

Where 4th And 9th Circ. Diverge On Trade Secret Timing

By **Bijal Vakil, James Pak and Ca-Zao Bui** (October 10, 2025, 6:21 PM EDT)

The timing of trade secret identification has become a pivotal and hotly contested issue in federal litigation. Recent appellate decisions have revealed a deepening circuit split over when plaintiffs must specifically define their alleged trade secrets under the Defend Trade Secrets Act.

This divide shapes not only the viability of claims but also the entire trajectory of trade secret disputes, from initial pleadings through discovery and trial.

For both plaintiffs and defendants, understanding the timing requirements in their chosen forum is now essential to an effective litigation strategy.

The U.S. Court of Appeals for the Fourth Circuit has adopted a strict approach, requiring plaintiffs at the pleading stage to allege their trade secrets with sufficient particularity. This is necessary to allow courts to assess the plausibility of the claim, including whether the information is secret and has independent economic value. Failure to provide this level of detail puts the claim at risk of dismissal under Rule 12(b)(6) of the Federal Rules of Civil Procedure.

In contrast, the U.S. Court of Appeals for the Ninth Circuit does not impose such a rigid requirement of early definition at the beginning of the case. Instead, courts in the Ninth Circuit allow more general allegations at the outset, with the expectation that the precise contours of the trade secrets will be clarified as the case progresses, particularly during discovery.

This approach offers plaintiffs greater flexibility in defining their trade secrets as more facts become available.

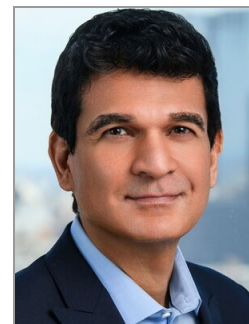
The lack of uniformity in the timing of trade secret identification has turned the early stages of trade secret litigation into a key battleground, with significant consequences for both plaintiffs and defendants. These varying requirements influence the viability of specific claims, the scope of discovery and ultimately, overall litigation costs.

The resulting uncertainty has elevated the importance of forum selection and careful drafting of trade secret definition in these disputes. If the circuit split widens, the need for harmonization, potentially through U.S. Supreme Court intervention, will become increasingly necessary, offering a potential path to clarity and consistency.

This article examines the legal framework for trade secret protection, analyzes the contrasting approaches of the Fourth and Ninth Circuits on the timing of trade secret definition, and explores the practical consequences of the emerging circuit split for litigants and courts.

The Legal Framework for Trade Secret Protection

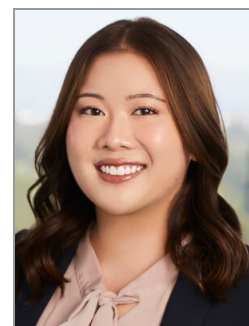
The DTSA, enacted in 2016, establishes a federal cause of action for the misappropriation of trade



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secrets. Trade secrets can include a wide range of information, such as customer lists, manufacturing processes or proprietary software.

The DTSA supplements state laws that are largely modeled on the Uniform Trade Secrets Act. Both the DTSA and state analogs require plaintiffs to demonstrate that the information at issue qualifies as a trade secret — specifically, that it derives independent economic value from not being generally known and is subject to reasonable efforts to maintain its secrecy.

Congress passed the DTSA to address the lack of a uniform federal remedy for trade secret theft and to better protect businesses in an increasingly interconnected and competitive global economy.

The DTSA does not expressly require a heightened standard when plaintiffs assert trade secret claims. However, some courts have developed a requirement that a plaintiff identify the alleged trade secret with sufficient particularity, rooted in the need for fair notice and effective case management.

Courts have applied the sufficient-particularity standard to ensure that defendants understand the nature of the claims against them and can assess the plausibility of the alleged trade secret.

Though exact requirements may vary by jurisdiction, sufficient particularity is generally a less stringent standard than reasonable particularity, the requirement codified in California's Uniform Trade Secrets Act. The CUTSA mandates that plaintiffs identify their trade secrets with reasonable particularity before commencing discovery.

As noted below, however, courts evaluating DTSA claims are in disagreement over whether plaintiffs must describe their trade secrets with sufficient particularity at the pleading stage, or whether greater detail may be disclosed as the case progresses.

Divergent Timing Requirements

Federal pleading standards, as articulated in the Supreme Court's 2009 decision in *Ashcroft v. Iqbal* and its 2007 decision in *Bell Atlantic Corp. v. Twombly*, require that a complaint set forth sufficient factual matter to state a claim that is plausible on its face.

In the context of trade secret litigation, the key question is how much detail is necessary at the outset to satisfy this plausibility standard — specifically, whether a plaintiff must identify the alleged trade secrets with particularity in the complaint, or whether more general allegations suffice until discovery.

Importantly, *Iqbal* and *Twombly* do not themselves mandate a specific timing or level of detail for trade secret identification. Instead, they establish a flexible plausibility threshold: A complaint must provide enough factual content to allow the court to infer a plausible, rather than merely possible, claim.

How much particularity is required to meet this standard in trade secret cases, however, is the subject of significant disagreement among the circuits.

This contention is rooted in competing policy considerations. On one hand, particularized descriptions of trade secrets are often necessary for defendants to understand the accusations against them and for courts to assess the sufficiency of the claims.

On the other hand, requiring too much detail too early risks forcing plaintiffs to disclose sensitive information before adequate protections are in place.

The result is a circuit split over whether the plausibility standard compels early, detailed disclosure of trade secrets, or whether such specificity can be developed through discovery.

The Fourth Circuit: Early, Exacting Disclosure at the Pleading Stage

The Fourth Circuit has adopted a strict approach to the timing of trade secret definition under the DTSA, applying the plausibility standard in a way that effectively imposes a heightened particularity requirement at the outset of litigation.

