

The Protection of Trade Secrets when Obtaining Evidence in Patent Litigation

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Vilhelm Schröder is a Finnish attorney-at-law specialized in intellectual property disputes. He has been involved in a broad range of IP disputes since he started practicing law in 2010. He has experience from both civil and administrative procedure and has advised clients in several fields of industry such as pharmaceuticals, telecommunications and media. Vilhelm particularly focuses on large-scale intellectual property disputes and is also experienced in preliminary injunction proceedings and enforcement.

In addition to his MIPLC degree, Vilhelm holds a master's degree in law from the University of Helsinki. He has also studied at Santa Clara University School of Law in California. Vilhelm frequently publishes legal articles and is enrolled as Doctoral Candidate at the University of Helsinki. The topic of his doctoral thesis is "Trade Secrets in Patent Litigation".

Abstract

In any litigation, evidence is essential. To ensure that his case is robust enough, the patent holder may want to obtain evidence in a pending or upcoming litigation. The patent holder may e.g., claim for documents or objects for proving infringement to be disclosed by the defendant. The claim could for example encompass documents where the defendant's process is disclosed or financial statements to substantiate a claim for damages. The patent holder may also want secure evidence either before or during litigation if there for example is a risk that the defendant would destroy or hide the evidence.

The defendant may however very well argue that such documents or objects include *trade secrets* and oppose the claim. How should the tension between patent rights and trade secret protection be optimally solved in such a scenario? How can the legitimate rights of the trade secrets holder be safeguarded in relation to the public and in relation to the counterparty without unreasonably jeopardizing the rights of the patent holder?