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COMMENTS

THE ROLE OF COUNSEL IN LITIGATION INVOLVING TECHNOLOGICALLY COMPLEX TRADE SECRETS

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Litigation, although never a happy recourse, is to be particularly avoided when trade secrets are involved. Because the risks involved transcend those of normal litigation, it is especially important that, before the litigation has acquired a momentum of its own, counsel educate the respective parties about precisely what is at stake. The pitfalls of trade secret litigation are many, varied and unique, in that both parties—the prospective plaintiff and defendant—are exposed and are exposing themselves to possible irreparable business damage with the institution of the lawsuit. Perhaps no other single facet of the law calls for as much pre-litigation counselling, objective evaluation, and thorough fact-finding. Just as a good lawyer advises nine out of ten would-be libel plaintiffs against opening a Pandora's box by suing, so here utmost caution is the theme.

Plaintiff's counsel will be chiefly concerned with the pitfalls involved in the decision to sue; defendant's counsel may, however, perform his most valuable services when the time comes for settlement suggestions. The purpose of this comment is to attempt to assist counsel's educational efforts by providing an abbreviated guide to that particular region of purgatory inhabited by businessmen who rashly insist on bringing or fighting a trade secret case.¹

We may begin with the prospective plaintiff who believes that another is improperly using his trade secrets. Unless his counsel is alert, such a prospective plaintiff may in fact frustrate his goal of secrecy by bringing suit. In many cases there may be substantial doubt regarding

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¹ This comment will not attempt to explain the substantive principles of trade secret law. For such a review, see Callman, *Unfair Competition* (1950); Ellis, *Trade Secret* (1953); Turner, *The Law of Trade Secrets* (1962); Klein, *The Technical Trade Secret Quadrangle: A Survey*, 55 *Nw. U.L. Rev.* 437 (1960); *Developments in the Law, Competitive Torts*, 77 *Harv. L. Rev.* 888, 947-59 (1964). As its title suggests, this comment will not deal with litigation involving misappropriation of general business ideas, advertising schemes, etc., where continued secrecy is not an important consideration and where any relief would be primarily in the form of damages.

which processes the potential defendant uses and whether he obtained them from the plaintiff. In such cases the greatest disadvantage of bringing suit is that plaintiff will have to disclose his trade secrets to defendant in the process of attempting to prove that defendant is using them.² Although protective orders would be available to plaintiff to protect his disclosures in the course of litigation, they may not offer the degree of assurance plaintiff would like.

A court, in entering a protective order, is faced with a seemingly unavoidable dilemma. If the order limits disclosure to the parties' counsel, it may well be impossible for the lawyers properly to prepare their cases, since they lack the technical background in the industry necessary to compare the processes involved.³ On the other hand, if a party's trade secrets are revealed to his opponent's technical staff, it may be virtually impossible to prevent their later use.

Disclosures made in the course of litigation will have independent significance only in the event that plaintiff loses on his basic claim.⁴ In that event, plaintiff begins with one strike against him if he later tries to hold defendant liable for violation of the protective order. If defendant imposes a normal degree of industrial security, he may be able to use plaintiff's secrets without plaintiff ever becoming aware of it. Even assuming that plaintiff finds out about defendant's subsequent use, he will have difficulty proving that such use is due only to the disclosure under the protective order; a court, moreover, is less likely to foreclose defendant from use of a process because he may have learned it in the course of being unsuccessfully sued than if defendant's use is traceable to the wrongdoing of an ex-employee of plaintiff. In addition, defendant may, in the course of defending himself, discover a number of references in the literature or patents from which plaintiff's process can be put together, and it may be difficult to prove that the later use is necessarily due to plaintiff's disclosure rather than to defendant's search of sources in the public domain. Alternatively, defendant may have already been conducting preliminary research along a number of lines, including the one that plaintiff had perfected, and the knowledge of plaintiff's success may induce defend-

² Cf. *Coca-Cola Co. v. Joseph C. Wirthman Drug Co.*, 48 F.2d 743 (8th Cir. 1931). Normally, under the Federal Rules of Civil Procedure, plaintiff will have to do so before he can utilize discovery procedures against defendant.

³ It would always be possible to limit disclosure only to independent experts retained for the litigation, *Delaware Chems., Inc. v. Reichhold Chems., Inc.*, 36 Del. Ch. 126, 127 A.2d 465 (1956), but that might impose too great an expense upon the parties even assuming that experts unconnected with any competitor can be found.

