



1 of 2 DOCUMENTS

DEERING'S CALIFORNIA CODES ANNOTATED
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*** THIS DOCUMENT IS CURRENT THROUGH 2009-2010 EXTRAORDINARY SESSIONS 1-5, ***
7, AND 8, AND URGENCY LEGISLATION THROUGH CH 733 OF THE 2010 REGULAR SESSION
AND CH 3 OF THE 2009-2010 6TH EXTRA SESSION

CODE OF CIVIL PROCEDURE
Part 4. Miscellaneous Provisions
Title 4. Civil Discovery Act
Chapter 5. Methods and Sequence of Discovery
Article 2. Methods and Sequence of Discovery in Specific Contexts

GO TO CALIFORNIA CODES ARCHIVE DIRECTORY

Cal Code Civ Proc § 2019.210 (2010)

§ 2019.210. Misappropriation of trade secret

In any action alleging the misappropriation of a trade secret under the Uniform Trade Secrets Act (Title 5 (commencing with *Section 3426*) of *Part 1 of Division 4 of the Civil Code*), before commencing discovery relating to the trade secret, the party alleging the misappropriation shall identify the trade secret with reasonable particularity subject to any orders that may be appropriate under *Section 3426.5 of the Civil Code*.

HISTORY:

Added Stats 2004 ch 182 § 23 (AB 3081), operative July 1, 2005.

NOTES:

Historical Derivation:

Former CCP § 2019(d), added Stats 1986 ch 1334 § 2, amended Stats 1987 ch 86 § 4, Stats 1988 ch 553 § 2, Stats 1995 ch 576 § 6.

Law Revision Commission Comments:

2004

Section 2019.210 continues former Section 2019(d) without change.

Editor's Notes

For notes of decisions derived from cases decided under former CCP § 2019, see *CCP § 2019.010*.

Collateral References:

Cal. Points & Authorities (Matthew Bender(R)) ch 81 "Discovery: Privileges And Other Discovery Limitations" § 81.331.

Cal. Employment Law (Matthew Bender(R)), § 70.02.

Cal. Legal Forms, (Matthew Bender) §§ 57.21[2], 85.440[1][d][ii], 86.204[1][e].

Matthew Bender(R) Practice Guide: *Federal Pretrial Civil Procedure in California*, 24.93

13 Witkin Summary (10th ed) Equity § 92.

Hierarchy Notes:

Pt. 4, Tit. 4 Note

NOTES OF DECISIONS 1. Application 2. Reasonable Particularity 3. Claim Not Established

1. Application

CCP § 2019.210 is not limited in its application to a cause of action under the Uniform Trade Secrets Act, CCP §§ 3426-3426.11, for misappropriation of the trade secret, but extends to any cause of action which relates to the trade secret. The trade secret designation mandated by § 2019.210 is not itself a pleading but functions like one in a trade secret case because it limits the scope of discovery in much the same way as the allegations of a complaint limit discovery in other types of civil actions, and it means that a plaintiff must make some showing that is reasonable under all the circumstances to identify its alleged trade secret in a manner that will allow the trial court to control the scope of subsequent discovery, protect all parties' proprietary information, and allow them a fair opportunity to prepare and present their best case or defense at a trial on the merits. *Advanced Modular Sputtering, Inc. v. Superior Court* (2005, *Cal App 2d Dist*) 132 *Cal App 4th* 826, 33 *Cal Rptr 3d* 901, 2005 *Cal App LEXIS* 1433, rehearing denied *Advanced Modular Sputtering, Inc. v. Santa Barbara County Superior Court (Sputtered Films, Inc.)* (2005) 2005 *Cal. App. LEXIS* 1685, review denied *Advanced Modular Sputtering v. S.C.* (2005, *Cal*) 2005 *Cal LEXIS* 13061.

CCP § 2019.210, concerning discovery in trade secret misappropriation actions, is a state rule of civil procedure that is inapplicable in federal court, especially since it has the effect of imposing an otherwise unmandated sequence to discovery. *Proven Methods Seminars, LLC v. Am. Grants & Affordable Hous. Inst.* (2008, *ED Cal*) 2008 *US Dist LEXIS* 10714.

CCP § 2019.210 did not govern a federal trade secret action because it conflicted with *Fed. R. Civ. P. 26* in that the state provision was not in keeping with the liberal discovery scheme of Rule 26; however, fair notice was required prior to presentation of trade secret claims. *Hilderman v. Enea Teksci, Inc.* (2010, SD Cal) 2010 US Dist LEXIS 1527.

2. Reasonable Particularity

Where a plaintiff makes a showing that is reasonable, i.e. fair, proper, just, and rational, a trade secret has been described with "reasonable particularity" pursuant to *CCP § 2019.210* and is sufficient to permit discovery to commence. *Advanced Modular Sputtering, Inc. v. Superior Court* (2005, Cal App 2d Dist) 132 Cal App 4th 826, 33 Cal Rptr 3d 901, 2005 Cal App LEXIS 1433, rehearing denied *Advanced Modular Sputtering, Inc. v. Santa Barbara County Superior Court (Sputtered Films, Inc.)* (2005) 2005 Cal. App. LEXIS 1685, review denied *Advanced Modular Sputtering v. S.C.* (2005, Cal) 2005 Cal LEXIS 13061.

