

When Nondisclosure Agreements and Pharmaceutical Trade Secrets Intersect

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In the United States, the scale of trade secret theft is estimated to be between \$180 billion and \$450 billion annually. Among the targets of this theft are pharmaceutical companies, which are some of the most research-intensive institutions in the world. Pharmaceutical research generally requires extensive work and often generates proprietary data that is pivotal to shaping pharmaceutical development. Because that data may be very attractive to threat actors, pharmaceutical companies employ various measures to protect their proprietary information, these measures may sometimes fall short. A November 2021 trade secret misappropriation suit brought by Venn Therapeutics (“Venn”) against Corbus Pharmaceuticals (“Corbus”) in the District Court for the Middle District of Florida highlights the issues that can arise despite a company’s best efforts to protect its trade secrets.

The origins of the dispute date back to April 2018, when Venn exclusively licensed the rights to an antibody called VTX-001 from the University of California (the “University”). In its complaint, Venn states that, after licensing the rights to the antibody, it spent many months and millions of dollars studying VTX-001. According to Venn, those studies demonstrated that the antibody effectively inhibited a certain cell receptor linked to cancer growth. Based on VTX-001’s promising results, Venn then entered into an exclusive negotiation agreement with the University in March 2020 to license VTX-002—an antibody derived from VTX-001 which was shown to be even more potent than VTX-001 in early studies. Pursuant to the exclusive negotiation agreement, the University could not solicit or consider any offer for VTX-002 from a third party until December 2020. In addition, the exclusive negotiation agreement required Venn to obtain a certain level of funding as a condition to the grant by the University of a license for the rights to VTX-002. When Venn determined that it would not be able to satisfy the funding condition on its own, it hoped to partner with a third party in order satisfy the financial requirement.

Venn states that in November 2020 it approached Corbus—which was then purportedly focused on only neurobiological therapies—and sent Corbus an informational slide deck that contained high-level, non-confidential information about Venn’s therapeutic development efforts. Venn and Corbus thereafter entered into a nondisclosure agreement, according to which Corbus allegedly agreed not to use confidential information disclosed by Venn for any purpose other than considering and forming a business relationship with Venn. As the negotiations between Venn and Corbus progressed, Venn provided Corbus with access to a confidential virtual data room containing proprietary data, reports, and analyses from its work with VTX-001. Venn also disclosed to Corbus information about VTX-002. By February 2021, Venn and Corbus were purportedly in the midst of finalizing the terms of a transaction agreement. However, according to the complaint, Corbus abruptly terminated the final negotiations without explanation and shortly thereafter issued a press release announcing that it had exclusively licensed the rights to VTX-002, and that human testing would begin in the first half of 2023.

Stay tuned for any interesting developments in the litigation between Venn and Corbus, including Corbus’s response to Venn’s complaint. It is possible that Corbus simply acted in bad faith. It is also possible that the Venn-Corbus nondisclosure agreement was less protective of Venn’s data than Venn hoped it would be, or that ambiguities in the agreement created a fundamental misunderstanding between the parties with respect to their respective rights and obligations under the agreement. Regardless of the cause, Venn’s suit against Corbus serves as a stark reminder that disputes concerning confidential information—particularly in an industry where research and development form the backbone—may ultimately lead to litigation.

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