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Trade Secrets 2026

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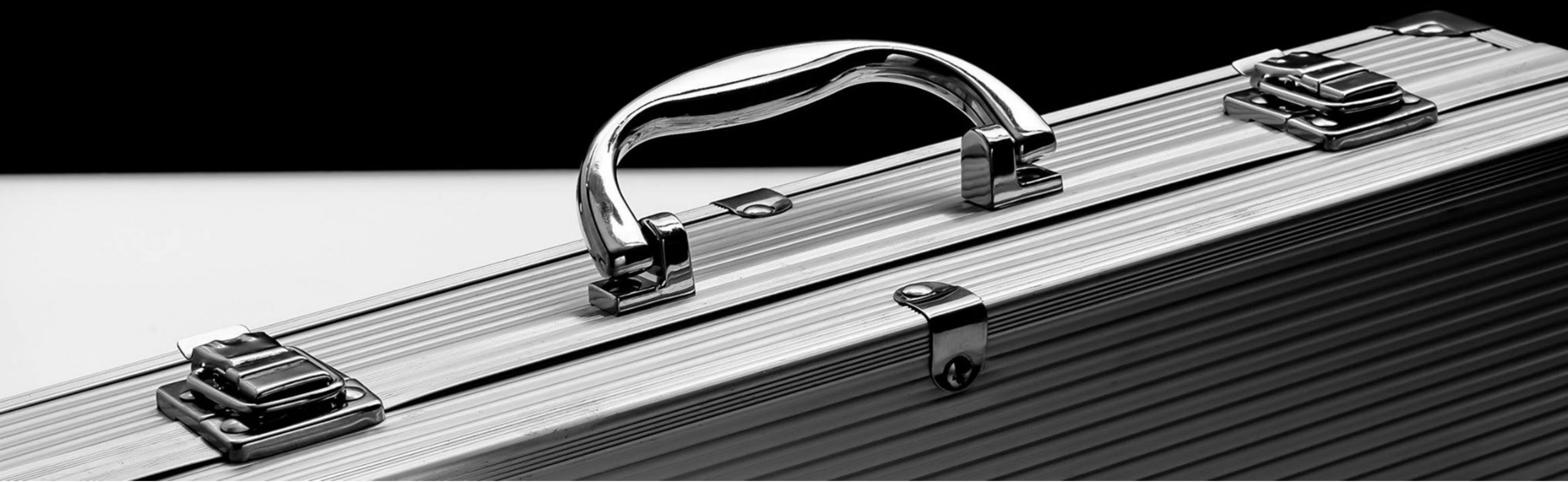
Poland: Law and Practice & Trends and Developments

Szymon Gogulski, Marek Oleksyn and Maciej Gil
Sołtysiński Kawecki & Szlęzak



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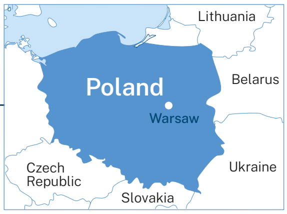

Law and Practice

Contributed by:
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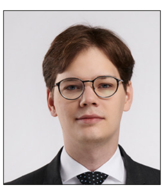

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1. Legal Framework

1.1 Sources of Legal Protection for Trade Secrets

Law on Counteracting Unfair Competition

The protection of trade secrets is substantially governed by provisions of the Law on Counteracting Unfair Competition, dated 16 April 1993 (UCL), implementing Directive (EU) 2016/943 on the protection of undisclosed know-how and business information (trade secrets), dated 8 June 2016, against their unlawful acquisition, use and disclosure (the "Trade Secrets Directive"). The UCL regulates the prerequisites to protect information as a trade secret, the scope of trade secret protection, exceptions from protection, available remedies and criminal liability.

Other Legal Acts

Specific provisions regarding the protection of trade secrets are also included in, for example:

- the Civil Code (23 April 1964) – the protection of information disclosed during negotiations;
- the Civil Procedure Code (17 November 1964) (CPC) – the protection of trade secrets in civil proceedings;
- the Labour Code (26 June 1974) – the confidentiality obligations of employees and representatives of trade unions;
- the Industrial Property Law (30 June 2000) – licence agreements for the use of inventions constituting trade secrets for which no application for a patent grant has been filed; and
- the Law on Access to Public Information (6 September 2001) – the limitation of the right to public information constituting trade secrets.

Poland is also a party to the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), the relevant provisions of which are directly effective in the national legal system.

1.2 What Is Protectable as a Trade Secret

Under Polish law, any technical, technological, organisational, or other information of economic value which, either as a body or in the precise configuration and assembly of its components, is not generally known, to or easily accessible by, persons usually dealing with that type of information, may be potentially protected as a trade secret. That also includes negative information – eg, regarding unsuccessful trials and tests. Any information lacking economic value or information generally known to experts in a given field is excluded from protection.

1.3 Examples of Trade Secrets

Case law recognises the following examples of types of information protectable as a trade secret:

- the description of a manufacturing process or a quality-control system;
- analyses of the presence of mineral deposits;
- sales forecasts;
- data showing production and sales volumes as well as sources of supply and clients;
- information on the publishing plans of a publishing house; and
- information related to a company's organisational structure or employees' salaries.

1.4 Elements of Trade Secret Protection

Under the UCL, the following prerequisites must be jointly met to protect a given piece of information as a trade secret:

- such information must be confidential – ie, not easily accessible to persons that normally deal with the kind of information in question, either as a body or in the precise configuration and assembly of its components;
- such information must have a commercial value; and
- such information must be subject to appropriate (reasonable) efforts to maintain its confidentiality.

1.5 Reasonable Measures

One of the prerequisites to apply the trade secrets regime is taking appropriate steps to keep the information confidential (see **1.4 Elements of Trade Secret Protection**). Such steps include both factual and legal actions, for example:

- providing information on a "need-to-know" basis;
- password protection;
- file access control;
- encryption measures;
- the obligation to wear badges in a workplace, enabling the identification of employees and the distinction of authorised personnel from visitors, as well as restricting access to designated areas to employees with appropriate clearance;
- appropriate staff training to raise awareness of trade secrets issues;
- executing non-disclosure agreements; and
- notices in documents and correspondence.

In some cases, an implied intent to keep information confidential may be sufficient to apply trade secrets protection.

As a general rule, the extent of the necessary steps depends on a particular case's circumstances, including a relevant enterprise's size and the relevant market sector.

1.6 Disclosure to Employees

If an employer takes appropriate steps to keep the information confidential, in particular by executing non-disclosure agreements with employees (see **1.5 Reasonable Measures**) and informing an employee of the confidential nature of the disclosed information, the disclosure of such information to the employee does not affect its protection as a trade secret (so long as other prerequisites for the protection are met, see **1.4 Elements of Trade Secret Protection**).

Regarding the use of employees' general knowledge and skills, see **4.1 Pre-Existing Skills and Expertise**.

Regarding the burden of proof in a trial against a former employee, see **5.5 Initial Pleading Standards**.

1.7 Independent Discovery

Independent discovery and reverse engineering constitute legitimate means of acquiring a trade secret. Therefore, as a rule, the trade secrets protection regime may not be invoked to prohibit the use of information acquired in that manner. However, an item/product subject to reverse engineering should be in the public domain or in the lawful possession of the person acquiring the information and whose right to acquire the information is not restricted (eg, under a licence agreement).

