

## Use Can Be Inferred from Reliance on Trade Secrets in Developing One's Own Technology

Article By:

D. Jeremy Harrison

---

Finding sufficient evidence to support a jury's verdict, the U.S. Court of Appeals for the Fifth Circuit affirmed a \$45 million trade secret misappropriation award. ***Wellogix, Inc. v. Accenture, LLP***, Case No. 11-20816 (5th Cir., May 15, 2013) (Higginson, J.).

In an attempt to modernize construction of oil and gas wells, Wellogix developed software that allows companies to plan, procure and pay for complex well construction services online. The software featured dynamic templates able to adjust costs and supply estimates based on "intelligence" built into underlying source code. Wellogix was the only company offering such software from 2000 to 2005, but required the assistance of other companies for core accounting functions and promotion of the product. To fill these needs, Wellogix entered into agreements with SAP America and Accenture and provided its source code to both parties under confidentiality agreements.

In the meantime, Wellogix participated in pilot projects with various oil companies using its complex services software, including a 2004 "eTrans" pilot that provided BP America access to the source code. BP subsequently discontinued the eTrans project and instructed Accenture to select a software provider for a new BP project. Both Wellogix and SAP pitched their integrated software for that project. However, without notifying Wellogix, Accenture and SAP began developing the complex services component of the software for BP. In doing so, Accenture and SAP apparently accessed a confidential online eTrans portal that contained Wellogix's flow diagrams, design specifications and source code. In 2008, Wellogix sued Accenture, SAP and BP in Texas state court for misappropriation of trade secrets. SAP was dismissed for lack of venue, and Wellogix and BP agreed to arbitrate. Wellogix's misappropriation suit against Accenture proceeded to trial, and the jury awarded Wellogix compensatory damages of \$26 million and punitive damages of \$68 million (the punitive award was later reduced to \$19 million). Accenture appealed.

The 5th Circuit affirmed the verdict finding first that Wellogix indeed possessed a trade secret, notwithstanding Accenture's contention that Wellogix disclosed its technology to the public in various patent documents. These documents, however, were not entered into evidence by either party, and Accenture was unable to demonstrate that the patents destroyed those trade secrets.

In determining that Accenture used Wellogix's trade secrets, the Court concluded that "use" can be found if Accenture relied on Wellogix's trade secrets to assist or accelerate research or development

of its own complex services templates. Evidence of such reliance included Accenture's ability to access the trade secrets via the eTrans portal, an Accenture document discussing the "creation of ... complex service templates" that contained the statements "[u]se Wellogix content" and "better deliver similar or better functionality than Wellogix or we may have a problem" and a statement from a BP employee advising Wellogix to sue Accenture for utilizing Wellogix's confidential information. Although circumstantial, the Court concluded that this evidence was enough for a jury to legitimately infer that Accenture used Wellogix's templates to develop its own.

Notably, the Court stated that "[h]ad we sat in the jury box, we may have decided otherwise." Nevertheless, it determined that the jury's findings were supported by the record and therefore affirmed the verdict and upheld the damages awards.

© 2025 McDermott Will & Emery

---

National Law Review, Volume III, Number 180

Source URL: <https://natlawreview.com/article/use-can-be-inferred-reliance-trade-secrets-developing-one-s-own-technology>