

**Introduction on Intellectual Property to Engineers and Technologists**  
**Prof. T. K Bandyopadhyay**  
**Department of Metallurgical and Materials Engineering**  
**And**  
**Rajiv Gandhi School of Intellectual Property Law**  
**Indian Institute of Technology, Kharagpur**

**Lecture - 33**  
**Trade-Secret and Basic**

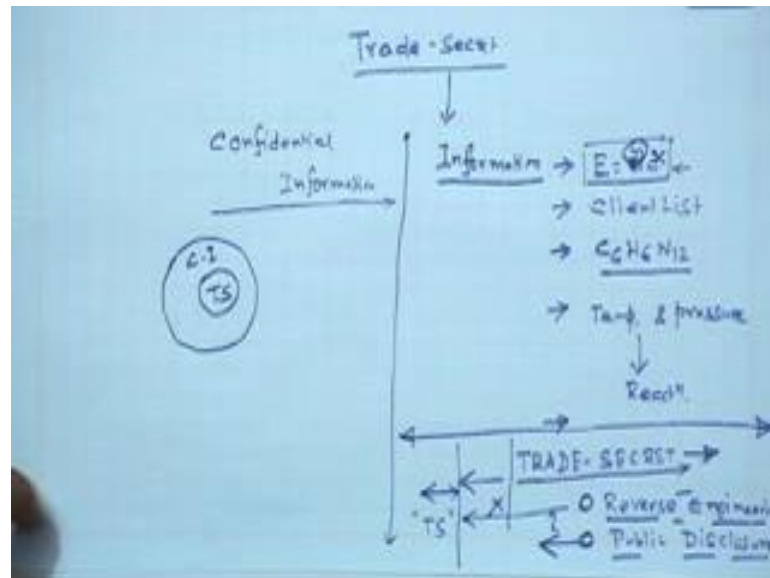
We will discuss another form of IP although you may ask me what forms of IP involved in there; but, its value is immense just like say people tell about the stories of Coco-Cola. Similarly, you understood that, source code of windows. Similarly, lots of other examples are there. If you consider utility and value, it has huge utility and value just like say give the example of Coco-Cola and its formulations, window and its source code. Similarly, lots of other things are there. There you cannot deny it their value or importance. So, on that premises, I will discuss now about another form of industrial property or intellectual property, definitely, industrial property; that is called trade secret. Sometimes we refer say another part of trade secret or another part in respect to business world academic world; we call it confidential information. So, I will just discuss now trade secret, confidential information all those elements, because you will work in an organization or you are a part of a particular system; you have to know about some things.

(Refer Slide Time: 02:17)



So, now, what is trade secret; first discussed on that part. The definitions have different components that I have created here; say let us say trade secret includes information or trade secret; we can consider secret means information. What is the nature of information? Information has commercial value; information means not mere information, information having commercial value.

(Refer Slide Time: 02:59)



So, you may ask me how will you decide whether that information having the commercial value or not? That has to be you have to assess in your organization. When you are thinking about trade secret part, then you are thinking about the information. Now, you are thinking about let us say if I ask whether  $E$  is equal to  $m c^2$  is information? I will say yes. Whether your client list is information? I will say yes. Whether a chemical formula like  $C_6H_6N_{12}$  is information? Yes. Whether a particular temperature and pressure for a reaction is information? I will say yes. So I will say a list can be elaborated. So, now, you are deciding whether  $E$  is equal to  $m c^2$ ; just like it is now public document, you are thinking about  $E$  is equal to  $m c x$ ; I already referred that  $m c x$  in the first class; or, not  $M$ , that  $n$ ; you are not telling the mass, but let us say some other number. [FL] So, whether this will be having some value? That part has to be definitely we have to decide.

So, now, in respect of infringement suits also, the court will decide whether information having the commercial value or not. So, commercial value information should have

commercial value and you have taken sufficient reasonable steps to keep its secrets, because listed secret; you are keeping their information in a public websites, that is, accessible to all. Then, you are not treating it as secret information; you have to take a reasonable precautions step to keep it secret. And also, this will give you a competitive edge over your competitors. So, trade secret I am just getting like this way. So, any information having commercial value and the organization is keeping sufficient steps to keep it secret. And definitely, in return, organization will get a competitive edge over the others with reference to that information; that will come in the form of trade secret. Clear?

So, now, what is the different information I already referred? Now, let us take that. Information includes sales method, distribution method, consumer profile, advertising strategies, and list of suppliers, clients, and manufacturing processes. These are the inclusive definition; inclusive information includes various things just like sales method. I am telling about that, you have created a unique selling method of your product; that also you are ultimately keeping within the organization part sufficient such a way that, it will be the secret; that also it will be considered as a trade secret.

So, distribution method; just like the sales method, distribution method; all those things also coming up. So, these are the marketing components and also technical components manufacturing process, formula, design, drawing, algorithms; just like in respect of software specifically, lot of components may come up in the form of trade secrets just like that including how you are designing your codes, structure sequencing all those things you make it within the purview of trade secret. Just like that consider examination systems, examination conduction, software examination systems or method, whatever.

