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Federal Circuit Reverses Trade Secret Verdict as Time-Barred, Clarifying When a Defend Trade Secrets Act Claim Accrues

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The decision confirms that the discovery of misappropriation of one trade secret starts the clock for related trade secrets misappropriated in the same course of conduct.

On May 28, 2026, the Federal Circuit held that the statute of limitations under the Defend Trade Secrets Act (DTSA) is triggered when a plaintiff knows, or with reasonable diligence should know, enough facts to plead a DTSA claim. *Insulet Corp. v. EOFlow, Co.*, -- F.4th --, 2026 WL 1502238 (Fed. Cir. May 28, 2026). The decision also confirms that the discovery of misappropriation of one trade secret starts the clock for related trade secrets misappropriated in the same course of conduct.

In *Insulet*, a jury found that EOFlow misappropriated four of Insulet's trade secrets and awarded $170,000,015 in compensatory damages and $282,000,005 in exemplary damages. The damages were reduced by the district court to approximately $59 million. A divided panel of the Federal Circuit then reversed the judgment, holding that EOFlow was entitled to judgment as a matter of law because the three-year statute of limitations under the DTSA had expired before Insulet filed suit.

The decision is notable in two key respects. First, it ties the accrual date of a DTSA claim to a plaintiff's actual or constructive knowledge of facts sufficient to *plead* a DTSA claim. The limitations period runs once the plaintiff knows, or should know, facts sufficient to state a claim for misappropriation—not when it has gathered enough evidence to prove it. *Id.* at *6. The court found that circumstantial evidence showing the defendant's access to the asserted trade secrets and similarity between those secrets and the accused product ("access plus similarity") sufficed to start the clock. *Id.* at *5–6. Second, applying the DTSA's statutory instruction that "a continuing misappropriation constitutes a single claim of misappropriation," 18 U.S.C. § 1836(d), the decision holds that related trade secrets disclosed in the same course of conduct share a single accrual date. *Insulet*, 2026 WL 1502238, at *7–9.

Background

Insulet manufactures the Omnipod® insulin patch pump. *Id.* at *1. EOFlow developed a competing device, the EOPatch 2. *Id.* Insulet alleged that EOFlow misappropriated its trade secrets beginning in 2018 after hiring former Insulet employees bound by confidentiality agreements. *Id.* Chief among them was Steve DiIanni, who between March and May 2018 disclosed to EOFlow CAD files, soft-cannula design and manufacturing information, and information concerning the Omnipod's occlusion-detection algorithm. *Id.* at *2.

Insulet filed suit on August 3, 2023, more than five years later, alleging trade secret misappropriation under the DTSA and patent infringement. *Id.* The jury found misappropriation of four trade secrets and awarded $452 million in damages, which the

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district court reduced to approximately $59 million. *Id.* at *2–3.

The Federal Circuit's Decision

The Federal Circuit reversed, holding that Insulet's DTSA claim was time-barred as a matter of law.

Accrual Standard. The court held that the limitations period starts to run once a plaintiff knows, or should know, facts sufficient to state a claim for misappropriation. *Id.* at *6. "[D]etailed knowledge of all of the relevant facts underlying the misappropriation is not required" for the limitations clock to begin. *Id*. Instead, circumstantial evidence of the defendant's access to the trade secrets and similarity between those secrets and the accused product suffices to start the clock. *Id.* at *5. The court declined to decide whether the DTSA also incorporates an inquiry-notice standard—under which the limitations period could be triggered even earlier, when a reasonably diligent plaintiff would have begun an investigation that would have uncovered facts sufficient to plead a claim. *Id.*

The court concluded that Insulet knew or should have known facts sufficient to plead both access and similarity more than three years before filing suit. As to access, by March 2019, Insulet knew that its former employees, including DiIanni, were working for EOFlow on the EOPatch 2—which is enough to satisfy the access prong as a matter of law. *Id.* at *10. As to similarity, Insulet personnel observed and photographed EOPatch 2 samples at a June 2018 industry conference, internally described the product as having "cloned" the Omnipod and as bearing a "stunning resemblance," and could have learned the relevant design features from EOFlow's publicly available IPO prospectus. *Id.* at *10–13.

