a case originally filed in a district court or county court at law. Id. § 25A.006 (d). Once the statutory requirements are met, the court's jurisdiction extends to the entire suit – not merely to the individual claims or causes of action that satisfy the jurisdictional hook – as long as all parties and the judge agree. Id. § 25A.004 (f). This means that related claims, like tortious interference, can be heard with trade secret claims in a single proceeding. If the parties do not agree to the Business Court exercising supplemental jurisdiction over a related claim, that claim may proceed in the court of original jurisdiction concurrently with any related claims proceeding in the Business Court. Id.

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The first jury trial in the Texas Business Court's Third Division recently produced a verdict that serves as a promising precedent for plaintiffs with trade secret claims. In that case, ES3 Minerals alleged that three former senior executives and their competing entity wilfully and maliciously misappropriated ES3's trade secrets. *ES3 Minerals, LLC v Nicholas Kreines*, No 24-BC03B-0005 Jury Charge at 7-9, 19 (Tex. Bus. Ct. 3rd Div March 9, 2026). The jury unanimously agreed, finding that ES3's trade secret system was misappropriated, had a value of USD40 million, and that the defendants should be assessed an additional USD9 million in exemplary damages because the misappropriation was wilful and malicious. Id. at 7-9, 14, 20. The jury returned their verdict on 16 March 2026, less than two years after the case was filed, and the Court is expected to enter a final judgment on the jury's findings and address post-trial motions and potential injunctive relief in the coming weeks.

Conclusion

The rise in trade secret claims in the United States reflects, in great part, the widening recognition that trade secret litigation is often the most powerful weapon in one's IP arsenal. Not merely to right the wrong and regain control of the stolen material, but also – where warranted by the facts – to exert decisive pressure on other market participants to achieve business goals. Because of their unique attributes, Texas courts have become a go-to forum for trade secret litigation, including for strategic trade secret litigation. For all the reasons discussed above, we can expect both trends to accelerate in the coming years.

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