Let us say consider I am thinking about TCS has been designed and practicing. And, by virtue of that, they are getting some competitive edge. So, that way examination; that examination soft code, whatever they have divided for examination software; so, that also will be considered information. Similarly, let us say you have created a design or drawing for a manufacturing unit. So, that way, the manufacturing units just like nice way you have created a design or manufacturing unit. Or, you have created a design of a particular product or all those things will come in the form of information. So, information understood; the list of information is used including the technical

components and commercial components, because trade secret. Trade involves commerce specifically. So, understood what is trade secret?

So, now trade secret I also told you that, I was in a you would have work in an organization. So, definitely, you should know about another term this confidential information. So, confidential information, here the difference between the trade secret and confidential information will lie on the term called commercial value. So, confidential information does not contain any commercial value. But, trade secret, commercial value is primary importance and also this competitive edge, others. So, confidential information does not contain any commercial value. So, now, if I put up subset and superset; so, confidential secret information or confidential information; but, all trade secrets are not confidential information. So, it will come within the purview of subset of superset is confidential information.

So, that way confidential information will differ from trade secret, now, why it is coming in the form of intellectual property? I will say that, it has huge utility; it has huge it has value associated with that. So, you can apply the utility theory; you can apply the economical theory called investment theory here. So, also for creation of that information, you have to invest. So, for that reason also, it has economic value or return on investment required. So, it is coming in the form of intellectual property or industrial property.

(Refer Slide Time: 11:19)

**ART. 39 OF THE AGREEMENT ON TRADE-RELATED ASPECTS OF  
INTELLECTUAL PROPERTY RIGHTS (TRIPS AGREEMENT):**

- **THE INFORMATION MUST BE SECRET (I.E. IT IS NOT GENERALLY KNOWN AMONG, OR READILY ACCESSIBLE TO, CIRCLES THAT NORMALLY DEAL WITH THE KIND OF INFORMATION IN QUESTION).**
- **IT MUST HAVE COMMERCIAL VALUE BECAUSE IT IS A SECRET.**
- **IT MUST HAVE BEEN SUBJECT TO REASONABLE STEPS BY THE RIGHTFUL HOLDER OF THE INFORMATION TO KEEP IT SECRET**

So, now, say just like say article 39 of the TRIPS agreement that, they have referred just like say the information must be secret; that it is not generally known among or readily accessible to circles that normally deals with that kinds of information in question. It must have commercial value because it is secret. It must have been subject to reasonable step by the rightful holder or information to keep it secret; that I already defined. To something, you are characterizing in the form of trade secret that, they are trying to refer. So, why it is important? Trade secret is an important parameter; you understood now.

So, why it is IP? Importance of trade secret; and so, just like say story suggested that, again the story just like a Coco-Cola formula, Pepsi have tried to do reverse engineering, because you understood I already referred in IC layout design class. The reverse engineering is a valid defense in respect of trade secret. So, if somebody reverse engineer developed that information, which you are claiming as a trade secret; then, it will not; if that time you are claiming that, that person has committed theft with reference to my trade secret; then, that will not be considered as an offense in respect of theft of trade secret because he has developed that thing by reverse engineering route. So, that way that reverse engineering is a valid defense.

So, understood that, definitely if you have thought about your information or is embedded in a product and somebody can easily do reverse engineering out of that product; then, it is not worth to consider in the form of a trade secret. So, reverse engineering if you are fear or reverse engineering about that code or formula or information; then, definitely, it will be not considered secret after some time. Just like say for the reason, the story suggested that, Coco-Cola formula, Pepsi has tried to do reverse engineering, because understood the Coco-Cola taste and the Pepsi taste; the formula they are using to get that kind of taste is considered their trade secret.

So, Pepsi had made an attempt to do reverse engineering; but, they have not reached to that formula. So, for that reason, the taste differs in Pepsi and Coke. And, understood that, they have to take a sufficient step; that one sufficient step to keep it secret; so, that way, people suggested Coco-Cola, what strategy they have adopted in respect of trade secret. They have disclosed that information or related to that formula among the top management people only. They have not given the access with reference to that secret information to majority of the not beyond the particular people. So, that way, they are making; they were story suggested that, people who do not (Refer Time: 15:26) trade

secret; maybe 2-3 people or 3 management people know the trade secret; they do not fly in the same plane, because if crash the plane crashes, that you understand; they will lose the trade secret; that is the story. So, that way, the people should take so reasonable steps with reference to the trade secrets. You got the thing? So, how they are thinking about that reasonable steps; they are creating just like say if it is for reference to the trade secret.

So, now, what is trade secret you understood? So, that information having commercial value, reasonable step to keep it secret and competitive edge the component required with reference to the trade secret. So, if I ask whether what is confidential information? You understood the confidential information means any information, which are you are keeping it in confidence. So, if you have kept some information in confidence; that will be considered as confidential information. But, the trade secret includes just like say a subset of confidential information; that confidential information having some value commercial value will be considered as trade secret. So, it is as a subset of confidential information.