⁴ If plaintiff proves that defendant had already misappropriated the secrets which plaintiff disclosed in the course of showing such misappropriation, the injunction finally entered will prohibit further use. It is only to the extent that the secrets disclosed in litigation exceed those which defendant is found to have misappropriated that disclosure in litigation is independently harmful.

ant to continue the research he might otherwise have abandoned. In short, the simple fact is that if plaintiff loses his lawsuit, he is going to be in a poor position to complain later that defendant is using information disclosed in the litigation. This is especially true, of course, if plaintiff loses because of a public domain defense.

In some cases, protection against subsequent claims of prior discovery can be afforded by requiring each party, before disclosure of the other's process, to file a detailed statement of the process he is presently using.⁵ This device might be extended to include processes each is trying to develop. If anything more than a few fairly narrow and clearly-defined processes are involved, however, such a device would become unworkable; it would not, moreover, completely insure against defendant's later concentration on one line of research, already begun and disclosed in the statement, because of the knowledge gained in the litigation that the process could be made workable.

Given such risks, it is more than normally important that counsel for the potential plaintiff ascertain before suit is filed whether plaintiff has a good case.⁶ To begin with, counsel may save his client considerable embarrassment and expense by first making sure that protectible trade secrets are involved at all. It is a natural tendency to exaggerate the importance of one's particular company and its business, and, especially after a key employee has left to take a better-paying job,⁷ the client may be suffering from delusions of grandeur concerning the uniqueness or value of his methods.⁸ In addition to providing an unemotional evaluation of the asserted "secrets" which the vagrant employee knows, counsel may also wish to point out that a court would be quite reluctant to prohibit the employee from working for his new employer and from using the general skills he learned in his prior employment.⁹ A realistic evaluation of the risks involved as

⁵ See *Delaware Chems., Inc. v. Reichhold Chems., Inc.*, 111 U.S. Pat. Q. 193 (Del. Ch. 1956), evidently modified upon clarification of plaintiff's request, *Delaware Chems., Inc. v. Reichhold Chems., Inc.*, supra note 3.

⁶ If a thorough factual investigation discloses that defendant has demonstrably misappropriated plaintiff's trade secrets, it may not be necessary actually to file suit to achieve substantially the benefits plaintiff might reasonably hope to achieve through litigation, at least insofar as injunctive relief is concerned. It may be sufficient to approach the prospective defendant with a well drafted complaint and the facts to back it up.

⁷ The danger to the new employer arises primarily when he hires two, three, or more key employees from a competitor, for then he is subject to a "raiding" charge.

⁸ As the court observed in *Arthur Murray Dance Studios v. Witter*, 62 Ohio L. Abs. 17, 54, 105 N.E.2d 685, 709 (1952): "All of us have 'our method' of doing a million things—our method of combing our hair, shining our shoes, mowing our lawn. Labelling it 'my method' does not make it secret."

⁹ Absent an enforceable contract not to work for a competitor, a court will generally refuse to enjoin an ex-employee from working for his new employer simply because he knows the trade secrets of his former employer or because he has already wrongfully disclosed those trade secrets. *Bickley v. Frutchey Bean Co.*, 173 F. Supp.

balanced against the benefits likely to be gained may often convince the client to refrain from suing. Obviously, the lawyer must utilize to the fullest degree the technical expertise of his client; he must also, however, resist any attempt by the client to draw legal conclusions from that technical expertise.

Defendant must, of course, be equally concerned with disclosure of his trade secrets to plaintiff in the course of litigation. The pendency of the lawsuit may, however, have other equally grave consequences. In some situations, potential purchasers from defendant may be frightened away by the possibility of a claim later being asserted against them.¹⁰ So also a projected merger or offering of securities may be completely aborted by the pendency of the lawsuit.¹¹

In short, in cases where both parties entertain some doubt as to the strength of their respective positions, there is a strong incentive to avoid reciprocal disclosure if possible. Moreover, the normal interest of a defendant in delaying the lawsuit may not be present in trade secret cases.

