

# Automated trade secret asset management: subject-format-product classification

By R. Mark Halligan, Esq., FisherBroyles LLP

JANUARY 3, 2023

A trade secret asset is a property asset that must be validated in litigation. There is no public registration system for trade secret assets so a company or other enterprise must establish an *internal* trade secret asset management system.

The United States has the most advanced legal system in the world for protecting trade secrets.

Trade secrets are defined broadly to include *any information* that can be used in the operation of a business or other enterprise and that is sufficiently valuable and secret to afford an actual or potential economic advantage over others.

---

*Using the power of the computer and artificial intelligence—the next revolution in intellectual property law will be the implementation of automated trade secret asset management systems designed to identify, classify, protect and value trade secret assets.*

---

This means that the modern definition of a trade secret can encompass not just one trade secret but thousands, tens of thousands, even millions of pieces of information for statutory trade secret protection.

How can this be done?

The naysayers say it cannot be done. This group includes intellectual property lawyers and in-house counsel. The naysayers proclaim that any attempt to rein in all the potential and actual pieces of information that can qualify as a trade secret is a futile exercise. It is the crazy equivalent of attempting to “boil the ocean.” So, for most companies and other businesses, trade secret asset management is a non-starter.

Using computer software and artificial intelligence to manage trade secret assets remains an anathema. There are two reasons for the rejection of computer software designed to identify, classify, protect

and value trade secret assets. First, it is posited that putting all the trade secrets in one location would create a huge security risk. Second, if the company fails to enter a “trade secret” into the trade secret asset management (TSAM) system, the company will forfeit its rights in the trade secret asset.

Both perceptions are inaccurate.

First, the computer captures metadata. The term “metadata” is data that describes and provides information about other data. An old-school example is the card catalog that contains information about the contents of that library including the title of the book, the author of the book, the year of publication, the number of pages, the reference number in the Library of Congress and the library call number (row and section) in the library. This is metadata: data [the card catalog] that provides information about other data [the book].

An automated trade secret asset management system operates the same way: The system captures metadata relating to the trade secret; not the trade secret itself. The pointer to the “book” or “trade secret” exists independent of the actual contents of the “book” or “trade secret.” An automated TSAM system reduces the risk of loss.

Second, the determination whether a piece of information is a trade secret depends upon proof of the statutory requirements for a trade secret. An automated trade secret management system is a tool to assist companies with trade secret asset management. There is no requirement that every trade secret be entered into the system. A cause of action for trade secret misappropriation exists whether there is metadata regarding the trade secret.

An automated TSAM system is lightning fast, and retrieval of critical information occurs in seconds — not days or weeks — but there is no legal requirement in the Uniform Trade Secrets Act (UTSA) or the Defend Trade Secrets Act (DTSA) that metadata relating to a piece of information be captured in an automated TSAM system. If the piece of information qualifies as a trade secret, it is a trade secret, regardless of whether the metadata exists or not.

The constant refrain that an automated TSAM system may “leave something out” and result in the forfeiture of trade secret rights is a cop-out. This is not a valid excuse for leaving trade secret assets in a state of chaos in most companies and organizations. Boiler-plate NDA agreements are not a panacea. The law requires that reasonable measures be taken to protect trade secret assets.

Implementing an automated TSAM system is a tool to assist the company in managing trade secret assets. If something is left out of the system, confidential information will still qualify as a trade secret if it meets the statutory requirements for protection as a trade secret.

Recent studies show that over 80 percent of senior executives recognized that trade secrets are critical and essential to their businesses. Fifty percent of the senior executives say that trade secrets are more important than their patents and trademarks. Even more (69 percent) say they foresee trade secret protection becoming more critical than safeguarding other types of intellectual property because of the rapid and furious pace of innovation. See, "The Board Ultimatum: Protect and Preserve," Baker McKenzie. <https://bit.ly/3vqpqNU>. (last visited Dec. 28, 2022).

