

U.S. Senate Judiciary Committee Holds Hearing on Trade Secrets Legislation Moving Legislation Closer to Full Senate Consideration

December 4, 2015

Trade Secrets

On Wednesday, December 2, 2015, the U.S. Senate Judiciary Committee held a hearing on the importance of trade secrets protection, with a particular focus on the Defend Trade Secrets Act (“DTSA,” S. 1890).

The DTSA would create a federal civil remedy for trade secret misappropriation. Currently, the legal tools available to protect trade secrets in the United States include the federal criminal statute—the Economic Espionage Act (“EEA”)—and state laws that are generally modeled on the Uniform Trade Secrets Act. While owners of patents, copyrights, and trademarks can protect their property by enforcing their rights in federal court, trade secret owners have no federal civil remedy when their know-how is stolen. The DTSA would fill this gap and modernize trade secret law by creating a unified, consistent body of law nationwide. In addition to streamlining the discovery and subpoena process in multijurisdictional cases, the Act provides for *ex parte* seizure orders when necessary to prevent unauthorized dissemination of trade secrets. The bill therefore facilitates the immediate, cross-jurisdictional action often necessary to preserve the value of company data. A summary of the bill can be found [here](#).

The hearing included testimony from four witnesses: Karen Cochran (Associate General Counsel and Chief IP Counsel, DuPont), Thomas Beall (Vice President and Chief IP Counsel, Corning Inc.), James Pooley (practicing IP attorney and former Deputy Director General of the World Intellectual Property Organization), and Sharon Sandeen (Law Professor, Hamline University School of Law). Committee Chairman Chuck Grassley (R-IA) and Ranking Member Patrick Leahy (D-VT) opened with remarks on the importance of trade secrets to American business and the country’s global competitiveness. They said that trade secrets are crucial to companies large and small, and that trade secret protection is essential to encouraging continued innovation.

Ms. Cochran, Mr. Beall, and Mr. Pooley all testified in favor of the legislation. They argued that a federal civil remedy is needed in an increasingly interstate and international economy. Professor Sandeen testified in opposition. Eight members of the Senate Judiciary Committee asked questions of the witnesses, and it became clear that the legislation has broad, cross-industry support.

The DTSA also has strong support among Senators and Members of the House of Representatives. The legislation introduced by Senators Hatch (R-UT) and Coons (D-DE) is cosponsored by half of the Committee. The companion legislation in the House was introduced

by Representatives Doug Collins (R-GA) and Jerrold Nadler (D-NY) and has more than 90 sponsors. During the hearing, Senator Hatch stated that the bill is “ready to move,” and that he was not aware of any stakeholder opposition.

Covington represents the Protect Trade Secrets Coalition, a cross-industry group of a dozen leading American companies working with other leading American companies and trade associations in support of a federal civil remedy for trade secret theft. The coalition includes businesses in a wide range of industries including biotech, software, semiconductors, consumer goods, medical devices, automobiles, aerospace, and agriculture. The legislation is also supported by the U.S. Chamber of Commerce and the National Association of Manufacturers.

If you have any questions concerning the material discussed in this client alert, please contact the following members of our Trade Secrets practice group:

Aaron Cooper	+1 202 662 5976	acooper@cov.com
Richard Hertling	+1 202 662 5669	rhertling@cov.com
Daniel Spiegel	+1 202 662 5347	dspiegel@cov.com
Ryan Mowery	+1 202 662 5482	rmowery@cov.com

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