In this connection, the parties may find it advantageous to agree to the use of court-appointed impartial experts in controlling the areas of discovery. In one case,¹² with the consent of the parties, the court appointed two independent experts to inspect both parties' plants and papers and to report which aspects of plaintiff's plants were substantially similar to defendant's. The experts were also directed to identify those

516 (E.D. Mich. 1959), *aff'd*, 279 F.2d 685 (6th Cir. 1960); *Irving Iron Works v. Kerlow Steel Flooring Co.*, 96 N.J. Eq. 702, 126 Atl. 291 (1924). Compare *Eastman Kodak Co. v. Powers Film Prods., Inc.* 189 App. Div. 556, 179 N.Y. Supp. 325 (1919). On the other hand, if there is a clear threat of intentional disclosure of valuable trade secrets by a former key employee who acquired all his knowledge of the area while with his former employer, an injunction restraining him from working in that area for his new employer may be appropriate. *B. F. Goodrich Co. v. Wohlgemuth*, 117 Ohio App. 493, 192 N.E.2d 99 (1963). Cf. *E.I. duPont de Nemours & Co. v. American Potash & Chem. Corp.*, 200 A.2d 428 (Del. Ch. 1964). *Wohlgemuth* and *American Polish* may portend even broader injunctive protection for the ex-employer, although the wisdom of such protection is subject to question if it goes beyond cases of threatened intentional disclosure.

¹⁰ This situation would occur if defendant is engaged in selling expensive production facilities and/or providing know-how rather than simply producing consumption goods.

¹¹ Such an effect may, especially if defendant is small and plaintiff large in the industry, lead to a counterclaim under the antitrust laws or the law of torts alleging that suit was brought for an improper purpose. The likelihood of such a counterclaim can, however, be considerably reduced if, prior to institution of suit, plaintiff obtains an order that the complaint be sealed. The court has power to seal a complaint, *Birnbaum v. Wilcox-Gay Corp.*, 17 F.R.D. 133 (N.D. Ill. 1953), and in one case, at least, has done so on the request of plaintiff, *Allied Chem. & Dye Co. v. Dixon Chem. & Research, Inc.*, Civil No. 467-58, D.N.J., order dated April 24, 1958.

¹² *Ethyl Corp. v. Skaggs*, Civil No. 9905, N.D. Ala., order dated October 27, 1961. Cf. *Bickley v. Frutchey Bean Co.*, *supra* note 9. Compare *Delaware Chems., Inc. v. Reichhold Chems., Inc.*, *supra* note 3.

aspects which, although substantially similar, they considered to be in the public domain and to set forth the basis for their opinion. On the basis of such a report, the court could confine discovery to those aspects found to be substantially similar, and, if no important areas of similarity were found, the parties would be spared the considerable expense of further litigation.

Of course, a confident defendant might agree simply to open his files for plaintiff's inspection so that plaintiff could convince himself that defendant was innocent. However, this course of action presents considerable dangers. In the first place, defendant's top executives who will make the decision may not really know what the files contain.¹³ Secondly, plaintiff will be prone to believe that any similarities are due to misappropriation of plaintiff's secrets, where an independent expert might conclude that the similarities are simply due to the fact that competent technicians designing facilities to achieve the same results are likely to parallel each other to a degree. Finally, it is not inconceivable that, in some situations, such disclosure would be regarded as violating the antitrust laws.¹⁴

In many situations, defendant may be anxious to defer plaintiff's discovery until plaintiff has defined the nature of his trade secrets, particularly where plaintiff is an alleged inventor or a peddler of technological information claiming that he disclosed trade secrets to defendant. If plaintiff is not forced to define his alleged disclosures before he gets into defendant's files, he may simply claim whatever he finds there. Even though a protective order limiting disclosure to third parties would be available, it may also be appropriate to defer discovery into defendant's secrets until plaintiff has defined the secrets he expects to find in defendant's files; in most cases this would involve deferring discovery until trial.¹⁵

¹³ It should also be remembered that it may be difficult to get objective advice from one's technical staff who are being accused of intellectual theft. No technician or scientist enjoys being accused of intellectual theft, even if unwittingly committed, and the evaluation of the merits of plaintiff's claim which they give defendant's executives often is, at least in part, an exercise in self-justification. An impartial report may, however, induce defendant to look more favorably upon the possibility of settlement.

¹⁴ Thus the acquisition of "assets" covered by Section 7 of the Clayton Act may include learning a competitor's trade secrets. See *United States v. Allied Chem. Corp.*, 5 Trade Reg. Rep. (1964 Trade Cas.) ¶ 71193 (S.D.N.Y. July 24, 1964); consent decree entered, 5 Trade Reg. Rep. (1964 Trade Cas.) ¶ 71311 (S.D.N.Y. Dec. 7, 1964).

