

UTSA Preemption and the Public Domain:

How Courts Have Overlooked Patent Preemption of State Law Claims Alleging Employee Wrongdoing

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Majority and Minority Positions on Preemption under the UTSA

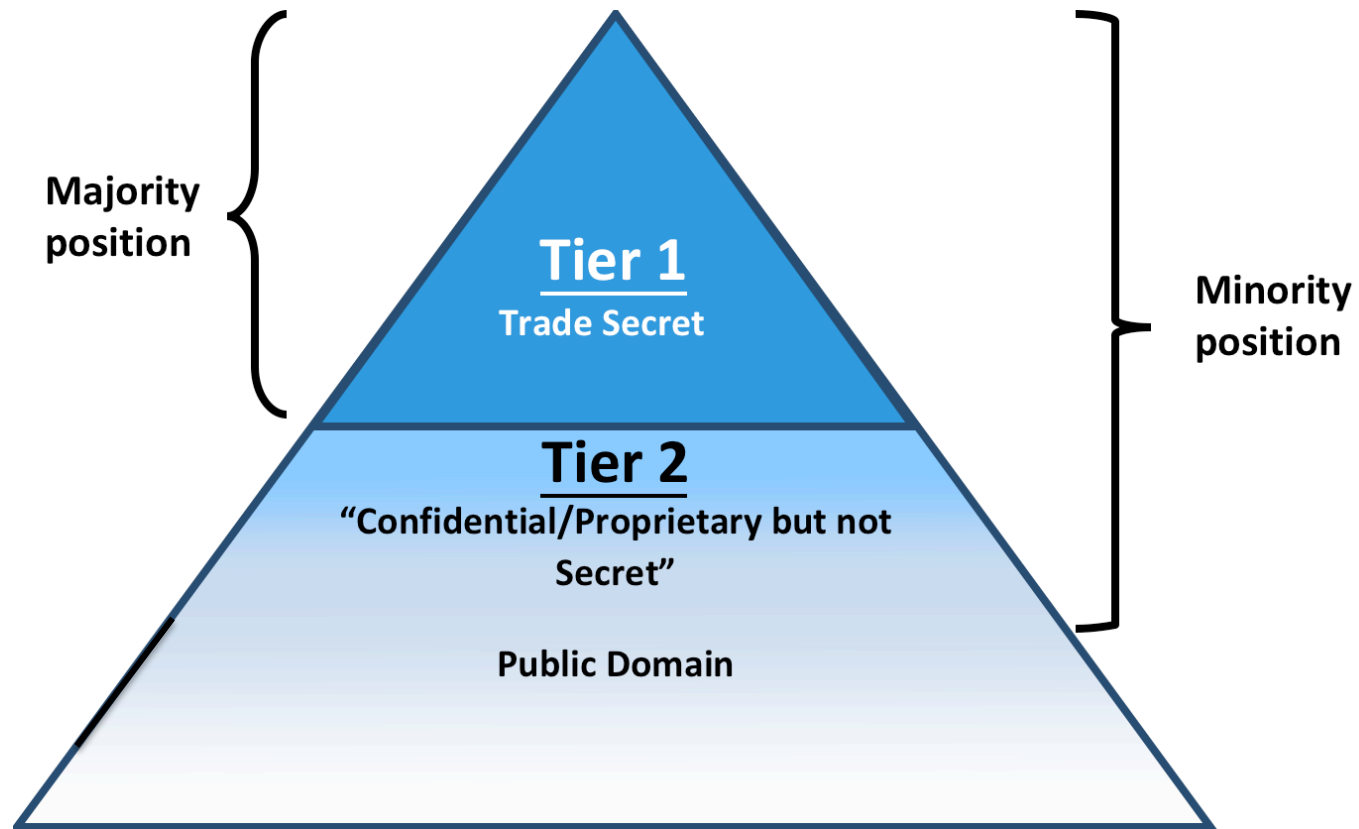
Majority position – Single Tier of Protected Information

The UTSA preempts common law claims arising from the same facts as a trade secret claim. UTSA claims represent the exclusive tort remedy for allegations that a party misused non-public business information.

Minority position – Second Tier of Protected Information

Overlapping common law tort claims are available for a information constituting a failed trade secret claim. Courts typically refer to the information as “proprietary” or “confidential but not secret.”

Majority vs. Minority Position on Trade Secret Preemption





Convertible Jet Boat and Personal Water Craft

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Subsidized "below cost" Hull and Deck Moulds offered for the Dokitjet 5.6m RIB craft in your region



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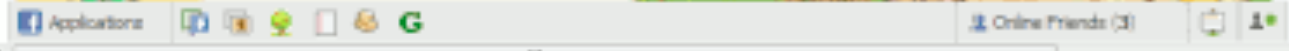
A jet boat and a jetski!

The **Dokitjet 5.6m RIB** (Patent Pending) is an unsinkable **Rigid Inflatable Boat**, powered by a Personal Water Craft, which can lock in and out of the Dokitjet hull at any time, in minutes.

The Dokitjet RIB can fit most PWC, becoming a boat that's great for group outings, safe and dry in chop, stable and spacious for fishing, diving or lunch, and still free to undock for play. The best of all worlds!



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What Kinds of Information are Minority Position States Protecting, and Why?

Common definition of trade secrecy under the UTSA:

- (1) Information that ... derives **independent economic value**, actual or potential, **from not being generally known** to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and
- (2) Is the subject of **efforts** that are reasonable under the circumstances **to maintain its secrecy.**"