Johnston in Bloomberg Law: Why Delayed Investigations May Kill Your Trade Secret Claims

August 5, 2026

RELATED PRACTICES Trade Secret Litigation, Intellectual Property, Litigation

A recent Federal Circuit decision underscores the risks companies face when they delay investigating potential trade secret misappropriation claims. Haynes Boone Partner **Lee Johnston** authored an article for *Bloomberg Law,* examining how the court's ruling in *Insulet v. EOFlow* highlights the importance of promptly investigating former employee departures, monitoring potential misuse of confidential information and carefully considering when to bring trade secret claims before the statute of limitations expires.

Read an excerpt below.

Companies that adopt a wait-and-see approach when former employees join competitors risk losing their right to sue for trade secret misappropriation, as a landmark ruling in Insulet v. EOFlow now strongly suggests that firms should file claims much earlier than many previously assumed — even before a competing product's commercial viability is established. The decision's application of the Defend Trade Secrets Act's three-year statute of limitations carries significant strategic implications for companies suspecting potential misappropriation. The case also emphasizes the vigilance that companies must pay to departing employees and the need to conduct audits, when appropriate, of their files and electronic data to enforce trade secret protection.

How many times has this scenario played out: One or more key employees in your company's product development team depart to join a company which, at the time, doesn't directly compete with your company but is within your company's industry sector. The departure is amicable, and there's no reason to suspect any foul play is afoot. You've taken what you believe are appropriate steps via NDAs in your employee handbook to ensure that the former employee hasn't taken any confidential, proprietary electronic files or data to his new employer. A couple of years pass, and although you hear reports of the former employee's role in his new company's stepped-up product development efforts abroad, nothing has happened domestically to threaten the market share of your company's product.

Then, one morning, you see a press release from the former employee's company announcing its launch of a new product that directly competes with your company's existing product — a product on which your company has spent the last decade and substantial capital, both on the technical development and legal side by securing patent protection.

You don't (and can't) know exactly how the new product accomplishes the same functionality as your company's existing product, since the software logic in the new product (like your company's product) isn't publicly accessible. Your company's patent protection arguably doesn't cover the key elements of your product's software functionality, but you feel confident in your trade secret protection over these elements, so you decide to wait and see if this product launch gains traction. Then, you see another press release announcing that former employee's company is being acquired by the undisputed market behemoth in your industry sector.

It's now time to litigate with the double-barrel shotgun of trade secret misappropriation and patent infringement claims, right? Maybe. But it may now be too late, at least with respect to your strongest claims, which are based on trade secret misappropriation.

The Federal Circuit's decision in Insulet v. EOFlow highlights the potential pitfalls of a wait-and-see litigation strategy. The court overturned Insulet's $59M trade secret damages award, holding that the statute of limitations under the DTSA had expired by the time Insulet filed its lawsuit because Insulet knew or should have known the critical facts it needed to sufficiently plead a trade secret misappropriation claim more than three years earlier.

Read the full *Bloomberg Law* article **here**.