



Trade Secrets

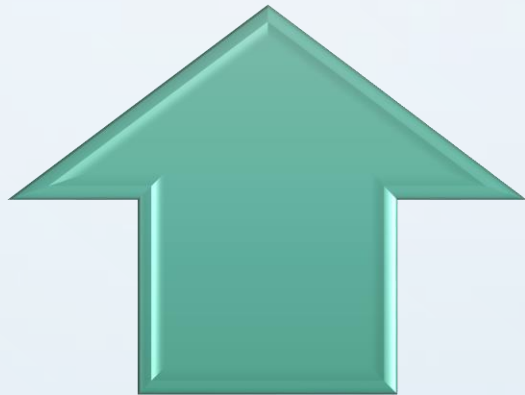
Law 115 | Week 8 | Lecture 16
Rachael Vaughn

Agenda

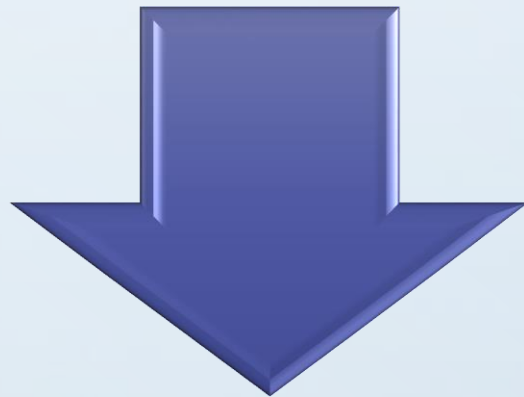
1. Rationale for Trade Secret Protection
2. Sources of Trade Secret Law
3. What is a Trade Secret
4. Reasonable Efforts
5. Misappropriation of Trade Secrets
6. Limitations of Trade Secret Law
7. NDA Discussion

Rationale for Trade Secret Protection

Trade secret law is effectively the opposite of patent law



Patents: disclose idea in exchange for limited monopoly



Trade Secrets: keep idea secret in exchange for remedies for misappropriation

Rationale for Trade Secret Protection

- Information has value, and may require investment of time, money, skills, and technology to produce it.
- But information may be worthless if disclosed to competitors.
- Other IP protections require disclosure of protected stuff – disclosure is exactly the danger that trade secret protects against.
- Some other IP protections have **limited terms**, but trade secret protection, properly protected, may last **forever**.

Sources of Trade Secret Law

- **International Basis:** Article 39 of TRIPs
- **Federal Law:** Economic Espionage Act is probably the only provision of federal law that is relevant
- **State Law:** Common law, judge made law statutory law, administrative law

Restatement of Torts and Uniform Trade Secrets Act

What is a Trade Secret

Information that meets the following requirements:

1. Not generally known and not readily ascertainable by others
2. Subject of reasonable efforts to keep secret
3. Derives independent economic value



