

## How to Develop a Successful Trade Secret Litigation Strategy: 7 Best Practices for In-House Counsel

By [Varant Yegparian](#) and [Lori Arakaki](#)

In today's competitive business environment, trade secrets have emerged as some of an organization's most prized assets. They are the hidden formulas, proprietary processes, and specialized know-how that give companies their unique edge over rivals. For in-house counsel, managing these intangible assets is a responsibility that goes far beyond simply ensuring confidentiality. It requires a holistic approach—one that integrates meticulous planning, robust protection, and a deep understanding of the evolving legal landscape. Below, we summarize seven tactics in-house counsel can use to successfully implement such an approach.

### 1. Define your organization's trade secrets

The process begins with the careful identification and classification of trade secrets. Rather than relying on vague definitions or general assumptions about what constitutes a trade secret, legal teams must work closely with various departments to systematically document and categorize each piece of sensitive information. Consider, for instance, an organization that has developed innovative engineering specifications for a new product. In-house counsel, alongside technical experts, must pinpoint exactly which details provide the company with a competitive advantage, thereby establishing a clear foundation for legal protection. This rigorous process not only reinforces the organization's claim over its intellectual property, but also sets the stage for effective legal defense should a dispute arise.

### 2. Create a culture of compliance

Once trade secrets have been clearly delineated, the focus shifts to protection via a well-orchestrated set of policies and procedures. This involves more than just signing forms and enforcing rules; it demands the creation of a culture that prioritizes the safeguarding of confidential information. In-house counsel play a key role in drafting comprehensive non-disclosure agreements and implementing access controls that restrict sensitive information

to those with a genuine need to know. In addition, counsel should regularly host training sessions to educate employees on the specific protocols designed to prevent inadvertent leaks as well as the importance of these measures. They help the organization shield itself from potential breaches and build a compelling narrative of due diligence—a critical factor in the courtroom if litigation ever occurs.

### **3. Respond proactively to threats**

Even when protective measures are installed, the risk of misappropriation remains. Vigilant monitoring of information flows is essential, and in-house counsel must be prepared to react swiftly in the face of any suspected breach. When a threat is detected, the response must be both rapid and coordinated. Whether it involves launching an internal investigation, consulting with cybersecurity experts, or seeking immediate legal remedies such as court injunctions, the goal is to contain the damage and prevent further loss. In addition to mitigating the potential impact of a breach, this proactive approach reinforces the organization's commitment to protecting its valuable assets.

### **4. Anticipate the complexities of litigation**

The litigation process itself introduces a new set of challenges. Trade secret disputes are fraught with obstacles that extend far beyond the bounds of standard commercial litigation, such as meeting the legal need for full disclosure while also maintaining the secrecy of the intellectual property at issue intact. In these scenarios, employing third-party experts who can access the contested information under strict judicial supervision is prudent. Such measures help ensure that the legal process proceeds without compromising the organization's intellectual property or exposing it to unnecessary risks.

### **5. Safeguard your organization's reputation**

The potential misuse of trade secret claims adds another layer of complexity. In some instances, companies have been accused of leveraging trade secret laws as a weapon against employees, especially those who expose wrongdoing or raise concerns about internal practices. In-house counsel must defend the organization's proprietary interests while respecting the rights of employees protected under whistleblower laws. Their legal strategy must be fair and transparent, ensuring that the enforcement of trade secret protections is seen as a legitimate safeguard rather than an act of corporate retaliation.

### **6. Keep up with the legal environment**

In this ever-evolving legal environment, staying ahead of the curve is not merely advisable—it is essential. Legislative changes, emerging case law, and shifts in judicial attitudes can significantly impact how trade secret disputes are handled. In-house counsel should invest

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time and effort into taking continuing education programs, participating in industry forums, and engaging with legal publications. This ongoing learning process equips them with the insights needed to adapt their strategies, anticipate challenges, and, ultimately, provide their organization with sound legal guidance.

**7. Plan for the big picture**

For in-house counsel, trade secret litigation work is a delicate balancing act. Integrating proactive asset protection with reactive legal defense requires both strategic foresight and operational precision.

But by comprehensively identifying trade secrets, enforcing rigorous protection measures, and staying vigilant against potential breaches, in-house counsel fortify their organization's most valuable resources. And by navigating the multifaceted challenges of litigation with a keen awareness of legal and ethical considerations, they lay the groundwork for long-term success in an increasingly competitive marketplace.



**Varant Yegparian**  
Partner  
vyegparian@hicksjohnson.com



**Lori Arakaki**  
Partner  
larakaki@hicksjohnson.com

Varant Yegparian and Lori Arakaki are partners at the Houston- and Chicago-based trial firm Hicks Johnson PLLC.

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**Hicks Johnson PLLC** is a premier boutique law firm with offices in Houston and Chicago, specializing in complex commercial litigation, arbitration, and appeals. Known for delivering results, our trial and appellate lawyers are well-versed in handling high-stakes cases.



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