¹⁵ See *Ray v. Allied Chem. Corp.*, 34 F.R.D. 456 (S.D.N.Y. 1964); *Remington Rand, Inc. v. Control Instrument Co.*, 7 F.R.D. 18 (E.D.N.Y. 1947). Compare *Grasselli Chem. Co. v. National Aniline & Chem. Co.*, 282 Fed. 379 (S.D.N.Y. 1920). This approach is an application of the general reluctance of courts to order disclosure of a party's trade secrets until it clearly appears that they are necessarily relevant. See *International Nickel Co. v. Ford Motor Co.*, 15 F.R.D. 357 (S.D.N.Y. 1954); *Cities Service Oil Co. v. Celanese Corp. of America*, 10 F.R.D. 458 (D. Del. 1950); *Lever Bros. Co. v. Procter & Gamble Mfg. Co.*, 38 F. Supp. 680 (D. Md. 1941). In any case, it is generally advisable that plaintiff's alleged trade secrets be defined prior to trial

The problem of the scope and nature of injunctive relief is one which deserves particular examination by defendant's counsel. Of course, if defendant is found guilty of misappropriation, the damages may be severe, if not ruinous. It is, nevertheless, in the injunctive prohibitions that the most serious long-term effect of the suit may be felt, and the far-reaching form which such relief may take distinguishes trade secret litigation from the more usual type of lawsuit. The ingenuity of defendant's counsel may play an important role in shaping an injunction which is possible to live with.

Unfortunately, once defendant has been found guilty of improper conduct, many courts tend to enter sweeping and vague injunctions without giving very much thought to their terms.¹⁶ It is probably advisable in most trade secret cases to employ a procedure often used in civil antitrust suits, *i.e.*, holding a separate hearing on relief after the court has made its findings of fact and liability.¹⁷ Trade secret cases may, after all, rival antitrust suits in factual complexity and the impact of the decree on defendant's business, and in both types of litigation it may be exceedingly difficult for counsel adequately to argue the issues of relief until they know the scope of liability. Although other courts have scheduled separate hearings on relief after rendering their findings of fact and liability,¹⁸ defendant's counsel can only reckon on the possibility of sweeping relief being entered simultaneously with a finding of liability without a further opportunity to be heard.

Uncertainty as to the form which relief may take, with or without a separate hearing, should be a strong factor in inducing a negotiated settlement. It is of interest in this connection to delineate the varieties of litigated injunctive relief, both to indicate the effect which relief may have upon a defendant's business and to suggest some of the more crucial areas in any settlement negotiations. Such a review may also help to emphasize that if defendant decides not to settle a

See *Package Mach. Co. v. Hayssen Mfg. Co.*, 164 F. Supp. 904 (E.D. Wisc. 1958), *aff'd*, 266 F.2d 56 (7th Cir. 1959).

¹⁶ A classic case is *K & G Oil Tool & Service Co. v. G & G Fishing Tool Service*, 158 Tex. 594, 314 S.W.2d 782, cert. denied, 358 U.S. 898 (1958), where defendants were simply enjoined from making devices substantially the same as plaintiff's and from "using in any way the confidential information obtained by defendants from an examination of plaintiff's magnetic fishing tool." Although it seemed doubtful that any trade secret was involved at all, the fact that the court was incensed with defendant's conduct may have led to this question-begging injunction. See Arnold, *Problems in Trade Secret Law*, in A.B.A. Section of Patent, Trademark and Copyright Law 248 (1961).

¹⁷ See *United States v. National Lead Co.*, 332 U.S. 319, 331-34 (1947); O'Donnell, *Civil Antitrust Trials*, in A.B.A. Section of Antitrust Law, *An Antitrust Handbook* 301, 326-27 (1958).

¹⁸ *E.g.*, *Sperry Rand Corp. v. Rothlein*, 143 U.S. Pat. Q. 172 (D. Conn. 1964).

trade secret case, he may find himself virtually enjoined from carrying on his business.

