

Trade Secret Law, Licensing, and Acquiring Bioenergy Data

DOE Workshop – Leveraging Existing Bioenergy Data

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Introduction

Trade Secret Basics

Licensing Trade Secrets

Trade Secrets and Bioenergy Data

Acquiring Bioenergy Data Assets

Trade Secret Basics

The broadest category of intellectual property, but perhaps the weakest.

Four basic elements.

Differences from patent law.

Independent development.

Trade Secret Licensing

Trade secrets are property rights and are licensed like other forms of intellectual property.

But the right may be rendered valueless if others publish the same or similar information; this is a price pressure.

The possibility of independent development also puts a ceiling on the license price (do your homework in advance!)

Trade Secrets and Bioenergy Data

Under what circumstances could data be a trade secret?

Tests, methods, experiments, etc.

Data that is compiled by others and available from third parties versus internally-developed data that would be difficult or impossible for others to replicate.

Facts in the world versus internal experiments.

Contract rights versus trade secret rights.

Acquiring Bioenergy Data Assets

From an existing company.

This is largely a matter of contract.

Use trade secret-specific points in a negotiation.

Be sure to obtain adequate representations and warranties as to conflicting IP claims from third parties.

Acquiring Bioenergy Data Assets

Availability from failed companies.

Availability through bankruptcy.

Trade secret law is loosely defined and frequently litigated, so risk cannot be discounted.

That said, only those with standing (generally ownership and license rights) can sue over trade secrets – not anyone connected with a failed company.

Consent and authorization.

Lack of reasonable measures through open sale.

Thank you