

UNDISCLOSED INFORMATION

Knowhow is another important form of intellectual property generated by R&D institutions that do not have the benefit of patent or copyright protection. Such know-how is kept undisclosed as trade secrets.

A Trade Secret or undisclosed information is any information that has been intentionally treated as secret and is capable of commercial application with an economic interest. It protects information that confers a competitive advantage to those who possess such information, provided such information is not readily available with or discernible by the competitors.

They include –

- ✓ Technical data
- ✓ Internal processes
- ✓ Methodologies
- ✓ Survey methods
- ✓ A new invention for which a patent application has not yet been filed
- ✓ List of customers
- ✓ Process of manufacture
- ✓ Techniques
- ✓ Formulae
- ✓ Drawings
- ✓ Training material
- ✓ Source code, etc.

It therefore becomes imperative to strengthen the confidentiality around the trade secret by ensuring that contractual obligations are enforced on persons who are allowed to use the trade secret, especially, when it is licensed to a third party.

Since there is no documentary evidence such as a Letters Patent or a Copyright registration or a Trademark Registration to prove that the trade secret was originally created by the proprietor, it is essential to maintain proof of creation of trade secret either by mailing the information to oneself and retaining postmarked and sealed envelope or by depositing a copy of the information with a third party that would maintain a dated copy.

Trade secret remains confidential for indefinite period of time as per the will of the proprietor provided the security and its confidentiality is not breached. There is no specific legislation regulating the protection of trade secrets in India. India follows common law approach of protection and all matters relating to it are generally covered under the Contract Act, 1872. So, if the information constituting trade secret is leaked, legal action can be brought against the parties who have leaked it under the Law of Contracts. However, in such a case the protection of trade secret will be lost and it becomes available in public domain.