So, now, confidential information or trade secret contains say different elements including commercial elements. Commercial elements means I want to mention that, say business strategies, business related information, client list, sales method, advertisement methods; then, design, drawing, manufacturing methods, formulas all sorts of things will come in the purview of trade secret. So, intellectual involvement in respect of trade secret definitely is there; why not just like a chemical formula, client list, process parameters all the things are coming in the form of trade secret.

And, for that reason, we are considering those in the form of intellectual properties specifically. So, trade so, that way the trade secret is so important in respect of business worlds specifically. Just like say they are considering trade secret as an important assets for the organization. So, they generally strategize that, what will be considered on the form of trade secret; what will be considered in the form of patent; whether it will be worth to get it in the form of patent or it is better to keep at as a trade secret. So, advantage, disadvantage with reference to that, I will discuss later on.

What if I ask you what is the problem with reference to the trade secret? Problem with reference to the trade secret; problem that you have to be fear of reverse engineering; you

have to be fear of public disclosure; or, you may say the disclosure. If it is disclosed somehow to the public to the public; what do you mean by public? That is the different issue. The issue is that, whether it is disclosed beyond the organization will be considered as public disclosure.

Or, if it is disclosed within the organization also, may lead to the public disclosures? That is the question. So, they have to be always fears of reverse engineering and public disclosure; just like if you disclosed your client list in your website though you are not considering that in the form of a trade secret. If you want to disclose your client profile in the trade in the website, that is public disclosure. Definitely you are not considering that in the form of a trade secret. Or, you are disclosing your say advertisement strategy; then, that is also not as trade secret.

So, now, what I want to mention that, you have be fear of reverse engineering always that, trade secret whether the information if competitor or any user get by virtue of reverse engineering, then there is no secrecy involved in respect of that information. So, then, it will lose the secrecy; then, it will not be considered as trade secret. So, now, how you are strategize that, whether it is, will come in the form of trade secret or it should go for by others means for protection that you have to strategize it; I will suggest if something is difficult to reverse engineering, then you think about trade secret. Definitely that have been should have commercial value; that part you have to decide, not like the reinformation private information or others; that information should have a commercial value; that definitely you will try to keep it as a trade secret. If that information can easily be reverse engineering, then you should go think about others forms of IP depending upon the natures of the information. Just like say if I ask the client list; if it is you are producing that client list in a public domain; then, definitely, you can till get one form of IP out of client list, that is, copyright.

If you are thinking about a design or a drawing; then, you thought about that design and drawing in the form of patent, if it is functionality or it is aesthetic in the form of industrial design or it is a layout we talked about IC layout. So, try to protect those things in that forms of IP; then, you put those things in a public domain. Now, so, that way, you have to strategize your IP or your creation for getting some value out of that. So, now, the advantage with reference to the trade secret that, trade secret there is no specific time

frame for your right; it may be a one day, it may be 100 years also. Why? So that how long you will be able to keep it as secret, your rights will exist for that period only.

When you will ultimately it will be disclosed to the public automatically that secrecy will be lost. So, that leads to that you will lose rights over your trade secret. So, that way that, if something is not easy to reverse engineer; then, I will suggest you may go for T S trade secret. If something is difficult to reverse engineer difficult to reverse engineering; then, you should go for trade secret. If it is easy to so, reverse engineering is easy; then, you should go for other form of IP. Reverse engineering is difficult; then, you are coming for trade secret. So, that way you are strategizing your creations. Again once again I am repeating that components.

So, now so that importance of trade secret; you understood, why it is so important in respect of a business circle specially. It is definitely generating some return on investment to their organizations; and, organization is strategizing their IP based on the based on their natures, how they will strategize; that whether it is easy to reverse engineer that; definitely, their technical contribution, technical people or the nature of information you have to nice way analyze appropriately. Just like say whether by means of some chemical etching or some other ways, people will be able to identify the design involved in that chips; or, they will ultimately abstract the software and able to identify the code embedded within that software; that part have to be only judged by the creators or the people who has involved in respect of that creations; they can only judge that part. So, this is the important things to learn that. When you are working in organization, so that organization kept sufficient steps regarding this; specifically they consider trade secret and confidential information as an important three important thing within the purview of organization premises.

So, now, let us summarize. Although I have repeated same things separate several times, now, we will summarize the things. Trade secret is also considered as one form of industrial property or intellectual property. Why trade secret is a form of intellectual property? If I ask that question, I think you will try to answer those things based on the philosophical aspects also; based on the economical aspects also. You try to apply the economical theory in respect of trade secret; you try to apply the philosophical theory with reference to trade secret. You know what is trade secret as per trips agreements,



definitions; that is widely acceptable definitions. And, why, how long it is protected all those things you learnt out of this class.

Now, I am closing the class with reference to the basics of trade secret now. And, subsequent class I will discuss about the protections; mechanisms of trade secret for different countries also I will try to touch.