Because of independent discovery or reverse engineering, the same piece of information may be protected as a trade secret for the benefit of two or more independent entities. The public disclosure of such information by one person results in the loss of protection for all independent trade secret owners.

1.8 Computer Software, Artificial Intelligence and Technology

There are no specific provisions regulating the protection of computer software or technology as trade secrets. The Law on Copyrights and Neighbouring Rights (4 February 1994) regulates the limits for permitted analysing, testing and decompiling of a computer program from the copyright perspective. Copyright protection of a computer program may overlap with trade secrets protection (see **1.12 Overlapping IP Rights**).

1.9 Duration of Protection for Trade Secrets

Term of Protection

Trade secrets protection lasts as long as the prerequisites for its protection are met (see **1.4 Elements of Trade Secret Protection**); in particular, as long as the protected information is not easily accessible to persons from the relevant industry. There is no maximum term of protection.

Consequences of Disclosure

Any kind of disclosure (accidental or controlled) may result in the loss of protection if such information becomes easily accessible to persons from the relevant industry. However, if the recipient of the trade secret (even if unauthorised) keeps such information confidential, such disclosure will not affect the protection for benefit of the rightful trade secret owner.

In typical situations, a trade secret may, for example, be disclosed through publication in a scientific journal or at a trade fair.

1.10 Licensing

General Rules

Trade secrets may be licensed to third parties in a manner similar to other IP rights (eg, inventions or copyrightable works). Although only licence agreements for the use of inventions constituting trade secrets are specifically addressed in provisions of law, these rules may in principle also be applied by analogy to other trade secrets licences.

Trade secrets licence agreements can be:

- non-exclusive or exclusive;
- full (ie, the licensee may use the trade secrets within the same scope as the licensor) or limited;
- active (where the licensor is obliged to provide the licensee with the information and technical experience needed to use the subject matter of the license) or passive; and
- concluded for a defined or undefined period.

To maintain the protection of the licensed trade secrets, the licensee should be obliged to undertake reasonable measures to keep its confidentiality (see **1.5 Reasonable Measures**).

Sublicensing

A trade secret licence agreement may be sublicensed only with the licensor's consent. The admissibility of granting further sublicences to use the trade secret is debatable.

Form

There are different views on whether the requirement of a written form (wet-ink or qualified electronic signatures) also applies to trade secrets licences. Given the subject matter of these types of licence agreement and for precautionary reasons, a written form of a licence agreement is highly recommended.

Assignment of Rights

Trade secrets rights may be also assigned to a third party – eg, under a sale agreement or as an in-kind contribution. In such a case, as a rule, the assignor loses their right to use the assigned trade secrets.

1.11 What Differentiates Trade Secrets From Other IP Rights

According to prevailing views, a trade secret may be considered an IP right. However, trade secrets have certain specific features not shared with other IP rights:

- a given piece of information may be protected as an independent trade secret of several entities (eg, as a result of independent discovery or reverse engineering);
- it has no maximum term of protection (this is similar to trade marks but unlike patents or economic copyrights); and
- there are no protection fees or registration requirements (unlike for some industrial property rights).

1.12 Overlapping IP Rights

It is possible for a claimant to assert trade secret rights in combination with other types of IP rights, especially with economic copyrights (eg, to documents including a description of a given trade secret), as well as patent rights (eg, where a manufacturing process is protected partially as trade secrets and partially by patented inventions).

1.13 Other Legal Theories

Contractual Regime

Regardless of the UCL's provisions, the disclosure/misappropriation of trade secrets may constitute a breach of a contract (eg, non-disclosure or licence agreements). In such a case, general rules on liability for non-performance or improper performance of a contract apply.

Claims Against Non-Entrepreneurs

As a rule, the UCL regime applies only to entrepreneurs (defined as natural and legal persons and organisational units having no legal personality who, by undertaking profit-gaining or professional activity, even if secondary in nature, participate in economic activity). However, both case law and legal doctrine also accept the application of provisions of the UCL to trade secret protection relation to non-entrepreneurs. The Trade Secrets Directive and the TRIPS agreement additionally support such interpretation and approach. Claims regarding a non-entrepreneur's misappropriation of trade secrets (in particular, employees and former employees) may be also based on a different legal basis, in particular, on a contractual regime (if there is an appropriate confidentiality undertaking in place) or general tort regime (under the Civil Code).

Additionally, each employee is required to keep confidential any information the disclosure of which could expose the employer to damage under the Labour Code's provisions.

Tortious Interference With a Contract

Inducing an employee or any other person to breach a contractual confidentiality obligation with a third party constitutes a separate act of unfair competition, specifically defined in the UCL, and may result in an injunction or financial claims against the perpetrator.

1.14 Criminal Liability

The UCL provides for criminal liability for the misappropriation of trade secrets by any person, who:

- in breach of their obligation towards an entrepreneur, discloses information constituting a trade secret to another person, or uses such information in their own economic activity, and causes substantial damage to an entrepreneur;
- having illegally acquired information constituting a trade secret, discloses it to other persons or uses it in their own economic activity; or
- discloses or uses information constituting a trade secret which they acquired while participating in a hearing or in other court proceedings concerning claims for an act of unfair competition related to the infringement of a right to a trade secret, or through access to the files of such proceedings if, in such proceedings, the hearing was closed to the public.

Additionally, the Criminal Code (6 June 1997) provides for the criminal liability of anyone who, in violation of provisions of law or an obligation, accepts, discloses or uses information learned in connection with their function or work performed, or with a public, social, economic or scientific activity they pursue. Further, acquiring illegal access to information constitutes a criminal offence, notably:

- acquiring information not intended for a perpetrator without authorisation by opening a sealed letter or connecting to a telecommunication network or by breaching/bypassing electronic, magnetic, IT or other special protection;
- accessing an IT system (or any part of an IT system) without authorisation;
- installing or using any bugging, visual or other equipment or software to acquire information that a perpetrator is not authorised to access; or
- disclosing information acquired in the manner described above to a third party.

Possible penalties include a fine (from PLN100 to PLN1.08 million), the restriction of liberty or the deprivation of liberty for up to two years. In some exceptional cases (eg, recidivism), the penalties may be increased.

A trade secret owner may pursue both civil and criminal claims.

1.15 Extraterritoriality

Jurisdiction – Brussels I bis Regulation

One may bring a claim before a Polish court based on the misappropriation of trade secrets (infringement of trade secrets rights) that took place in another country if Polish courts have jurisdiction, in particular under Regulation (EU) No 1215/2012 of the European Parliament and of the Council on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (12 December 2012) (the "Brussels I bis Regulation"), in particular, if the defendant is domiciled in Poland or if the infringement of trade secrets rights takes place simultaneously in several states (including Poland) as might be the case with internet-based infringement.

In relation to non-EU states, jurisdiction may also be determined under international conventions or the CPC.