The first point involves the specificity with which the injunction defines the processes whose use is forbidden. There does not seem to be any uniform pattern, and courts may, in effect, simply enjoin use of the "trade secrets found herein to have been misappropriated."¹⁹ Other courts require, however, that the secrets enjoined be specified, such specification to be revealed only to the parties.²⁰ Plaintiff has an interest in defining in specific terms the trade secrets enjoined since he will want made clear exactly what defendant cannot do; defendant, on the other hand, will want to know clearly what he may do. This shared interest may be more effectively promoted by settlement than by having a judge who may not fully understand the technical questions involved hand down the injunction. Such a judge might, in a fit of despair, enter an injunction which really avoids those technical questions at the price of leaving both parties in the dark regarding its meaning.

Another crucial issue relative to relief concerns the public domain argument so beloved by defendants.²¹ Whereas the client may have rather exaggerated ideas of the value of *his* "secrets" when called upon to disclose them in the course of litigation, when it comes to his opponent's secrets the same client may be tempted to dismiss them as simply "standard practice." In addition to discouraging such optimism, counsel should point out that defendants seldom get very far in technologically complex cases with the contention that everything which was misappropriated could have been put together from public sources.²² The net result of the injunction, therefore, may be to prohibit defendant from what the rest of the world may do with only a moderate amount of effort and wit.²³ The requirement of secrecy has,

¹⁹ See, e.g., *K & G Oil Tool & Service Co. v. G & G Fishing Tool Service*, supra note 16; *Arnold*, supra note 16.

²⁰ *Taylor Iron & Steel Co. v. Nichols*, 73 N.J. Eq. 684, 69 Atl. 186 (1908). See the injunction in *Minnesota Mining & Mfg. Co. v. Technical Tape Corp.*, 23 Misc. 2d 671, 192 N.Y.S.2d 102 (Sup. Ct. 1959), aff'd, 15 App. Div. 2d 960, 226 N.Y.S.2d 1021 (1962).

²¹ This public domain argument is obviously relevant to the issue of liability as well as that of relief. It could be argued that a court should be more reluctant to enjoin use of processes which could have been pieced together from information in the public domain than to grant damages for their use in the form of a royalty, especially where plaintiff has licensed others to use the same secrets. *Franke v. Wiltschek*, 209 F.2d 493 (2d Cir. 1953), stands, however, to the contrary.

²² See, e.g., *Franke v. Wiltschek*, supra note 21; *Smith v. Dravo Corp.*, 203 F.2d 369 (7th Cir. 1953); *Minnesota Mining & Mfg. Co. v. Technical Tape Corp.*, supra note 20; *Allen Mfg. Co. v. Loika*, 145 Conn. 509, 144 A.2d 306 (1958); *Extrin Foods, Inc. v. Leighton*, 202 Misc. 592, 115 N.Y.S.2d 429 (Sup. Ct. 1952); *Fairchild Engine & Airplane Corp. v. Cox*, 50 N.Y.S.2d 643 (Sup. Ct. 1944).

²³ The justification is that it would be impossible to ascertain whether defendant's later improvements of his product were due to his independent experimentation or his knowledge of plaintiff's secrets. *Stone v. Goss*, 65 N.J. Eq. 756, 55 Atl. 736 (1903);

indeed, occasionally been reduced simply to a showing that defendant did not know the "secret" before he learned it improperly from plaintiff, evidently regardless of whether the rest of the world did in fact know it.²⁴ Moreover, even if many elements of the secret are in the public domain, the total secret process may not be, and the injunction may prohibit use of the total process, including elements in the public domain.²⁵

In the course of settlement negotiations, however, defendant may be able to salvage much that he otherwise would be enjoined from using.

A litigated injunction may also extend to defendant's improvements on processes he has been found to have misappropriated,²⁶ as well as processes which are "substantially similar."²⁷ If defendant has made important improvements he can, on the other hand, use the offer of a license as a bargaining device in settlement negotiations, since even if held liable, defendant may be permitted to patent those improvements found to have been due primarily to defendant's own efforts.²⁸

Another powerful inducement for defendant to settle is the possibility that the court will enjoin him from manufacturing, regardless of the process used, a product which he previously manufactured by

International Indus., Inc. v. Warren Petroleum Corp., 99 F. Supp. 907 (D. Del. 1951), *aff'd*, 248 F.2d 696 (3d Cir. 1957), cert. dismissed on stipulation, 355 U.S. 943 (1958).