*The Subject, Format, Product classification enables granular categorization of a larger universe of trade secret assets. At first blush, it seems too rudimentary for complex pieces of information within an organization. Just the opposite is true.*

So why is there a disconnect between the recognition of the importance of trade secret assets and the failure of companies to manage trade secret assets? Because, until recently, no one had a solution to this puzzle. This is no longer the case. Using the power of the computer and artificial intelligence — the next revolution in intellectual property law will be the implementation of automated TSAM systems designed to identify, classify, protect and value trade secret assets.

### Subject-format-product (SFP) classification

Taxonomy is the process of naming and classifying things. The starting point and ending point in trade secret law posits the following question: What is "IT" that is alleged to be the trade secret?

The answer lies in the discovery that every trade secret lines up in a three-dimensional plane: Subject, Format and Product (SFP). Each trade secret lies within one SFP "cubbyhole."

The SFP classification is a taxonomy that identifies and classifies trade secrets: [Subject] [Format] [Product]. The *Subject* corresponds to the department or other organization that developed or uses the trade secret. Examples include research and development, manufacturing, quality control, and marketing. The *Format* identifies the receptacle for the trade secret: a formula, drawing,

process, pattern, device, method, techniques, designs, plans, programs, codes, and the like. The *Product* identifies an existing product, a prototype, or a failed product.

Here are several examples:

Engineering Specifications for the Model 5750 tractor. [Engineering] is the [Subject]. [Specifications] is the [Format]. Model 5750 Tractor is the [Product].

Sales Plan for Lawn Furniture. [Sales] is the [Subject]. [Plan] is the [Format]. Lawn Furniture is the [Product].

Manufacturing Drawings for a Sootblower. [Manufacturing] is the [Subject]. [Drawings] is the [Format]. Sootblower is the [Product].

Research Test Results for Non-Flammable Plastics. [Research] is the [Subject]. [Test Results] is the [Format]. Non-Flammable Plastics is the [Product].

The SFP classification enables granular categorization of a larger universe of trade secret assets. At first blush, it seems too rudimentary for complex pieces of information. The SFP classification system pinpoints the existence of a trade secret within a three-dimensional plane. Each trade secret lies within one unique SFP cubbyhole.

Let's take an example of a company with 10 departments, 30 formats for confidential information, and 20 products. This company has 6,000 SFP cubbyholes available into which tens of thousands or even millions of trade secrets can now be efficiently sorted with redundancy elimination.

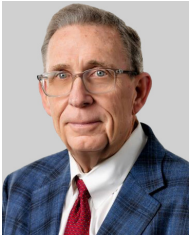
SFP classification is well suited for computerized trade secret asset management systems because once all the possible Subjects, Formats and Products have been identified, assigning any piece of information to an SFP cubbyhole is simply a matter of selecting the appropriate **S, F, P** from three drop-down boxes custom-built into the SFP database. Another benefit is the ability to sort the SFP cubbyholes by Subject, by Format and by Product.

The SFP classification system is simple for employees to use. Employees are already knowledgeable about the different departments within the company, the different types of proprietary and confidential information, and the different products that the company manufactures and sells.

Trade secret owners must use the power of the computer to identify, classify, protect and value trade secrets. Manual systems are ineffective and outdated. The starting point and ending point in trade secrets law is the "IT" analysis: What is it that is alleged to be a trade secret. The taxonomy that works well for trade secrets is the SFP system: subject, format and product. Utilizing the SFP classification system pinpoints the existence of a trade secret in a unique location within a three-dimensional plane and is well suited for computerized trade secret asset management.

*R. Mark Halligan is a regular contributing columnist on trade secrets law for Reuters Legal News and Westlaw Today.*

### About the author



**R. Mark Halligan** is a partner at **FisherBroyles LLP** and is based in Chicago. He focuses his practice on intellectual property litigation and is recognized as a leading practitioner in the development of automated trade secret asset management blockchain systems. He teaches Advanced Trade Secrets Law in the LLM program at University of Illinois Chicago School of Law and is the lead author of the “Defend Trade Secrets Act Handbook,” 3rd Edition, published by Wolters Kluwer. He can be reached at [rmark.halligan@fisherbroyles.com](mailto:rmark.halligan@fisherbroyles.com).

This article was first published on Reuters Legal News and Westlaw Today on January 3, 2023.