Applicable Law

The Rome II Regulation

The law applicable to acts of unfair competition should be determined under Regulation (EC) No 864/2007 of the European Parliament and of the Council on the law applicable to non-contractual obligations (11 July 2007) (the "Rome II Regulation"). The European Commission indicated in the Explanatory Memorandum to the Rome II Regulation that the disclosure of trade secrets and industrial espionage should be considered acts of unfair competition for applying the Rome II Regulation (and not as an infringement of IP rights).

The applicable substantive law may also be determined under the provisions of international conventions with non-EU states that include conflict-of-law rules.

Acts of unfair competition infringing the interests of a specific competitor

For acts of unfair competition which exclusively affect the interests of a specific competitor (including the misappropriation of trade secrets), the law of the country in which the damage occurs applies irrespective of:

- the country in which the event giving rise to the damage occurred; and
- the country or countries in which the indirect consequences of that event occur.

However, where the person claimed to be liable and the person sustaining damage both have their habitual residence in the same country at the time the damage occurs, the law of that country applies. Where it is clear from all the case's circumstances that the act of unfair competition is manifestly more closely connected with a country other than that indicated above, the law of that other country applies. A manifestly closer connection with another country might be based, in particular, on a pre-existing relationship between the parties (eg, a pre-existing non-disclosure agreement) that is closely connected with the act of unfair competition in question.

Acts of unfair competition infringing the interests of several competitors (market-related infringements)

In some cases, it may be assumed that the misappropriation of trade secrets affects the interests of several competitors in a given market (eg, because of the introduction into trade of the infringing products). In such situations, the law of the country where competitive relationships are, or are likely to be affected, applies.

The "mosaic approach"

In both the cases described above (ie, the acts infringing the interests of one or several competitors), applying the Rome II Regulation's provisions to multi-jurisdictional acts of unfair competition may often result in a "mosaic approach" being taken – ie, one where it is necessity to assess the consequences of the infringement of the trade secrets rights in each country based on that country's substantive law. Applying several national laws in proceedings before one court may constitute significant practical difficulty in trade secret litigation.

Claims based on a breach of contract (the Rome I Regulation)

Claims related to trade secrets may also result from the breach of a contract (eg, a non-disclosure or licence agreement). In such a case, the applicable law should be determined under Regulation (EC) No 593/2008 of the European Parliament and of the Council on the law applicable to contractual obligations (17 June 2008) (the "Rome I Regulation"). As a general rule, a contract is governed by the law chosen by the parties. If the parties to the contract have not chosen the applicable law, then the contract is governed by the law of the country where the party required to effect the characteristic performance of the contract has its habitual residence. Determining such a party may be problematic, especially for non-disclosure agreements. Depending on the facts of a given case, other rules of determining the applicable law included in the Rome I Regulation may also apply.

Again, in this case, the applicable law may also be determined under the provisions of international conventions with non-EU states.

2. Misappropriation of Trade Secrets

2.1 The Definition of Misappropriation

Under the UCL, each event of disclosure, use or acquiring of another party's information constituting a trade secret may be considered an act of unfair competition giving rise to the claims provided for in the UCL (see **7. Remedies**), in particular, if it took place in the circumstances described below.

It is important to note that a trade secret owner does not have to demonstrate that its trade secret was actually used.

Acquisition

Acquisition of information constituting a trade secret is an act of unfair competition, in particular, when it:

- takes place without the consent of the party authorised to use the information or dispose of it; and
- is a result of unauthorised access, appropriation or copying of documents, items, materials, substances or electronic files, including both the trade secret itself and any materials that enable inference of that trade secret.

Use and Disclosure

Use or disclosure of information constituting a trade secret is an act of unfair competition, in particular, when it:

- takes place without the consent of the party authorised to use or dispose of it; and
- infringes the obligation limiting its use or disclosure resulting from the applicable laws, legal action or another act, or if it was effected by a person who acquired the information by performing an act of unfair competition.

Good Faith and Due Diligence

The disclosure, use or acquisition of information constituting a trade secret is also an act of unfair competition if, on the date of its disclosure, use or acquisition, the person performing such actions:

- had knowledge; or
- with observance of due diligence, could have had knowledge,

of the fact that the information was acquired directly or indirectly from the party that used or disclosed it illegally.

In addition, the use of a trade secret constitutes an act of unfair competition where such use consists of producing, offering, placing on the market, importing, exporting or storing goods, if the person performing such activities:

- had knowledge; or
- with observance of due diligence, could have had knowledge,

of the fact that the properties of the goods, including aesthetic or functional, the process of their manufacture, or the manner in which they were sold, were shaped to a significant extent as a consequence of the illegal use, disclosure or acquisition of a trade secret.

The above rules assume the good faith of the person disclosing, using or acquiring trade secrets. The trade secret owner has to demonstrate that such actions were performed in bad faith.

Further Exceptions

The disclosure, use or acquisition of information constituting a trade secret is *not* an act of unfair competition if it occurred:

- to protect a justified legally protected interest;
- under the exercise of freedom of expression;

- to disclose irregularities, infringements or actions in breach of the law for the protection of public interest; or
- regarding representatives of employees in connection with their functions determined by law, if necessary for the proper performance of these functions.

In exceptional cases, it may be possible to claim that although the disclosure, use or acquisition takes place without the trade secret owner's consent, such actions:

- were not contrary to "good commercial practices"; or
- did not, in fact, threaten or infringe the trade secrets owner's interests and, consequently, did not constitute an act of unfair competition.

See also **1.7 Independent Discovery** and **4.1 Pre-Existing Skills and Expertise**.

2.2 Employee Relationships

For trade secret claims under the UCL against employees or ex-employees, see **1.13 Other Legal Theories**. Claims regarding an employee's misappropriation of trade secrets may be also based on a different legal basis, in particular, under the Labour Code's provisions, stipulating that each employee is required to keep confidential any information the disclosure of which could expose the employer to damage.

Additionally, the claims against employees and former employees may be based under:

- a contractual regime (if there is an appropriate confidentiality undertaking in place);
- a general tort regime (under the Civil Code); or
- the provisions of TRIPS directly.

See also **4.1 Pre-Existing Skills and Expertise**.

2.3 Joint Ventures

Rules regarding the use, disclosure, (co-)ownership or licensing of trade secrets are usually included in shareholders agreements, investment agreements or other joint-venture agreements. There are no Polish law provisions pertaining specifically to trade secrets in joint-venture relations.

2.4 Industrial Espionage

Most activities usually considered to be industrial espionage are covered by the UCL's penal and civil law provisions (see **1.14 Criminal Liability** and **2.1 The Definition of Misappropriation**). There are no provisions of Polish law defining "industrial espionage".

3. Preventing Trade Secret Misappropriation

3.1 Best Practices for Safeguarding Trade Secrets

There are no recognised "best practices" or guidelines pertaining to the protection of trade secrets. In practice, entrepreneurs implement various factual and legal measures to protect the confidentiality of their trade secrets as described in **1.5 Reasonable Measures**.

3.2 Exit Interviews

Exit interviews are not common in Poland. However, if a given employee had access to sensitive information, a prudent entrepreneur may request that such an employee provide written confidentiality assurances.

