

California Court Finds Trade Secret Not Automatically Destroyed by Related Patent

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In *Global Protein Products v. Le*, a California Court of Appeal recently confirmed that a patent does not automatically destroy a trade secret where the patent discloses a list of ingredients but does not disclose the specific “formula and process” at issue.

In that case, Global Protein Products (GPP) sued Le, a former GPP employee, for purportedly disclosing to a GPP competitor trade secret information relating to a formula derived from a patented process for turning a plant-protein into a film. According to GPP, when the patented process is combined with an additional, undisclosed organic acid, the resulting process constitutes a trade secret. This process may be used to prolong the shelf life of produce. Le had argued that the information at issue did not constitute a trade secret because GPP had publicly disclosed the information. Specifically, Le argued that by publishing the general process in its patent and identifying the final acid ingredient in its answer to a request for admission in the litigation, the information no longer qualified for trade secret protection.

On appeal, the court generally agreed that publication of a trade secret destroys it; however, it disagreed that publication occurred in this case. The court found that the trial court could have reasonably concluded that the publication of the patent, even combined with GPP’s admission, did not destroy GPP’s trade secret because a trade secret is not limited to the *identity* of the components used. The court concluded that the trade secret encompassed the components, the formula, and the process, which were not fully disclosed in the patent.

TIP: The very narrow holding in this case demonstrates the importance of choosing the proper method of protecting your intellectual property, whether it be as a trade secret or through patent protection, and understanding the interplay, overlap, and differences between the two types of protection.

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