Trial court's order that permitted a manufacturer to conduct discovery on all of its causes of action against a competitor other than its cause of action under the California Uniform Trade Secrets Act, *CC §§ 3426-3426.11*, for misappropriation of trade secrets, was vacated because the trial court adopted an inappropriately strict construction of the term "reasonable particularity" found in *CCP § 2019.210* and erroneously distinguished between a cause of action for misappropriation of trade secrets and other causes of action which also depended upon the same alleged misappropriation. *Advanced Modular Sputtering, Inc. v. Superior Court* (2005, Cal App 2d Dist) 132 Cal App 4th 826, 33 Cal Rptr 3d 901, 2005 Cal App LEXIS 1433, rehearing denied *Advanced Modular Sputtering, Inc. v. Santa Barbara County Superior Court (Sputtered Films, Inc.)* (2005) 2005 Cal. App. LEXIS 1685, review denied *Advanced Modular Sputtering v. S.C.* (2005, Cal) 2005 Cal LEXIS 13061.

Defendant in action for alleged misappropriation of trade secrets under *CC § 3426.1* was not entitled to compel further identification of trade secrets; plaintiff's amended statement cured the deficiencies of the original statement and satisfied the "reasonable particularity" requirement of *CCP § 2019.210* because it distinguished trade secret information from non-trade secret confidential information and incorporated more specific language into the description of each trade secret and explained how the information was distinguishable from general knowledge in the field of pain management systems. *I-Flow Corp. v. Apex Med. Techs., Inc.* (2008, SD Cal) 2008 US Dist LEXIS 44551.

In an action brought pursuant to the Uniform Trade Secrets Act, *CC § 3426 et seq.*, a claimant's trade secret designation was sufficiently particular to meet the reasonable particularity standard of *CCP § 2019.210*, where the claimant named two alleged trade secrets: his formula for a high protein, low carbohydrate pudding and his manufacturing process. *Brescia v. Angelin* (2009, 2d Dist) 172 Cal App 4th 133, 90 Cal Rptr 3d 842, 2009 Cal App LEXIS 365, review denied *Brescia (William) v. Angelin (Keith)* (2009, Cal.) 2009 Cal. LEXIS 5718.

Two most important goals of *CCP § 2019.210*, are to help the court shape discovery, and to give the defendant the opportunity to develop defenses. Absent a showing that elaboration is required to serve these goals, § 2019.210 should not be construed to require the trade secret claimant to explain why the alleged trade secret differs from matters already known in the industry. *Brescia v. Angelin* (2009, 2d Dist) 172 Cal App 4th 133, 90 Cal Rptr 3d 842, 2009 Cal App LEXIS 365, review denied *Brescia (William) v. Angelin (Keith)* (2009, Cal.) 2009 Cal. LEXIS 5718.

CCP § 2019.210, does not require in every case that a trade secret claimant explain how the alleged trade secret differs from the general knowledge of skilled persons in the field to which the secret relates. Rather, such an explanation is required only when, given the nature of the alleged secret or the technological field in which it arises, the details provided by the claimant to identify the secret are themselves inadequate to permit the defendant to learn the boundaries of the secret and investigate defenses or to permit the court to understand the designation and fashion discovery. *Brescia v. Angelin* (2009, 2d Dist) 172 Cal App 4th 133, 90 Cal Rptr 3d 842, 2009 Cal App LEXIS 365, review denied *Brescia (William) v. Angelin (Keith)* (2009, Cal.) 2009 Cal. LEXIS 5718.

When the nature of the alleged trade secret or the technical field in which it arises makes a detailed description

alone inadequate to permit the defendant to learn the limits of the secret and develop defenses or to permit the court to understand the secret and fashion discovery, the court may require an explanation of how the alleged trade secret differs from matters known to skilled persons in the field as necessary to satisfy those needs. But absent such necessity, requiring such an explanation in every case is unreasonable. *Brescia v. Angelin* (2009, 2d Dist) 172 Cal App 4th 133, 90 Cal Rptr 3d 842, 2009 Cal App LEXIS 365, review denied *Brescia (William) v. Angelin (Keith)* (2009, Cal.) 2009 Cal. LEXIS 5718.

Trade secret statement was insufficient because of its broad language, surplusage, and voluminous attachments; it failed to provide the exacting level of particularity required in a highly specialized technical field to distinguish the alleged trade secrets from the prior art or matters within the general knowledge of persons in the industry. *Perlan Therapeutics, Inc. v. Superior Court* (2009, 4th Dist) 178 Cal App 4th 1333, 2009 Cal App LEXIS 1787.

3. Claim Not Established

(Unpublished) Plaintiff failed to establish misappropriation of trade secrets by defendant because plaintiff did not identify any trade secret with reasonable particularity. *Nsight, Inc. v. Peoplesoft, Inc.* (2008, CA9 Cal) 296 Fed Appx 555, 2008 US App LEXIS 21523.