4. Safeguarding Against Allegations of Trade Secret Misappropriation

4.1 Pre-Existing Skills and Expertise

As a rule, the general knowledge, experience and skills an employee acquires during employment may not be considered trade secrets. The distinction between trade secrets and such general knowledge, experience and skills is ambiguous and may cause some difficulties in practice.

Polish law does not recognise the doctrine of "inevitable disclosure" and gives priority to the freedom of employment. As a rule, employees may use their pre-existing skills and expertise for the benefit of a new employer. Employers may protect their interest, in that respect, by entering into additional non-competition agreements with employees. However, maintaining a non-competition agreement after terminating employment involves paying the employee at least a quarter of their previous salary.

4.2 New Employees

As regards hiring employees from competitors, risks related to potential trade secret misappropriation claims may be mitigated by, for example, enquiring about a new employee's obligations towards their former employer(s) or informing the new employee in writing that they are not allowed to use any information acquired from the previous employer other than general knowledge, experience and skills acquired during previous employment. It is also worth including this type of arrangement in employment agreements.

5. Trade Secret Litigation

5.1 Prerequisites for Filing a Lawsuit

Lawsuit

A standard civil litigation alleging the theft of a trade secret commences with filing a lawsuit. This procedural brief is subject to general formal requirements under the CPC for lawsuits in civil cases (see **5.5 Initial Pleading Standards**).

Prerequisites or Preliminary Steps Before a Lawsuit Is Filed

Depending on the defendant's identity, a trade secret lawsuit may additionally fall under specific procedural rules envisaged for litigation in commercial matters – eg, a pre-litigation settlement attempt by the claimant. Although such a settlement attempt is not a prerequisite for initiating a civil lawsuit, a claimant failing to make such an attempt may result in the court shifting all costs of the litigation onto that claimant, regardless of the case's final outcome. Also, in commercial litigation, the claimant is obliged to adduce all statements and evidence in the lawsuit, failing which the party may be precluded from introducing such evidence at a later stage. Such statements and evidence produced at a later stage are ignored unless the claimant substantiates that their adducing was not possible or that the need to introduce them arose later. This means that, subject to the comments in **5.6 Seizure Mechanisms**, all the relevant and available evidence should be provided while filing the lawsuit.

5.2 Limitations Period

General Rule

As trade secret claims form part of "property-related claims", they are subject to the statute of limitations. As a general rule, under the UCL, trade secret infringement claims become time-barred after three years. This statute of limitation period begins separately for each infringement.

Claims to Redress Damage

For damage caused because of the unlawful disclosure, use and acquisition of trade secrets, claims for redress of damage become time-barred after three years from the date on which the harmed party (claimant) learned, or could have learned by acting diligently, about the damage and the person obliged to repair it. However, this period cannot be longer than ten years from the date on which the event giving rise to the damage occurred.

There is also a specific statute of limitation rule for those cases where a breach of a trade secret constitutes a crime or a misdemeanour. In such a case, the limitation period for the claim for damages may not end later than 20 years from the date of the offence.

Cessation Claims in Trade Secret Infringements Having a Continuous Character

The UCL or other laws do not expressly provide how the statute of limitations should be calculated for a cessation claim where trade secret infringement has a continuous character – eg, where products manufactured with the unlawful use of a claimant's trade secret are continuously offered for sale online. While different approaches are presented in case law and doctrine, according to the prevailing position the three-year statute of limitations of a cessation claim starts to run separately on each day in which infringement occurs.

The latter approach corresponds with the decision of the Polish Supreme Court, issued regarding an analogous point of law under EU trade mark enforcement in Poland (18 May 2021, case III CZP 30/20). Although this Supreme Court decision was based on trade mark law, due to its written reasoning and the arguments presented, its conclusions may potentially be more widely applied by common courts in trade secrets infringement cases.

5.3 Initiating a Lawsuit

Initiating a lawsuit requires filing a pleading (see **5.5 Initial Pleading Standards**), which is subject to a court fee. The court fee amount depends on the types of claims sought and is determined under the relevant statutory rules (see **5.11 Cost of Litigation**).

5.4 Jurisdiction of the Courts

IP Courts Having Jurisdiction Over Trade Secrets Disputes

From July 2020, civil lawsuits concerning the unlawful disclosure, use and acquisition of trade secrets are examined by specialised IP courts. These courts have exclusive jurisdiction to examine all – broadly defined – IP matters that comprise unfair competition cases, including trade secrets disputes. The specialised IP courts operate as separate divisions (chambers) of regional courts in the first instance and of courts of appeal as second-instance courts. There are five first-instance IP courts, namely Warsaw, Poznań, Gdańsk, Katowice and Lublin, having the jurisdiction to examine trade secrets disputes and two second-instance IP courts in Warsaw and Poznań. Additionally, the Regional Court in Warsaw has exclusive jurisdiction to resolve all matters pertaining to the infringement of technical trade secrets in the first instance.

Special Rules in IP, Including Trade Secrets and Infringement Proceedings

Court proceedings concerning the infringement of a trade secret are conducted under certain specific rules envisaged exclusively for IP (including trade secrets) disputes as set out in the CPC. These specific procedural rules were enacted together with the establishment of specialised IP courts in July 2020, and include:

- the mandatory representation of litigating parties by attorneys-at-law or by patent attorneys unless the dispute value is below PLN20,000 or the court releases a party (upon request or ex officio) from such professional representation obligations due to the low complexity of the case;
- the primacy of these IP-specific procedural rules over other specific CPC regulations which may also apply to IP litigation in the case of inconsistencies; and
- the competence of IP courts regarding qualifying a given matter as an IP case, which is binding on other courts.

5.5 Initial Pleading Standards

Initial Pleading – General Requirements

A lawsuit in trade secrets litigation is subject to the general requirements set out in the CPC for civil cases. Under the CPC, a lawsuit must comply with the general requirements envisaged for each procedural brief and should additionally contain:

- a precisely specified request, and in cases of property rights, also the indication of the dispute value unless the subject of the case is a specified amount of money;
- an indication of a date when the respective claim became due;
- a presentation of the facts on which the claimant forms their claim and, if necessary, also justifying the jurisdiction of the court; and
- information on whether the parties have attempted mediation or other out-of-court resolution regarding the dispute, and if such attempts have not been made, an explanation of the reasons for failing to do so.

Irrespectively, a lawsuit may include additional motions concerning, for example:

- an interim injunction;
- conducting a hearing in the absence of a claimant; or
- the preparation of the hearing – eg, requests for:
  - (a) the witnesses and experts indicated by the claimant to be summoned to a hearing; and
  - (b) an inspection to be made or the defendant ordered to deliver a document in their possession to the hearing.

Burden of Proof

According to the general rules on the burden of proof, the claimant must prove the infringement by all possible means of evidence. Consequently, in principle, a trade secret owner (claimant) cannot allege facts “on information and belief” before it has concrete evidence of misappropriation.

However, the Polish Supreme Court decided in a ruling (25 September 2019, case III CSK 217/17) that where an employer claims that their former employee misappropriated the employer's trade secrets, if the employer proves that such information constitutes a trade secret, the burden of proof moves to the former employee to prove that the disclosed information was not a trade secret or that the new business established by such a former employee was organised according to principles that are commonly known and applied by other entities conducting this type of business activity, or was organised according to new principles – in comparison to the principles applied by the employer claiming protection – developed because of that employee's knowledge and professional experience.

