

District Court Injects Five Errors into Four-Factor Preliminary Injunction Test  
*Insulet Corp. v. EOfFlow, Co. Ltd., 2024-1137 (Fed. Cir. June 17, 2024)*

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The Court of Appeals for the Federal Circuit (“CAFC”) recently reversed the U.S. District Court for the District of Massachusetts (“District Court”)’s grant of a preliminary injunction against EOfFlow, a medical device manufacturer that makes insulin pump patches. Insulet, also a manufacturer of insulin pump patches (the “OmniPod”) sought the injunction to prevent EOfFlow from making or selling its products on grounds that they misappropriated Insulet trade secrets. Insulet alleged it would be irreparably harmed by EOfFlow’s impending merger with Medtronic. The CAFC held that, in analyzing the four-factor *Winter* test for preliminary injunctions, the District Court abused its discretion in at least five ways.

Courts evaluate whether to grant a preliminary injunction, “an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled such a relief,” based upon four factors (the *Winter* factors): (1) likelihood of success on the merits, (2) likelihood of irreparable harm; (3) the balance of equities and hardships; and (4) whether injunction is in the public interest.

On the **likelihood of success on the merits**, the CAFC held the District Court abused its discretion by (1) failing to consider whether the trade secret claim was time-barred (2) applying a sweeping, “severely overbroad” definition of the claimant’s “trade secrets,” which included all information marked as “Confidential” and specifications, drawings, and CAD files related to the OmniPod, and (3) failing to consider publicly accessible information about the OmniPod, including patent disclosures, and for erroneously stating that the capability for a product to be reverse engineered was insufficient to defeat trade secret protection; it is. The CAFC further found that the harm to EOfFlow from the overbroad trade secrets was “compounded” by “the [D]istrict [C]ourt’s position that ‘it would be unfair to require at this stage perfection as to the precise number and contours of the trade secrets at issue,’” leading it to “advanc[e] a hazy grouping of information that [it] did not probe with particularity to determine, what, if anything, was deserving of trade secret protection.” On the **irreparable harm factor**, the CAFC found an the District Court abused its discretion by relying on “mere conjecture” when it came to determining competitive harm via loss of market share. And on the **public interest factor**, the CAFC held the District Court abused its discretion by failing to “meaningfully engage with the public interest prong.”

It is atypical for an appellate court to so comprehensively dismantle an analysis when it could have stopped after the first error, but the CAFC seems to be sending trade secret plaintiffs a message. It is common for plaintiffs to advance an “aggressive” interpretation of trade secret law, demanding relief while refusing to identify their trade secrets with particularity. This is advantageous because it denies the defense knowledge of what they are even fighting. But, courts have long been suspicious of this strategy for decades as they struggled to balance the competing policy considerations trade secret cases present. *See DeRubeis v. Witten Techs., Inc.*, 244 F.R.D. 676, 680-81 (N.D. Ga. 2007). By convincing the District Court to adopt its position, Insulet led the Court to strike the wrong balance, running well afoul of the law, and its luck ran out on appeal. The lesson here for trade secret plaintiffs is to put their cards on the table.