²⁴ See *Berry v. Glidden Co.*, 92 F. Supp. 909 (S.D.N.Y. 1950); *McKinzie v. Cline*, 197 Ore. 184, 252 P.2d 564 (1953); *Pressed Steel Car Co. v. Standard Steel Car Co.*, 210 Pa. 464, 60 Atl. 4 (1904). In *Tower Mfg. Co. v. Monsanto Chem. Works*, 20 F.2d 386 (S.D.N.Y. 1927), A. Hand, J., suggested that if defendant obtained plaintiff's process through improper means, he is *estopped* to assert that the process was not a secret because embodied in the "prior art."

²⁵ See *Allen Mfg. Co. v. Loika*, *supra* note 22; *Heyden Chem. Corp. v. Burrell & Neidig, Inc.*, 2 N.J. Super. 467, 64 A.2d 465 (1949). See cases cited in note 22, *supra*, for holdings that it is irrelevant that the process could have been pieced together from items in the public domain if that is not how, in fact, defendant learned of it. Compare *Bickley v. Frutchey Bean Co.*, *supra* note 9.

²⁶ *By-Buk Co. v. Printed Cellophane Tape Co.*, 163 Cal. App. 2d 157, 329 P.2d 147 (1958); see *Berry v. Glidden Co.*, *supra* note 24; Restatement, Torts § 757, comment c (1939).

²⁷ *Sperry Rand Corp. v. Rothlein*, *supra* note 18; *Harris Mfg. Co. v. Williams*, 157 F. Supp. 779 (W.D. Ark. 1957); *International Indus., Inc. v. Warren Petroleum Corp.*, *supra* note 23; *Mycalex Corp. of America v. Pemco Corp.*, 64 F. Supp. 420 (D. Md. 1946) (dictum), *aff'd*, 159 F.2d 907 (4th Cir. 1947); *Ernst Slide Fastener Co. v. Stamberg*, 120 N.Y.S.2d 311 (Sup. Ct. 1953); *Extrin Foods, Inc. v. Leighton*, *supra* note 22; *L. M. Rabinowitz & Co. v. Dasher*, 82 N.Y.S.2d 431 (Sup. Ct. 1948). This result has sometimes been explained in terms of the "doctrine of equivalents" which originated in the field of patent law, e.g., *Minnesota Mining & Mfg. Co. v. Technical Tape Corp.*, 221 N.Y.S.2d 58 (Sup. Ct. 1961), *aff'd*, 18 App. Div. 2d 679, 235 N.Y.S.2d 830 (1962). That doctrine applies "where the process employed is used to produce an identical result in ways directly suggested by the disclosure, though slightly differing from it in detail." *Way Mfg. Co. v. Monsanto Chem. Works*, *supra* note 24, at 387.

²⁸ *Ackermans v. General Motors Corp.*, 202 F.2d 642 (4th Cir. 1953), cert. denied, 345 U.S. 996 (1953); *Head Ski Co. v. Kam Ski Co.*, 158 F. Supp. 919 (D. Md. 1958).

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means of plaintiff's secret process.²⁹ One court seems to have suggested that such injunctions violate the spirit of the antitrust laws by forbidding competition,³⁰ and it is a matter of conjecture whether the present Supreme Court would sustain them. In any case, this possibility may have to be seriously considered in determining whether to assume the risk of a litigated injunction.

These examples of the far-reaching forms of injunctive relief could be multiplied. A sufficient number have, however, been provided to suggest that in deciding whether to settle a trade secret case which possibly might be lost if litigated, the defendant may be making one of the most significant decisions of his business history. It is in giving a hard-headed appraisal of the risks involved in this decision that counsel to defendant can render as important a service as does plaintiff's counsel in the earlier stages of the litigation.

In short, the trade secret case calls for the best in any lawyer as well as a wholehearted understanding of that lawyer's client—the business executive involved. In most litigation the burden rests almost entirely on the attorney's shoulders; here, however, he is lost without the expertise of his client. His main effort must be to keep that expertise objective.

²⁹ *Head Ski Co. v. Kam Ski Co.*, supra note 28; *Franke v. Wiltschek*, supra note 21; *Sealectro Corp. v. Tefco Electronics, Inc.*, 32 Misc. 2d 11, 223 N.Y.S.2d 235 (Sup. Ct. 1961). See *Minnesota Mining & Mfg. Co. v. Technical Tape Corp.*, supra note 22.

³⁰ *By-Buk Co. v. Printed Cellophane Tape Co.*, supra note 26.