IP-Specific Procedural Tools

Polish laws have transposed the relevant measures for preserving evidence and the right of information under Directive 2004/48/EC of the European Parliament and of the Council on the enforcement of intellectual property rights, dated 29 April 2004 (the "IP Enforcement Directive"). From July 2020, these measures have been set out in the CPC and form part of the specific rules envisaged exclusively for IP disputes (see **5.4 Jurisdiction of the Courts**). These procedural means can also be employed in a trade secrets lawsuit (see **5.7 Obtaining Information and Evidence**) and are intended to supplement the factual and evidential grounds of the main claim. Therefore, certain evidentiary and information-related procedural measures may be sought by trade secret owners prior to the commencement of the main civil action. Additionally, in certain circumstances under the CPC, the court can apply some factual presumptions to the claimant's benefit.

5.6 Seizure Mechanisms

Seizure of Products Within Preliminary Relief Proceedings

Seizing accused products is available for a trade secret owner as a method of enforcing a preliminary relief, if granted by court. A motion for a preliminary relief aimed at seizing accused products can be filed either before or during the main infringement litigation. Consequently, the seizure of products is also available before a final judgment in the case.

Prerequisites to Obtain a Seizure

To obtain a seizure within preliminary relief proceedings, a trade secret owner (claimant) must demonstrate:

- that their claim is probable (corroborated); and
- that they enjoy a "legal interest" in obtaining a preliminary relief.

The claim is considered probable by the court examining the preliminary relief motion if, prima facie, there is a significant chance of its existence. In turn, legal interest was defined in the CPC and is deemed to exist in those cases where the lack of a preliminary relief would prevent or significantly hinder the enforcement of a judgment issued or otherwise prevent or seriously hinder satisfying the purpose of the proceedings.

Either party can appeal a preliminary relief decision. An appeal against a decision of the court of first instance shall be heard by the court of second instance. An appeal against a decision of the court of second instance may be lodged with another panel of that court.

Ex Parte vs Inter Partes Proceedings

In intellectual property cases (including those concerning the protection of trade secrets), the court grants preliminary relief after hearing the defendant, unless an immediate decision is necessary. This inter partes examination rule does not apply to preliminary reliefs that are fully enforceable by a court bailiff – eg, where seizure of unauthorised products is involved.

Carrying Out the Seizure

A seizure is enforceable once the court has issued a preliminary relief decision and affixed this decision (acting ex officio) with an enforcement writ (enforceability clause). The seizure is performed by a court bailiff acting upon the applicant's motion within a separate enforcement proceeding.

5.7 Obtaining Information and Evidence

Evidence and Information Measures Available in Trade Secret Cases

Three separate mechanisms exist to secure evidence and to disclose information, which transpose the relevant measures set out under the IP Enforcement Directive:

- a motion to secure the means of evidence;
- a motion to hand over or disclose evidence; or
- a motion for information.

While the applicability of the first of these measures to cases concerning the protection of trade secrets does not raise any major doubts, the availability of the other two measures in trade secret cases is still not settled in case law.

Motion to secure the means of evidence

This motion can be filed by a trade secret owner to any person (including the defendant) who possesses the relevant evidence or who can enable such evidence to be secured.

Such a motion can be filed either:

- before commencing; or
- during the main proceedings,

until the case is closed in the first instance.

In the first scenario, a lawsuit must be filed within a specified court deadline. The deadline is between two weeks and one month as of the date the decision on securing the means of evidence becomes final.

This measure aims, in principle, to prevent a situation where achieving the purpose of the evidentiary part of the main proceedings would become impossible or be seriously hindered.

The court issues a decision on securing the means of evidence if the applicant shows the following two prerequisites:

- their claim is probable (corroborated); and
- they enjoy a "legal interest" in securing the means of evidence.

The CPC provides a specific definition of a legal interest in securing the means of evidence which explains and reflects the purpose of these proceedings.

The motion to secure the means of evidence should be examined by the court immediately at a closed-court sitting. The method of securing the means of evidence is shaped broadly in the CPC and can be freely determined by the court. Such methods may include, for example, the collection of goods, materials, tools used for production or distribution, documents and the preparation of a detailed description of these items, combined, if necessary, with samples being taken. The court's decision issued in the first instance is enforced by a court bailiff. This can be appealed to the court of appeals.

Motion to hand over or disclose the means of evidence

This motion can be filed only against the defendant in the main proceedings. These proceedings aim to oblige the defendant to disclose or hand over the means of evidence being in the defendant's possession, in particular, banking, financial or commercial documents, to disclose and prove the facts.

To effectively request that the means of evidence be handed over or disclosed, the trade secret owner (claimant) must make probable the circumstances justifying the application, including the circumstances which show that the defendant indeed possesses the means of evidence requested. The defendant has the right to reply and comment on such a motion, and the court may examine the motion and issue a decision, either at a closed sitting or during a court hearing. The court's decision issued in the first instance is enforceable. It can be appealed to a court of appeals.

Motion for information

This motion can be filed by the trade secret owner to any person (including the defendant) who possesses or has access to the relevant information.

Such a motion can be filed either before the main proceedings have commenced or during the proceedings until the case is closed in the first instance. In the first scenario, a main infringement case must be initiated within a deadline not longer than one month as of the performance of the information disclosure decision by its addressee – ie, the defendant or other person who was obliged to disclose information.

This motion for information can pertain to:

- the names and addresses of producers, manufacturers, distributors, suppliers and other previous holders from or for whom goods were purchased or sold, or services were used or provided, as well as expected wholesalers and retailers of these goods or services;
- information on the quantity of produced, manufactured, shipped, received or ordered goods or services rendered, as well as prices received; and
- other information necessary to prove the amount of the claim in particularly justified circumstances.

The trade secret owner (applicant) must:

- show the probability of the circumstances showing the infringement;
- set out the scope of information sought;
- demonstrate why the addressee has the requested information; and
- show that the information is needed to establish the source or value of the infringement.

The addressee of the request may respond to the motion within the time set by the court, but not shorter than two weeks. The court's decision issued in the first instance is enforceable. It can be appealed to the court of appeals. The obligation to provide information is performed by the addressee (obliged party) in writing or in electronic form.

5.8 Maintaining Secrecy While Litigating

The CPC provides some procedural rules aimed at maintaining the secrecy of the trade secrets at issue during litigation while the case is pending. These are summarised below.

- Only the litigating parties may view the case files and receive certified copies, copies or excerpts from these files.
- At a litigating party's request, the court orders a closed-door sitting, when trade secrets may be disclosed. In such a case, only the following persons may be present in the court room: the parties, the interveners, their statutory representatives and proxies, the prosecutor and persons of trust, two on each side.

On the other hand, while deciding on the motions concerning evidence and information (see **5.7 Obtaining Information and Evidence**), the court must take into account the protection of the addressee's confidential information. This general rule is discussed more precisely in the CPC for each relevant evidence-securing or information-disclosure motion.

