

TOP TRADE SECRETS LAWYERS 2023



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Douglas E. Lumish, an intellectual property litigation partner in Latham & Watkins' Bay Area offices, specializes in trade secrets cases, representing clients in groundbreaking, high-profile disputes.

In one notable matter, he represents Skyryse, a manufacturer of an advanced pilot assistance system (APAS). This case revolves around cutting-edge technology, with accusations of trade secret theft from Moog, which holds proprietary aero-

nautics technology. Lumish is defending Skyryse against these allegations.

Lumish is also leading the legal team in another high-stakes trade secret action. The case alleges that Balt and several former MicroVention employees misappropriated trade secrets related to medical device technology for treating brain aneurysms. This dispute is set to go to trial in the first half of 2024. *MicroVention, Inc. v. Balt USA LLC*, 20-cv-2400 (C.D. Cal., filed Dec. 22, 2020).

A significant aspect of Lumish's practice is his deep involvement in diverse industries, from AI and medical devices to aeronautics, global shipping, computer security and web technologies. These cases deal with cutting-edge technologies that can potentially impact products in the marketplace and even the viability of the involved companies. They also introduce legal questions of first impression, including jurisdiction, damages and the legal requirements for identifying and establishing ownership of trade secrets under the Defend Trade Secrets Act (DTSA).

Lumish discusses one of the central challenges in trade secret cases, emphasizing the need for lawyers to be well-versed in highly technical and complex materials. In these cases, the definition of trade secrets can evolve as the case progresses, requiring litigants and attorneys to craft narratives and

counter-narratives about the alleged trade secrets, their distinctions from conventional wisdom and their value.

Regarding the trade secrets field, Lumish said, "As a macro trend, the number of major trade secret cases continues to grow each year as big verdicts come in and IP lawyers repurpose their skills in patent cases to DTSA cases in federal court. As a more micro trend, I have seen an unfortunate rise in the vitriol in trade secret cases and in the willingness of lawyers to allege misconduct or spoliation and to opportunistically seek sanctions against their opposing parties and counsel. Often, obtaining an adverse inference sanction is a litigant's primary goal in a trade secret case and is seen as more valuable than whatever evidence is alleged to have been lost or destroyed. This leads to parties jockeying to manufacture such allegations of misconduct for leverage in settlement or at trial."

Beyond his legal practice, Lumish is actively involved in professional associations such as the Federal Circuit Bar Association and the Eastern District of Texas Bar Association. He served on the Patent Local Rules Committee for the Northern District of California in 2017 and has chaired the Federal Circuit Bar Association's Bench & Bar Planning Committee.