Single Accrual Date for Related Trade Secrets. The court next interpreted the DTSA's directive that "a continuing misappropriation constitutes a single claim of misappropriation," 18 U.S.C. § 1836(d), and held that "the first discovered (or discoverable) misappropriation of a trade secret commences the limitation period," *Insulet*, 2026 WL 1502238, at *7 (citation omitted).

Applying that rule, the court concluded that Insulet's four asserted trade secrets shared a single accrual date because Mr. DiIanni disclosed each of the secrets to EOFlow between March and May 2018, while serving as EOFlow's consultant, for the same purpose—"designing an improved EOPatch 2." *Id.* at *9. The court reached that conclusion even as to a trade secret that was "used internally to develop a product" and could not have been detected by examining EOFlow's product. *Id.* at *13. The court reasoned that "[o]therwise, absent direct proof of a misappropriator's access to the trade secret, the statute of limitations would never expire for a trade secret that could not be discovered based on publicly available information or other information known to the plaintiff." *Id.* The court therefore held that "[t]he statute of limitations begins to run with respect to all trade secrets disclosed during substantially the same time to that defendant by the same person for the same purpose." *Id.*

Dissent. Judge Prost dissented, reasoning that the majority's access-plus-similarity framework effectively applied an inquiry-notice standard that is inconsistent with the plain text of Section 1836(d). *Insulet*, 2026 WL 1502238, at *16. The dissent further asserted that this framework is unsupported by the case law and invites premature suits, because employees routinely move between companies making similar products. *Id.* at *16–21.

What It Means

Under *Insulet*, a DTSA claim accrues once a plaintiff knows, or reasonably should know, facts sufficient to *plead* misappropriation, which can be established based on circumstantial evidence alone. A trade secret holder thus cannot wait to sue until it has additional facts to confirm misappropriation. And importantly, the court did not decide whether the DTSA also incorporates an inquiry-notice standard, which would start the clock even earlier—i.e., when a diligent plaintiff should have begun investigating rather than

when it should have uncovered facts sufficient to plead misappropriation.

In practice, *Insulet* arguably creates pressure to file suit soon after circumstantial evidence emerges and gives defendants a basis to raise limitations defenses earlier and more aggressively. The decision may prompt prospective plaintiffs that suspect misappropriation to evaluate both their claims and limitations exposure more quickly than before. At minimum, the decision underscores the importance of early competitive monitoring, including of trade shows, product launches, public technical materials, and securities filings, because those materials may supply facts sufficient to trigger the DTSA's limitations period.

In addition to emphasizing the importance of filing a DTSA claim promptly, *Insulet* also underscores the importance of investigating a DTSA claim thoroughly. Under *Insulet*, discovery of misappropriation of one alleged trade secret can start the clock for other related trade secrets disclosed by the same person, to the same defendant, during substantially the same period, and for the same purpose—even if those other secrets are not visible in the accused product and could not be detected by examining it. This may encourage prospective plaintiffs to plead broadly in order to sweep in related secrets before the clock runs on them. It also gives plaintiffs a reason to characterize alleged misappropriation by different breaches of confidence—i.e., disclosed by different persons, at different times, or for different purposes—in order to preserve those claims for later. At bottom, how a plaintiff defines and groups its asserted secrets may carry limitations consequences under *Insulet*.

In short, *Insulet* highlights the importance of investigating a potential DTSA claim early, by permitting the clock to start when a plaintiff has facts sufficient to plead misappropriation of a trade secret (including based on circumstantial evidence alone)—while also highlighting the importance of investigating a potential DTSA claim thoroughly, as the clock may start as to multiple related trade secrets when they are misappropriated in connection with a single breach of confidence.

The following Gibson Dunn lawyers prepared this update: Ilissa Samplin, Angelique Kaounis, Grace Hart, Doran Satanove, and Joshua Leopold.

Gibson Dunn's lawyers are available to assist in addressing any questions you may have regarding these issues. For additional information about how we may assist you, please contact the Gibson Dunn lawyer with whom you usually work, the authors, or any leader or member of the firm's Trade Secrets or Intellectual Property practice groups:

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