5.9 Defending Against Allegations of Misappropriation

There are a range of formal and merit defences available in trade secrets litigation that, depending on the case background, may include the following:

- the lack of the legal protection of a trade secret due to the lack of – or insufficient – measures adopted by the claimant to maintain confidentiality (see **1.5 Reasonable Measures**);
- no infringement due to independent discovery/production, or to observation, research, disassembly or testing, if the relevant prerequisites set out in the UCL can be shown by the defendant;
- no infringement as a result of, for example, the protection of a legitimate interest, or as part of exercising freedom of expression or revealing irregularities, misconduct or violations of the law to protect the public interest;
- a statute of limitations plea;
- in exceptional cases, showing that the claimant's interest has not been infringed or threatened; and
- in specific cases, the claimant's too-long acquiescence to the defendant's unauthorised activities on the market (the venire contra factum proprium plea).

5.10 Dispositive Motions

There is no specific "dispositive motion" procedure available in Polish civil procedure. However, in turn, the CPC provides for some procedural measures that, to some extent, perform a similar function to a dispositive motion. For example:

- based on statements and attachments as well as notorious facts and facts known by the court ex officio, if the court perceives the case to be obviously ungrounded, it can dismiss the lawsuit at a closed sitting without even serving the lawsuit on the defendant;

- the defendant can bring the res iudicata argument and request that the court reject the lawsuit without examining the case on its merit; or
- by recognising the essence of a claim to be justified, the court may issue a preliminary judgment as to the principle only and, with respect to the disputed amount of a claim, proceed further with the trial.

5.11 Cost of Litigation

Types of Costs Involved

Costs connected with trade secrets litigation in Poland consist of the costs of court proceedings and attorney fees.

The final litigation costs (including attorney fees and proceedings costs) depend on the complexity of the case, number of hearings scheduled by the court in each instance, the number of pleadings prepared and filed by the parties and the possible engagement of a court-appointed expert (eg, where technical know-how is involved), etc.

A trade secret owner is obliged to incur a court fee while initiating a lawsuit. The amount of the court fee depends on the type of claims claimed:

- each non-financial claim (eg, cessation claim) is subject to a fixed court fee in the amount of approximately EUR70; and
- a financial claim is subject to a 5% court fee calculated based on the amount claimed (where such an amount is higher than approximately EUR4,700), but not more than approximately EUR23,500.

If a litigating party requests a court action which involves costs (eg, appointing experts, hearing witnesses who are entitled to the reimbursement of travel expenses and wage equivalents, translating documents), that party is usually required to make an advance payment on the appropriate costs. The costs are finally accounted for in a judgment on the merits in each instance and allocated according to the proportion in which they fall on each party.

Litigation Financing

There are still no specific statutory rules in Poland concerning litigation or arbitration financing (third-party funding). Although a dispute-financing mechanism is beginning to emerge in Poland, there is still no information about such cases in disputes before common courts regarding trade secrets.

6. Trial

6.1 Bench or Jury Trial

Under the CPC, trade secret trials are decided by a judge. The litigating parties cannot choose to have their case decided by a jury.

6.2 Trial Process

General

Trade secrets litigation starts with filing a lawsuit (see **5.5 Initial Pleading Standards**). Once the court checks the formal aspects of the lawsuit, its copy is served on the defendant who is granted a deadline (not shorter than two weeks) to file their reply. Depending on the judge's decision, the court may subsequently either:

- schedule a "preparatory sitting" that aims to resolve the dispute without the need for further meetings or draw up a detailed plan for a hearing with the participation of the parties;
- order the parties to exchange subsequent procedural briefs, specifying the order in which the briefs should be submitted, the dates of filing and the circumstances to be clarified; or
- schedule a hearing.

Hearing

After calling the case, the claimant and then the defendant present their demands and conclusions verbally and present their statements and supporting evidence. The court's role during the court hearing is, by asking the parties questions, to ensure that the parties provide or supplement their statements or evidence and provide the explanations necessary to duly establish the factual basis of their rights or claims. In the same way, the court seeks to clarify the essential circumstances of the case. The hearing also includes the examination and consideration of evidence. After closing the hearing, the court issues its judgment in a given instance. There are usually two to five court hearing dates set by the court in the first instance and one hearing date in the second instance in trade secrets disputes.

Witness Testimony

Because of the nature of trade secrets disputes, witness testimony forms a substantial part of evidentiary proceedings. However, it should be noted that, in commercial litigations, the CPC substantially limits witness testimony, and the cases are examined mostly based on documents. Consequently, in commercial litigations concerning trade secrets, the claimant should prepare a strong documentary evidence file and (if needed) be able to effectively use the mechanisms discussed in **5.7 Obtaining Information and Evidence**.

Time Taken for Proceedings

Trade secrets proceedings usually last approximately one to two years in the first instance and approximately one year in the second instance.

6.3 Use of Expert Witnesses

Court-Appointed Experts

Under the CPC, the court can appoint an expert in cases where “special information” is required – eg, specific biotech, chemical, construction or financial knowledge necessary for the court to assess a claim. The court may decide to appoint an expert after hearing both parties’ positions. The claimants usually apply to the court to appoint an expert in their lawsuit. Defendants may also apply for a court-appointed expert in reply to a lawsuit. An expert’s role is not to decide on the infringement but rather to equip the judge with the specific information necessary to examine the case and render a judgment.

Court Expert’s Opinion

Court-appointed experts prepare their opinions in writing. The court can subsequently summon experts to supplement or clarify their opinions verbally (during court hearings) or in writing. The parties can also comment on the expert’s opinion.

Private Experts

Private experts’ opinions are also allowed in trade secrets disputes to additionally substantiate the litigating party’s position and arguments. However, such private experts cannot substitute for the role of court-appointed experts.

7. Remedies

7.1 Preliminary Injunctive Relief

General

Preliminary injunctive relief is available before the final judgment in the case is given. See the preliminary injunction requirements in **5.6 Seizure Mechanisms**.

In the decision on the preliminary injunctive relief the court may order the cessation of unauthorised actions by the defendant for the duration of the main infringement case.

A motion for a preliminary injunctive relief can be filed either before or during the main infringement litigation.

Security Deposit

The court can make enforcement of its preliminary injunction decision conditional on the claimant submitting a security deposit (a bond) to secure the claims that the defendant (or a third party) may possibly have vis-à-vis the claimant as a result of the enforcement of such preliminary injunction. While deciding on a bond, the court can act either ex officio or upon the defendant’s request. The bond requirement may, in some cases, work as a cooling tool against excessively shaped preliminary injunctions, especially in those matters whose outcome is not obvious.

7.2 Measures of Damages

Types of Damages Available

The financial claims available for a successful claimant are one or both of the following:

- recovery by the defendant of unduly obtained benefits based on general civil law rules; and/or
- the redress of damage calculated based on either general civil law rules or, alternatively, on a fictitious licence fee.

Recovery of Unduly Obtained Benefits

Although case law, commentators and practitioners are not uniform regarding the approach and grounds to calculate the amount of unduly obtained benefits, the prevailing view is to base these claims on either the infringer's relevant income or their profit (income less cost). No faulty behaviour of the infringer needs to be shown for this financial claim.

