



---

Portfolio Media, Inc. | 111 West 19th Street, 5th floor | New York, NY 10011 | [www.law360.com](http://www.law360.com)  
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | [customerservice@law360.com](mailto:customerservice@law360.com)

---

## Google Says Rival Can't Prove Actions After DTSA

By **Kelly Knaub**

Law360, New York (May 12, 2017, 6:57 PM EDT) -- Google asked a California federal judge Thursday to toss rival Space Data's second amended complaint accusing it of misappropriating trade secrets on balloon-based internet technology, saying the allegations were conclusory and that Space Data couldn't prove any actions took place after the passage of the Defense Trade Secrets Act.

The tech giant told California's Northern District that Space Data's 80-plus-page second amended complaint still suffers from the same deficiencies as the one before it. Space Data filed the doctored trade secret and patent infringement complaint, which accuses Google Inc. of stealing its balloon-based internet technology to create Project Loon, several days after U.S. District Judge Beth Freeman dismissed it with leave to amend **in February** on the grounds that the wireless services company needed to be more specific about what trade secrets Google allegedly stole.

Google argued that Space Data's second amended complaint falls short on setting forth facts concerning Google's alleged misappropriation of any trade secrets and says that even if Space Data successfully alleged some misuse of its confidential information prior to May 11, 2016, the company still failed to allege any misappropriation following the enactment of the DTSA.

"Indeed, Space Data does not allege any specific acts by Google, lawful or otherwise, post-dating May 11, 2016," Google argued. "Rather, despite this court's clear guidance that more is needed to plead a valid DTSA claim, all that Space Data offers is a single conclusory allegation of ongoing misappropriation based on the mere fact that Google's Project Loon continues to exist."

Google also contended that the second amended complaint fails to identify Space Data's alleged trade secrets with the necessary detail and that it also fails to describe any of Space Data's claimed trade secrets with enough detail to distinguish them from information that has been publicly available in the wireless services company's patents and patent applications, pre-nondisclosure agreement disclosures to Google and press interviews.

"If this complaint does not allege misappropriation with requisite detail, no complaint ever could," Spencer Hosie, an attorney for Space Data, told Law360 on Friday in an emailed statement.

Space Data launched the suit in June, accusing Google, Google's spinoff Alphabet Inc. and Alphabet's subsidiary X of misappropriating its patented trade secrets and launching the rival wireless communication service called Project Loon. The suit alleged that Project Loon

uses Space Data's system of placing a constellation of balloons in the stratosphere to create an aerial wireless network with up to 4G-LTE speeds.

Space Data alleged that it disclosed its proprietary technology to the tech giant after Google expressed interest in acquiring Space Data in 2007. At the time, Space Data had Google sign a confidentiality and nondisclosure agreement prohibiting it from using its proprietary information.

In February 2008, a dozen Google executives, including Google founders Larry Page and Sergey Brin, visited the company to scope out the technology. The suit said that at the time of the visit, Space Data had conducted more than 15,000 flights and accrued more than 100,000 flight hours studying the weather patterns to enhance its technology's capabilities.

The suit said that less than a month after the visit, a member of the Google team sent Space Data an email saying the company wouldn't engage in further discussions in the near term, apparently because Space Data had discussed its business with *The Wall Street Journal*.

Space Data later discovered through media reports that Google had launched Project Loon. Space Data sued, asserting breach of contract claims, infringement of two patents — one of which Space Data has since recaptured at an interference proceeding at the U.S. Patent and Trademark Office, according to its second amended complaint — and trade secret misappropriation in violation of California statutes and the federal DTSA.

Space Data on Friday filed a reply brief to Google's opposition to its bid to file a third amended complaint, saying the amendment is proper under the Federal Rules of Civil Procedure.

Specifically, Space Data has several new patents, including the one clawed back from Google, that it wants to add to the complaint, according to Hosie.

"So we now own a Google Loon patent Google itself filed," Hosie said. "Hard for Google to discredit its own patent."

In December, Google filed a motion to dismiss, arguing that Space Data's complaint failed to plead sufficient facts about what trade secrets Google stole and instead only listed "vague categories of information" it claimed are its confidential trade secrets. Google also argued that DTSA claims can only apply to violations that occur after the law went into effect on May 11, 2016, but that the alleged violations occurred years before.

Additionally, Google had argued that it never violated its "limited obligations" under the nondisclosure agreement and therefore wasn't liable for the breach of contract claims.

Judge Freeman sided with Google in February, saying that Space Data's list of stolen trade secrets was "pretty general" and didn't explain what exactly the trade secrets were.

A trial date is tentatively scheduled for June 3, 2019.

The patents-at-issue are U.S. Patent Numbers 6,628,941 and 7,801,522.

An attorney for Google referred Law360 to a Google representative, who did not respond to a request for comment by the time of publishing.

Space Data is represented by Spencer Hosie, Diane S. Rice, Lyndsey C. Heaton and Darrell R. Atkinson of Hosie Rice LLP.

Alphabet and Google are represented by Robert A. Van Nest, Christa M. Anderson, Matthew Werdegar, Eugene M. Paige, Matthias A. Kamber, Thomas E. Gorman and Leah Pransky of Kecker Van Nest & Peters LLP.

The case is Space Data Corp. v. X et al., case number 5:16-cv-03260, in the U.S. District Court for the Northern District of California.

--Additional reporting by Dorothy Atkins. Editing by Sara Ziegler.

---

All Content © 2003-2017, Portfolio Media, Inc.