

## Solar Company's Amended Complaint Prompts Court to Dismiss Trade Secrets Claims Against LG Electronics as Untimely

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After finding that a solar technology company's claim under California's Unfair Competition Law was preempted by its theft of trade secret claim under California's Uniform Trade Secret Act, the Northern District of California proceeded to dismiss the trade secrets claims as untimely after the plaintiff amended its complaint and changed its theory of misappropriation.

Alta Devices, Inc., (Alta), is a manufacturer of thin-film solar technology that uses a specific compound semiconductor, Gallium Arsenide (GaAs). In 2011, LG Electronics, Inc., (LGE), entered into discussions with Alta about possible investment or other business opportunities between the two companies. In pursuit of those opportunities, both Alta and LGE entered into a non-disclosure agreement meant to protect Alta's trade secrets. The agreement required LGE to immediately return any physical trade secret information upon the termination of the agreement and to hold Alta's trade secrets in confidence for the next three years. After receiving confidential information from Alta, LGE declined to make an investment or enter into a business relationship with Alta. Instead, LGE allegedly used Alta's trade secrets to reverse engineer Alta's GaAs products and enter the market as a competitor of Alta. Alta alleges that LGE even posed as a customer in 2014 to receive a sample of Alta's GaAs product to assist with the reverse engineering process.

The Court rejected LGE's motion to dismiss Alta's initial complaint as untimely, finding that there was an issue of fact over when the non-disclosure agreement expired and triggered the three-year period that LGE was bound to hold Alta's secrets in confidence. Thus, based on the complaint alone, the Court could not find that Alta violated the four-year statute of limitations to bring its trade secrets claims. Alta then amended its complaint, prompting another motion to dismiss. This time, the Court agreed with LGE that Alta's trade secret claims were untimely. The Court noted that Alta added allegations that LGE entered into the non-disclosure agreement as part of its plan to acquire and misappropriate Alta's trade secrets. The Court found that these new allegations changed Alta's theory from alleged trade secret misappropriation *by use* to trade secret misappropriation *by acquisition*. Given Alta's theory of misappropriation by acquisition, the Court held that Alta was put on inquiry notice of the acquisition immediately at the termination of the non-disclosure agreement because Alta alleged that LGE did not return its trade secrets at that time. The Court, therefore, dismissed Alta's trade secrets claims as untimely.

**TIP: Plaintiffs bringing claims of trade secret misappropriation should carefully define their theory as misappropriation *by use* or misappropriation *by acquisition* and consider how the statute of limitations might**

impact each theory. Companies should also assess whether their NDAs can be bolstered by imposing an indefinite non-disclosure period for trade secrets even if the obligation to protect other confidential information is time-limited.

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