Redress of Damage

To effectively seek compensation based on general civil law terms, the claimant should demonstrate:

- trade secret infringement by the defendant;
- damage caused to the claimant;
- a causal link between this infringement and the damage caused; and
- the defendant's fault, which may also include negligence.

In turn, if a fictitious licence is sought, the claimant should demonstrate:

- the trade secret infringement by the defendant;
- the amount of the fictitious remuneration due to the claim should a licence be granted to the defendant; and
- the defendant's fault, which may also include negligence.

Punitive Damages

Punitive damages are not available under the CPC.

7.3 Permanent Injunction

Character of a Permanent Injunction

Under Polish procedural laws, a permanent injunction should be understood as a final and binding judgment issued by the court on the merits considered.

Infringing Products

For trade secrets infringement claims, upon a claimant's request, the court may also decide in its judgment on products, their packaging, advertising materials and other items directly related to the infringement. In particular, the court may order their destruction or include them towards compensation. Where the infringing products remain in the defendant's possession or control, the court may order their seizure, destruction or withdrawal from the market. However, once the ownership of the infringing products has been transferred by the defendant to third parties (eg, wholesalers or final customers), a recall of such products is generally not available.

Limiting Employees

Limiting an employee's subsequent employment to protect trade secrets is possible only within a non-compete arrangement after employment and against remuneration due to the employee during the non-compete period. A court judgment can only prohibit specific actions that infringe trade secrets; it may not limit defendants in choosing their workplace.

Duration

Final and binding judgments in trade secrets infringement cases are not limited in time. However, they may cease to bind if a trade secret becomes publicly available.

7.4 Attorney's Fees

If the claimant is successful in trade secrets litigation, they can request that the defendant reimburse the costs of asserting their rights. Such costs of legal proceedings also include attorneys' fees. However, the recovery of attorneys' fees is possible only within the limits set out in law. This limit is capped at a relatively low level. A claimant's motion is necessary to be reimbursed for the costs of legal proceedings, including attorneys' fees.

7.5 Costs

Reimbursement of the costs of legal proceedings includes:

- the court fee incurred by the party;
- the costs of travel to the court of the party or its representative;
- the equivalent of earnings lost as a result of appearing in court as well as mediation costs (if conducted); and
- some other costs (such as translation costs).

Such costs also include attorneys' fees (see **7.4 Attorney's Fees**). If the claims were only partially confirmed by the court, the costs are either mutually offset or shared proportionately.

8. Appeal

8.1 Appellate Procedure

Trade secrets litigation is of a two-instance nature. Both the claimant and defendant can file an appeal against the first-instance judgment – insofar as it is unfavourable to the party concerned. An appeal to a court of appeals (either the Court of Appeals in Warsaw or in Poznań) needs to be filed through the court that issued the judgment in the first instance (a relevant regional IP court) within two weeks from the date of the delivery of the judgment with the written reasoning to the party that wishes to appeal. The first-instance court prepares the written reasoning of its judgment upon the party's request to be served with such – filed within one week from the date of delivery of the judgment.

It is also possible to appeal against a number of decisions issued by the court throughout the first-instance proceedings that are not a judgment on the merits. In those cases, a separate procedural measure is applied – ie, a complaint against the court's decision. If there are court decisions which cannot be challenged by means of a formal complaint, the party can still question the decision in their appeal against a first-instance judgment if such court's decisions had an impact on the merit assessment of the case.

There is an extraordinary measure against a final and binding judgment of a court of appeals: a cassation complaint to the Supreme Court. However, the prerequisites allowing such a cassation complaint to be filed are narrow and are interpreted strictly.

8.2 Factual or Legal Review

Under the CPC, the courts of appeal in Poland review both factual and legal issues and re-examine the case anew. The courts of appeal are not bound by the allegations of a violation by the first-instance court of substantive law as set out in the appeal. However, the courts of appeal are bound by the allegations of a violation of procedural laws. Within the limits of the appeal, a court of appeals takes into account ex officio the possible nullity of the proceedings. The appeal is decided both on paper (a written appeal and the reply to that appeal) and the parties' arguments presented during a court hearing. A court of appeals may examine the case at a closed sitting (in camera) if it is not necessary to conduct a hearing, unless one of the parties applies for a hearing.

Both the lawsuit and the appeal can be withdrawn by the relevant party at the appeal phase of the proceedings. A withdrawal of the lawsuit may require the claimant to sign a waiver of claims.

9. Criminal Offences

9.1 Prosecution Process, Penalties and Defences

Crimes related to trade secrets appropriation are prosecuted at the request of the injured party. After the request is filed, proceedings are conducted ex officio by the public prosecutor. The request to prosecute may only be withdrawn with the public prosecutor's consent.

Regarding the description of trade secrets crimes and possible penalties, please see **1.14 Criminal Liability**.

A suspect in criminal proceedings may invoke the same exceptions to protect trade secrets as in civil litigation (see **2.1 The Definition of Misappropriation**) or claim that given information does not constitute a trade secret (see **1.4 Elements of Trade Secret Protection**). See also **5.9 Defending Against Allegations of Misappropriation**.

10. ADR

10.1 Dispute Resolution Mechanisms

There is no alternative dispute resolution forum envisaged for settling disputes over a trade secret infringement. However, the litigating parties may settle the case within mediation proceedings regulated by the CPC or during the hearing in the main case. During the court proceedings parties may also settle out of court or within mediation proceedings envisaged by the CPC.

If a trade secret dispute is based on a breach of contract (eg, a non-disclosure agreement), the parties may have potential disputes arising from such an agreement resolved through ADR, including arbitration.

Trends and Developments

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Sołtysiński Kawecki & Szlęzak is one of the leading legal advisers on intellectual property, unfair competition and advertising on the Polish market. It is also highly appreciated internationally, and has advised and represented clients in a range of intellectual property cases. The firm is involved in the protection of: EU and Polish trade marks, including renowned trade marks, geographical indications and other distinguishing indications; EU and Polish industrial designs, utility models, patents, plant varieties, topographies of integrated circuits and other industrial property rights; copyrights, including copyrights in software; business names and other intangible enterprise assets; a person's image and other personality rights; and commercial secrets. It also advises on advertising law, including protection against misleading advertising and unfair comparative advertising, and protection against copying products, dissemination of untrue information and other forms of unfair competition.

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Eight Years Since the Transposition of the EU Trade Secrets Directive in Poland – The State of Play

The protection of trade secrets in Poland is substantially governed by the Law on Counteracting Unfair Competition dated 16 April 1993 (UCL) implementing the Directive (EU) 2016/943 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure, dated 8 June 2016 (the "Trade Secrets Directive"). The UCL regulates the prerequisites to protect information as a trade secret, the scope of trade secret protection, exceptions from protection, available remedies and criminal liability.

While the Trade Secrets Directive was transposed into the Polish legal system in September 2018, it is worth noting that the key principles, scope and prerequisites of protection, as well as legal remedies available for rights-holders (claimants), were already introduced by the UCL in 1993. Consequently, the transposition of the Trade Secrets Directive in 2018 did not substantially change the level of trade secret protection in Poland or practice in relation to them. On the contrary, the key case law in this respect, including rulings issued before September 2018 by the Supreme Court and courts of appeal, remains valid and continues to form an important element of jurisprudence concerning trade secret protection.

