

**Hearing on**

**“Protecting Trade Secrets: the Impact of Trade Secret Theft on American  
Competitiveness and Potential Solutions to Remedy This Harm”**

**United States Senate Committee on the Judiciary**

**December 2, 2015**

**Written Statement of Karen Cochran**

**Associate General Counsel and Chief Intellectual Property Counsel**

**E. I. du Pont de Nemours and Company**

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Good morning Chairman Grassley, Ranking Member Leahy, and Members of the Committee. My name is Karen Cochran, Associate General Counsel and Chief Intellectual Property Counsel for E. I. du Pont de Nemours and Company (DuPont). Thank you for the opportunity to testify today on an issue of importance not only for my company—but for the American economy.

I want to express my support and appreciation for the leadership of Senators Hatch and Coons and their bi-partisan legislation, the Defend Trade Secrets Act, S. 1890. I also want to thank the Committee for your interest in trade secret protection.

I am here today on behalf of DuPont in support of S. 1890. DuPont has extensive experience in establishing, maintaining, and defending our trade secrets. It is our position that S. 1890 will provide an improved mechanism to protect trade secrets.

## **DuPont's History as an Innovator**

Throughout our history, DuPont's research locations have been the birthplace of a diverse array of innovations found in homes, farms, and businesses across the United States and around the world. DuPont's long line of innovation includes well-known technologies and products from Kevlar® and Tyvek® to seed and crop protection. These products reached the market with ingenuity, many years of dedication, and with the support of intellectual property protection.

As an innovator, DuPont™ depends on intellectual property protection—including trade secrets. Realizing the full potential of our innovation often includes knowledge-building that can span decades. This work generates a range of intellectual property from patents to trade secrets.

DuPont recently defended the trade secrets for one of our well-known products, Kevlar®. This experience brought about our realization of the importance of S. 1890 and updating trade secret protection and remedies. In sum, I will share the highlights of our trade secret enforcement experience, the need for assured, direct access to a federal court for these cases, and generally why time is of the essence in trade secret theft.

## **DuPont's Experience with Trade Secret Theft and Litigation**

The technology behind DuPont™ Kevlar® is a high-strength fiber used in a range of applications from protective body armor to fiber-optic cables. DuPont invested over fifty (50)

years of research and development to master this technology. Our product quality and manufacturing expertise have been unparalleled.

DuPont safeguards and maintains much of its valuable Kevlar® know-how as trade secrets. It was in 2006, however, that DuPont suspected that it had been a victim of trade secret theft. What we initially thought to be the misconduct of one ex-employee, turned out to be a sophisticated, large-scale trade secret theft of one of the most recognized and ground-breaking products in history. The federal criminal investigation led to indictments of Kolon Industries, Inc. under the Economic Espionage Act. The civil matter DuPont filed against Kolon would not be resolved until 2015.

As stated in the court record, Kolon ‘undertook various efforts to learn DuPont’s trade secrets...[and] find out how DuPont...operated...to produce a high quality...fiber at a profitable and price-competitive production level.’ To accomplish their goal, they recruited long-standing, former DuPont employees who had access to Kevlar® trade secrets throughout their employment with the company.

Fortunately, our case allowed us to access federal court. Even there, we experienced difficulty in determining the depth of the trade secret theft. We also experienced excessive delays. Court-compelled discovery indicated that Kolon had destroyed evidence. DuPont pursued these allegations with the assistance of a forensic expert, and the Court found Kolon to have deleted or destroyed considerable volumes of relevant evidence. After multiple motions to

compel, hearings and investigation to piece together what remained, this evidence destruction severely hampered DuPont's ability to prove its case.

### **What DuPont Learned in Trade Secret Litigation**

Our nine-year effort to defend our Kevlar® trade secrets exemplifies the importance of S. 1890 and its modernization of trade secret law. We urge the committee to consider what we learned from trade secret litigation: (1) the need for assured, direct access to federal court; and (2) the need to reduce the risk of further trade secret dissemination or the destruction of evidence.

First, the federal court's experience with litigating complex technologies for other intellectual property disputes is a valuable tool in addressing comparable complexities in trade secret cases. Existing state law enforcement is inadequate to address the interstate and international nature of trade secret theft. A federal civil remedy would eliminate jurisdictional complications and provide the full spectrum of legal options available to owners of other forms of intellectual property. Our ability to be in federal court was a significant help in advancing the Kolon case.

Second, paper copies and locked cabinets are no longer the standard medium of storage and dissemination of information. Information is now in portable, electronic form. It can be hidden and rapidly shared, or as in the case with Kolon, quickly deleted. The seizure provisions enable a trade secret owner under limited, controlled conditions, to proactively contain a theft

before it progresses and the trade secret is lost. A seizure mechanism may have prevented Kolon's comprehensive destruction of evidence and eliminated or reduced the need for a lengthy, expensive litigation.

### **Conclusion**

In conclusion, I urge the Committee to consider moving forward legislation, providing a federal process of certainty in allowing companies to protect their trade secrets in federal court. S. 1890, the Defend Trade Secrets Act, would represent a gold standard for national trade secret laws globally. Again, thank you again for the opportunity to testify today. I will be pleased to answer questions you may have or supply additional information for the record.