

## California Court Broadly Defines What Information Can Qualify as a Trade Secret

Article By:

Kurt A. Kappes

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A **California appeals court** recently explored some of the outer contours of trade secret law, and held that designs and ideas are protectable as trade secrets. In doing so, it affirmed a \$5 million judgment awarded to a small Silicon Valley technology company. See ***Altavion, Inc. v. Konica Minolta Systems Laboratory Inc.***, 14 C.D.O.S. 5160 (May 9, 2014).

The *Altavion* case is notable – not only because of its expansion of what qualifies as a protectable trade secret – but also because it allowed recovery for misappropriation of trade secrets that were more general than what the plaintiff had identified prior to discovery or trial.

The Defendant, Konica Minolta Systems Laboratory, Inc. (KMSL), manufactures multifunction printers. The plaintiff, a small company named Altavion, invented a process to create self-authenticating documents by using barcodes with encrypted data about the contents of the original document that enable detection if the document had been altered from the original.

KMSL approached Altavion about embedding its technology in one of KMSL's printer products. After forty meetings over the course of a year to discuss licensing, under the auspices of a non-disclosure agreement and a memorandum of understanding where KMSL promised to recognize Altavion's proprietary technology and keep it confidential, the parties amicably parted ways without coming to an agreement.

A year later, Altavion began to notice KMSL filed for a number of patents encompassing Altavion's unique barcoding technology. Altavion brought suit for trade secret misappropriation in San Mateo County Superior Court.

After a bench trial, the trial court concluded that Konica Minolta had misappropriated trade secrets Altavion disclosed to KMSL during negotiations. The trial court found that KMSL exploited Altavion's technology, including Altavion's unique document barcoding concept as a whole, as well as particular design concepts. The trial court awarded Altavion \$1 million in damages, \$513,400 in prejudgment interest, and almost \$3.3 million in attorneys' fees.

On appeal, KMSL argued that generalized ideas and inventions are protected under the rubric of patent law and thus could not be trade secrets. The Court of Appeal disagreed, noting that nothing in

the definition of “information” as set forth in California’s version of the Uniform Trade Secret Act, section 3246.1 (d) excludes patentable ideas, and that there is substantial overlap between patents and trade secrets. The Court concluded that “when KMSL secretly filed patent applications disclosing Altavion’s ideas, and subsequently obtained patents covering Altavion’s ideas, it was a classic violation of trade secret law.” The appellate panel reasoned that if a patentable idea is kept secret – instead of being publically filed in a patent application -- the idea itself can constitute information that is protected under trade secret law.

Further, the court found that “even if some or all of the elements of Altavion’s design were in the public domain and thus unprotectable, the *combination* [of these elements] was a protectable trade secret if it was secret and had independent economic value.” Because Altavion maintained its barcode concept as a secret, and the concept had independent economic value, the concept as a whole was protectable -- without separately examining its individual elements one at a time.

The Court of Appeal also outlined some of the factors it considered in determining whether the barcode had independent economic value, noting that Altavion invested substantial time and effort in developing its concept. On the other side of the ledger, it also noted that KMSL devoted resources to develop its own barcode that would achieve “Altavion’esque” results.

KMSL also argued that even if a concept was a protectable trade secret, Altavion failed to take reasonable efforts to protect the secrecy of the concept because it had publically disclosed the concept of verifying documents using a unique barcode technology. The Court of Appeal rejected this argument, noting that any public discussion of the barcode concept was generalized to how the technology could be applied, and did not divulge the unique design details.

The outcome of the case demonstrates that trade secrets are not limited to specific facts, such as a set of products, a specific formula, a line of code, or an algorithm, but rather concepts and designs to solve problems can also be protected. If adequately shielded from public disclosure, the idea for a technology can be safeguarded from replication and can represent a protectable property interest as a trade secret.

On a final note, the Court of Appeal noted what may be a growing trend in this area: in light of the substantial number of patents that are invalidated by courts, “many businesses now elect to protect commercially valuable information through reliance upon the state law of trade secret protection.” If Congress passes a national trade secret law, we can expect that to increase.

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