Therefore, it is circumstances such as technological progress, including the digitalisation of business processes, the AI revolution, and increasingly frequent cross-border (including global) transactions and technology transfers, that are key to assessing trends in trade secret protection. These are discussed in the subsequent sections.

Specialist IP courts

On the legislative side, a significant change in Polish trade secret protection practice took place in July 2020.

At that time, specialised IP courts started to operate. These courts have exclusive jurisdiction to examine all – broadly defined – IP matters, which comprise all unfair competition cases, including trade secret disputes. The specialised IP courts operate as separate divisions (chambers) of regional courts in the first instance, and of courts of appeal as second instance courts. There are five first-instance IP courts – in Warsaw, Poznań, Gdańsk, Katowice and Lublin – which have jurisdiction to examine trade secret disputes, and two second instance IP courts in Warsaw and Poznań. Additionally, the Regional Court in Warsaw has exclusive jurisdiction to resolve all matters pertaining to the infringement of technical trade secrets in the first instance.

Court proceedings concerning trade secret infringement are conducted under specific rules designed exclusively for IP (including trade secrets) disputes, as set out in the Polish Civil Procedure Code (CPC). These specific procedural rules were enacted together with the establishment of the specialised IP courts in July 2020 and include, among other things:

- the mandatory representation of litigating parties by attorneys-at-law or patent attorneys, unless the dispute value is below PLN20,000 or the court releases a party (upon request or ex officio) from

such professional representation obligations due to the low complexity of the case;
- the primacy of these IP-specific procedural rules over other specific CPC regulations which may also apply to IP litigation, in the event of inconsistencies; and
- the competence of IP courts to qualify a given matter as an IP case, which qualification is binding on other courts.

Although there are no official statistics on the increase in cases before IP courts concerning trade secret protection, the number of cases brought before these courts under the UCL is steadily growing – trade secret protection forming an important part of unfair competition legislation. This means that businesses operating in Poland, both domestic and international, are becoming increasingly aware of the key importance of trade secret protection for their operations and competitiveness. Continued steady growth in this type of case before the IP courts may be expected in the years to come.

New Technologies and Innovations: Trade Secret as a Key Asset in M&A Transactions

Over the past few years, there has been a clear trend regarding the key assets and components of businesses being acquired in M&A transactions in Poland. This trend consists of increasingly frequent transactions in which new technologies and innovations (rather than traditional fixed assets) constitute the essence of the transaction. These new technologies and innovations, in turn, are increasingly and more significantly protected by trade secret rights, including technical and technological know-how. This trend triggers several practical consequences:

- for the sell-side – the management of innovative businesses operating in Poland needs to ensure strict compliance with the statutory requirements under the UCL and the Trade Secrets Directive, so as to maintain sufficient legal protection of their trade secrets and preserve the value of the business to be sold;
- for the buy-side – M&A projects involving innovative businesses should be led by, or should include, teams and lawyers specialising in the protection of trade secrets and confidential know-how, in order to minimise the risks associated with insufficient protection measures in respect of the target's trade secrets; and
- for both sides – the due diligence and transaction process should be organised in a way that prevents any trade secrets of the target business from being disclosed.

Rights to Trade Secrets in Cross-Border Technology Transfer Projects

One of the clear indicators of the growing involvement of entrepreneurs in Poland in the development of innovation and new technologies is the increasing number of projects related to technology transfer (including assignment and licence agreements), which are frequently cross-border or even global in nature. The technology in question is often protected by various IP rights, including rights to technical or technological know-how.

While such technology transfer agreements are governed by the law chosen by the contracting parties, the effectiveness of a cross-border assignment or licence of the relevant IP rights is, in principle, subject to the laws of each respective jurisdiction (country) in which a given IP right is being used. This means that cross-border technology transaction projects often require verifying the IP transfer prerequisites in at least the key territories, and the co-operation of counsel from various jurisdictions.

Trade Secret Protection and Relations With Current and Former Personnel

One of the most sensitive areas of a business's operations in terms of trade secret protection is its legal (including contractual) relationship with its staff. Both case law in Poland and the recitals of the Trade Secrets Directive emphasise a subtle yet important distinction between the trade secrets of a given business and the experience and skills of its personnel. At the same time, among trade secrets disputes, those involving former personnel are the most common. Moreover, unlike the statutory rules concerning the creation of a copyrightable work or the making of an invention or design as a result of the performance of contractual duties by personnel, there are no equivalent statutory rules with respect to the assignment to an employer of trade secrets rights (including technical or technological know-how) that were created or developed by its personnel.

This, in turn, underscores the critical importance of properly drafted agreements with personnel who create or develop information protected as trade secrets – both in terms of the employer's effective acquisition of rights to such secrets and the obligations of personnel to maintain confidentiality and, within the limits provided by law, to refrain from competitive activity.

AI – New Challenges in Protecting Trade Secrets

In the era of rapidly evolving artificial intelligence, protecting trade secrets presents new challenges. Although AI tools provide significant operational advantages, they introduce potential risks of unintentional disclosure of trade secrets, especially when personnel use freely available AI tools without proper safeguards (so-called "shadow AI"). Additionally, insufficient safeguards may call into question whether the entrepreneur exercised due diligence in protecting its confidential information, potentially disqualifying such information from being legally recognised as a trade secret under the UCL.

To mitigate these risks, companies should establish internal policies governing the use of AI tools in the workplace. In particular:

- employees should receive adequate training on the legal and operational implications of using AI tools, particularly regarding data confidentiality;
- all identified incidents involving potential disclosure of confidential information should be promptly reported and addressed;
- employees should only use internally approved tools; and
- in contracts with AI solution providers, companies should ensure that both the input (prompt) and the output generated by such tools remain confidential and are not used by the provider to train AI models or for any other unintended purposes.

The appropriate protective measures may vary depending on the confidentiality level of the information concerned.

Legislative Plans to Strengthen Trade Secret Protection

While trade secrets are protected in Poland substantially under the UCL, the key legal act governing most industrial property rights in Poland is the Industrial Property Law Act dated 30 June 2000 (IPL). The IPL has been amended more than 20 times since its adoption in 2000, and the number of amendments has not had a positive impact on its readability. To ensure a modern and accessible legal environment for the protection of inventions, utility models, industrial designs and trade marks, a draft of an entirely new industrial property law has been prepared. Work on this draft was suspended, but discussions regarding its form have recently resumed.

One of the key solutions proposed in the draft of the new IPL is a new legal tool aimed at more effective trade secret protection. This tool takes the form of a repository dedicated to technical and technological information (know-how) constituting a trade secret within the meaning of the UCL. The repository is to be maintained by the Patent Office of the Republic of Poland (PPO), and its use will be voluntary for owners of technical or technological know-how. The proposed legal instrument aims to increase the effectiveness of trade secret protection by allowing rights-holders to objectively document and demonstrate, if needed (eg, in the case of an infringement or for transaction purposes), both the existence and the content and scope of their technical or technological know-how. The PPO will maintain the repository but will not examine the deposited information in terms of its content, nor verify the applicant's rights to the information contained therein.

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