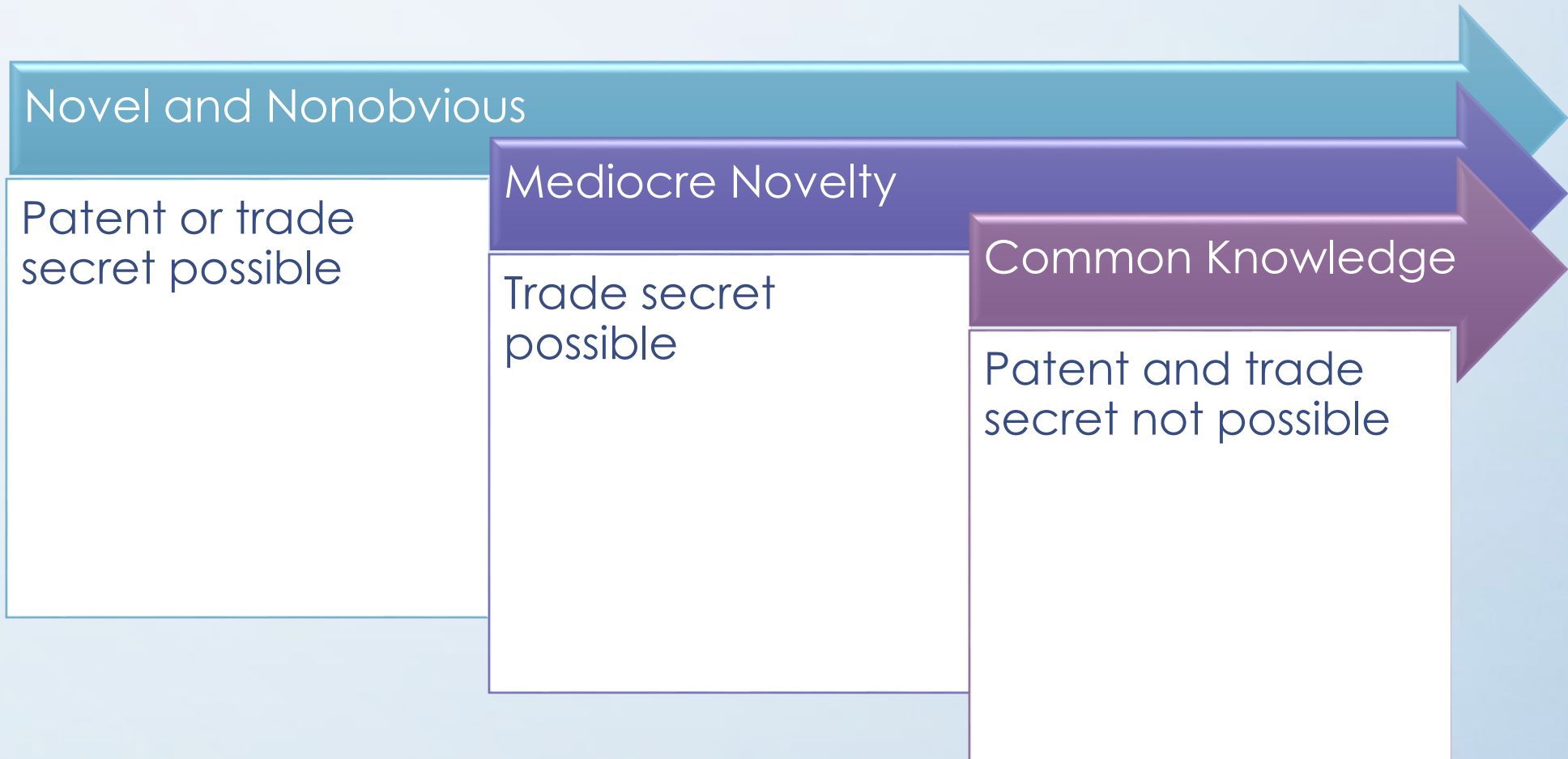
What is a Trade Secret



Examples of trade secrets include...

- Procedures used in creating or delivering your product or service
- Marketing strategies
- Customer lists, information about customers
- Research pertaining to existing, new, or rejected products

What is a Trade Secret



Reasonable Measures

Examples of measures for protecting trade secrets...

- Nondisclosure agreements
- Measures that limit physical or electronic access (password protection, secure servers, employee badges)
- Trade secret policies, guidelines, and training
- Signage
- Clean desk policies



Misappropriation of Trade Secrets

Misappropriation occurs when trade secret is:

1. Discovered through improper means; or
2. Disclosed in a manner that constitutes a breach of confidence

Example: *du Pont v. Rolfe* (5th Circuit 1970)

- Competitors hired contractors to take aerial photos of construction site for new plant
- duPont has some security but they could have done more



Misappropriation of Trade Secrets



Dennis Nedry from Jurassic Park

Limitations of Trade Secret Law

- **Reverse engineering:** Trade secrets may be discovered through reverse engineering or independent invention.
- **Loss of Protection:** Protection is lost if you fail to maintain confidentiality or trade secret becomes known through legitimate means. This usually happens a few ways...
 - Publishing in journal or web
 - Reverse engineering: when information gets embedded in product and someone figures it out (object code and source code)
 - Independent invention
 - Inadvertent disclosure

NDA Discussion

- Walk through the sample NDA