In the July 9 decision in *Sysco Machinery Corp. v. DCS USA Corp.*, the Fourth Circuit **addressed** whether broad, categorical definitions of trade secrets — such as "Sysco's compilation of machinery, software, and confidential information," or references to technical, financial, operational and customer information — satisfy the DTSA's requirements.

The Fourth Circuit held that such expansive and generalized descriptions are insufficient. The Fourth Circuit emphasized that, under the *Iqbal* and *Twombly* plausibility standard, trade secret claims must be supported by factual allegations that make it plausible, not merely possible, that a valid trade secret exists and was misappropriated.

The Fourth Circuit explained that the broad, categorical definitions of trade secrets at issue are "so 'sweeping and conclusory' that it is impossible for [the defendant] to know what it has been accused of misappropriating or for the court to assess whether Sysco has met the reasonable secrecy and independent economic value requirements."

Crucially, the Fourth Circuit's approach requires that plaintiffs distinctly and narrowly define their alleged trade secrets in the complaint, identifying and describing the precise confidential information at issue with particularity from the outset. Generalized references or broad categories are inadequate at

the pleading stage, identifying the trade secret with sufficient particularity means describing the trade secret at a level of detail that enables "a defendant to delineate that which he is accused of misappropriating," ... and that enables a court to determine whether the plaintiff has plausibly satisfied the reasonable secrecy and independent economic value requirements. ... Neither the defendant nor the court should be forced into a fishing expedition to find evidence of a valid trade secret in the pleadings.

This approach aims to ensure that only legitimate trade secret claims survive the initial stages of litigation and that defendants receive fair notice of the claims against them.

Note that while not directly discussed in *Sysco*, any concerns plaintiffs may have about coming close to disclosing detailed sensitive trade secret information in a publicly filed complaint can be addressed by seeking to seal all or portions of the complaint.

The Ninth Circuit: Iterative Identification Through Discovery

In contrast, in *Quintara Biosciences v. Ruifeng Biztech*, a defendant in the Ninth Circuit moved to strike the plaintiff's trade secrets at the outset of the discovery phase, arguing that the plaintiff's trade secret disclosures did not satisfy the district court's order to identify trade secrets with reasonable particularity.

The U.S. District Court for the Northern District of California granted the motion and agreed that the plaintiff had not fully complied with that order. The appellate court was then prompted to examine the propriety of striking trade secrets at such an early stage.

On Aug. 12, the Ninth Circuit **stated** that trade secrets need not be defined so specifically at such an early point in a case. The Ninth Circuit clarified that, unlike California law under the CUTSA, which statutorily requires reasonable particularity at the outset, the DTSA does not impose such a heightened requirement before the commencement of discovery. Instead, the Ninth Circuit treats the sufficient-particularity inquiry as a fact question to be resolved at summary judgment or trial.

The Ninth Circuit emphasized that trade secret identification is an iterative process. Plaintiffs may begin with more general allegations, refining and specifying their trade secrets as discovery unfolds. The court expressly rejected the notion that the DTSA requires early, detailed disclosures, holding that such detailed disclosures can be further developed through the course of litigation.

The court recognized the need for case management tools to address the sensitive nature of trade secret information, but held that motions to dismiss or strike DTSA claims for lack of particularity should be rare. The required level of specificity is expected to materialize as the case develops, ensuring that trade secrets are ultimately distinguished from general industry knowledge.

However, the Ninth Circuit recognizes that if a plaintiff still fails to identify its trade secrets with sufficient particularity even after discovery, the court may take appropriate action, such as granting summary judgment.

The Emerging Circuit Split and Practical Implications

The two circuits have now clearly diverged in their approach to the timing of trade secret disclosures. The Fourth Circuit exemplifies a strict, specificity-driven model, requiring the particularized identification of trade secrets at the pleading stage, including facts that support both the reasonable secrecy and independent economic value prongs.

The Ninth Circuit, by contrast, permits more general allegations at the outset, with the expectation that sufficient particularity will be developed through discovery.

For plaintiffs, the circuit split demands a strategic approach to drafting complaints. In stricter jurisdictions such as the Fourth Circuit, plaintiffs must walk a fine line: They are required to describe their trade secrets with sufficient detail to survive early dismissal, yet must avoid being so narrow as to exclude misappropriated information or so broad as to risk premature disclosure of sensitive material.

Plaintiffs may seek to balance these competing risks by combining high-level descriptions with illustrative categories, but the specificity-driven approach leaves little room for imprecision.

Conversely, in less stringent jurisdictions, plaintiffs benefit from the ability to plead in more general terms, but this can lead to protracted discovery and increased uncertainty for all parties.

Defendants face other challenges depending on the forum. In stricter circuits, they can challenge at the outset complaints that vaguely describe trade secrets, through motions to dismiss under Rule 12(b)(6), thereby potentially narrowing the scope of litigation and limiting discovery.

In more permissive jurisdictions, however, defendants must contend with broader, less defined claims, which can complicate defense strategy, expand the scope of discovery and increase litigation costs. In these forums, defendants must carefully evaluate every opportunity to compel a plaintiff to clarify and further explain the alleged trade secrets so that the case can be effectively managed.

Because the timing of trade secret identification now varies dramatically by circuit, forum selection and complaint drafting have become critical strategic decisions. Plaintiffs must align their disclosures with the forum's requirements — risking early dismissal for lack of specificity in some jurisdictions, or facing protracted discovery in others.

Defendants should be prepared to challenge vague claims early or seek more detail through discovery, depending on the forum's approach. This variability encourages strategic forum selection and requires courts to balance confidentiality with fair notice. Until there is clear Supreme Court guidance, both sides must adapt their strategies to the forum's expectations, making careful drafting and proactive litigation management essential.

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