



*The Sedona Conference
Commentary on the Proper Identification of Asserted Trade Secrets in
Misappropriation Cases
(October 2020 edition)*

The Sedona Conference Commentary on the Proper Identification of Asserted Trade Secrets in Misappropriation Cases provides Principles and Guideline recommendations for Trade Secrets litigation.

A fundamental question in every case involving a claim of trade secret misappropriation is: what are the alleged trade secrets that are the subject of the claim? This question sets apart trade secret law from other major categories of intellectual property (patents and copyrights) in which the alleged intellectual property is defined and registered with a regulatory body before litigation begins.

The burden is on the party asserting trade secret misappropriation to answer this question by “identifying” the alleged trade secrets. While this requirement for “identification” is ubiquitous, the rules for doing so are not clear or consistent.

The Sedona Conference’s Working Group 12 (WG12) resolved that its first commentary on trade secret law would address the identification question. This *Commentary* represents WG12’s views about certain aspects of identification, including when an identification must be provided, what an identification must contain, and how an identification can be amended.

This *Commentary* presents four practical Principles for the Proper Identification of Asserted Trade Secrets in Misappropriation Cases:

- Principle 1** The identification of an asserted trade secret during a lawsuit is not an adjudication of the merits and is not a substitute for discovery
- Principle 2** The party claiming misappropriation of a trade secret should identify in writing the asserted trade secret at an early stage of the case.
- Principle 3** The party claiming the existence of a trade secret must identify the asserted trade secret at a level of particularity that is reasonable under the circumstances.
- Principle 4** The identification of an asserted trade secret may be amended as the case proceeds.

The full text of *The Sedona Conference Commentary on the Proper Identification of Asserted Trade Secrets in Misappropriation Cases*, OCTOBER 2020 EDITION, is available free for individual download from

The Sedona Conference website at





https://thesedonaconference.org/publication/Commentary_on_Proper_Identification_of_Trade_Secrets_in_Misappropriation_Cases

© 2020 The Sedona Conference. Reprinted courtesy of The Sedona Conference.