

## INTELLECTUAL PROPERTY ALERT

### **PATENTS, TRADE SECRETS, AND THE ROLE OF THE CONSTITUTION**

Article 1 Section 8 Clause 8 of the United States Constitution states, “The Congress shall have Power...To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.” About one year after these words were ratified, Congress used them as a source of power to enact the first patent statute in the United States. Since then, these same words have continually been used to modify the patent laws of this country, laws which protect the practice of teaching. Specifically, as discussed in ‘The role of the patent,’<sup>1</sup> patents are a property right that protect against theft of energy used to invent when an inventor decides to teach the world how to make and use his or her invention.

Article 1 Section 8 Clause 3 of the United States Constitution states, “The Congress shall have Power...To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.” Earlier this year, Congress used these words as a source of power to enact the Defend Trade Secrets Act of 2016 (DTSA), legislation which protects the practice of not teaching. More precisely, 18 U.S.C. § 1836 has been amended to state, in relevant part, “An owner of a trade secret that is misappropriated may bring a civil action under this subsection if the trade secret is related to a product or service used in, or intended for use in, interstate or foreign commerce.” Thus, when trade secret owners decide not to teach the world trade secret information, the DTSA provides the federal district courts with original jurisdiction to hear civil cases where that trade secret information has been misappropriated.

For businesses, this means that Congress has provided two legislative tools to better leverage their assets. Specifically, Congress is concurrently using the Constitution to promote the progress of science and useful arts by protecting owners of information who want to teach that information, and to regulate commerce by protecting owners of information who do not want to teach that information. Information, or knowledge, should be taught to those who are ready to receive it because managing knowledge, or power, requires great responsibility. In this manner, Congress’s dual means are not competing, but rather function together to further an end of the Constitution – to “secure the Blessings of Liberty to ourselves and our Posterity.” Stated differently, when knowledge is patent eligible, businesses are free to teach, or pass on that knowledge, and pass it on in a responsible manner wherein they are well protected and the recipients receive it when they are ready. Additionally, when knowledge qualifies as a trade secret, businesses are now more free to deny that knowledge to those who they determine are not ready to receive it.

*This Eckert Seamans Intellectual Property Alert was authored by John Powers, with research assistance from Taylor Brailey, summer clerk. The alert is intended to keep readers current on matters affecting intellectual property and is not intended to be legal advice. If you have any questions about its content, please contact John Powers at [jpowers@eckertseamans.com](mailto:jpowers@eckertseamans.com) or (412) 566-6174.*

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<sup>1</sup> See Eckert Seamans Intellectual Property Alert, May 2014, Authored by: John Powers