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# Mechanism of Judicial Protection against Infringement of Trade Secrets

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**Abstract**

*Advanced countries of the world adopt modern methods to deal with claims of trade secrets from infringement, The most prominent of these methods are the substantive and formal conditions that must be provided in the protection cases, The subject of the research, since the will, the place, and the cause are the real pillars that must be resorted to in the objective conditions of the petition for the protection of trade secrets, as for the place and time circumstance, they are among the most important and accurate formal conditions, which shed a light specially in comparative legislation, such as French and American Law.*

**Keywords:** *Trade Secret, Judicial Protection.*

## Introduction

Judicial procedures in the protection of trade secrets occupy an important and effective position in the field of legal regulation in developed countries, while third world countries still hesitate in granting procedural legislative importance to the Civil Procedure Law in protecting trade secrets and viewing them as mere formalities with no purpose. Therefore, it does not rise to the level of law, but rather below that, as it is decided according to the opinion of the legislator, in contrast to the objective rules that are often governed by the principle of consensual consent.

Reasons for Choosing the Topic

The lack of studies that shed light on the judicial procedure for the protection of trade secrets compared to the Latin and Anglo-American schools, so this research is a serious and real attempt to conduct an in-depth study in the laws of pleadings.

Research Importance

The survival of the backward view of the rules of the Civil Procedure Law leads to viewing these rules as mere formal rules that impede justice without being able to know the real philosophical function of these rules and their importance for building a real legislative organization appropriate to the nature of the rights of the litigants as well as in the protection of trade secrets, and that this goal It is in itself a practical necessity to study rules that protect material and moral trade secrets that represent the capital of the state from the funds of its individuals and the mechanism for preserving them, especially since these procedures are not carried out by the litigants alone who are governed by the law to be characterized by a set of objective and formal conditions from the moment of filing the

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lawsuit until winning The decision issued in the case is final, but also participates in these procedures on the side of the litigants, and the judge who must be knowledgeable in the rules of litigation and not just familiar with them, as well as the clerk of the seizure and the judicial reporter, and some others are carried out by the litigants or their lawyers, and other persons may intervene As in experience and testimony. In addition to this and that, these procedures are closely related to each other, and thus they reflect the philosophy of the state in organizing its judicial activity, and the seriousness of litigation procedures on trade secrets, which may be the first violator of these secrets through litigation procedures during or after the pleading.

## Research Methodology

This study followed the method of a comparative study between the Latin and Anglo-American schools, which deals with the issue of judicial protection of trade secrets.

Research Plan

The study was divided into two requirements:

The first requirement: Substantive Conditions in the Trade Secrets Protection Suit.

The second requirement: the formal conditions in the case for the protection of trade secrets.

1st Requirement

Substantive Conditions in the Trade Secrets Protection Lawsuit

We will divide the substantive conditions for the protection of a trade secrets suit in the Latin and Anglo-American schools

First branch:

Substantive conditions in the lawsuit for the protection of trade secrets in the Latin School:

In the Iraqi law, the Civil Procedure Law No. (83) of 1969 indicates in Article (3) specifically that: (It is required that each of the parties to the lawsuit enjoy the necessary capacity to use the rights to which the lawsuit relates, otherwise he must be represented by someone who takes his place legally in using these rights).

We conclude from this article that in order to accept the lawsuit for the protection of commercial secrets, the subject of the research, the person must have the legal capacity or the objective requirements to accept the lawsuit, which are the will, the place and the cause, and we will detail that successively.

First: The will to file a lawsuit for the protection of trade secrets

The sound and free will is the first principle on which the judicial procedure is built as a legal act that is considered reliable. However, it must be stressed that they will be required in filing a lawsuit for the protection of trade secrets is the will of the procedure for filing the lawsuit and not the effect of this procedure. To uphold the invalidity of this judicial procedure, so if the plaintiff or the defendant left the lawsuit for the protection of trade secrets based on the coercion of one of them or the acknowledgment of one of them to practice the act of coercion against his other opponent, then this behavior allows the party subjected to coercion to invoke the invalidity.

Some Iraqi jurisprudence goes that the defect that is tainted by will or coercion breaks the bond produced by the judicial procedure, and therefore this procedure resulting from these defects is without effect.

Second: The Object in the Protection of Trade Secrets Lawsuit:

It is the content of the judicial procedure, as the law draws a specific formality, and this formality is considered essential to the place of the judicial procedure, without which there is no place for this procedure, based on the text of Article (1/44) of the Iraqi Civil Procedure Law, which specifies that the form of the judicial claim in the petition of the case be in the form of the drawn law Where it states: (1- Every lawsuit must be filed with a petition).

Therefore, this text can be applied to a lawsuit for the protection of trade secrets, so the protection lawsuit must be filed with a separate petition, which includes the formality stipulated in the Civil Procedure Law in Article (46) with all its paragraphs that we will mention except for Paragraph (6) thereof for the specificity of the protection of trade secrets, as the article in question states that: The lawsuit petition must include the following data:

1- The name of the court before which the case is filed.

2- The date of filing the petition.

3- The name, surname, occupation and place of residence of both the plaintiff and the defendant. If the defendant does not have a known place of residence, then the last place of residence he was.

4- An indication of the place chosen by the plaintiff for the purpose of reporting.

5- Statement of the subject matter of the lawsuit. If it is movable, mention its gender, type, value, and descriptions. If it is real estate, mention its location, boundaries, number, or sequence.

7- The signature of the plaintiff or his agent if the agent is authorized by a document certified by a competent authority).

We agree in full and in detail with what is drawn up in this article regarding the need for the formality of the lawsuit petition, which is considered the subject of judicial action in a lawsuit for the protection of trade secrets, but we strongly oppose the application of Paragraph (6) of the same article in question, which states that:

(The facts of the case, its evidence, the plaintiff’s requests and its support), it is well known that lawsuits for the protection of trade secrets are instituted to seek judicial protection over a specific trade secret or secrets, and that conducting a process of attaching the documents or evidence of the case in this way will expose the trade secrets to a greater violation than they are exposed to, and therefore it will be a process of application The judicial procedure, as drawn by the Civil Procedure Code in its entirety, is the greatest danger to the lawsuit for the protection of trade secrets, and accordingly we suggest not to apply the text of Paragraph (6) of Article (46) of the Civil Procedure Code to the lawsuits for the protection of trade secrets, because this will lead to the reluctance of many companies Trade and merchants have to resort to the Iraqi judiciary because of its procedures that expose the subject of lawsuits protecting merchants' secrets to the risk of being violated once more than what is exposed to this violation.

We also suggest that the evidence of the case be presented in closed envelopes submitted by the plaintiff or his attorneys, and the person who can open this cover or envelope is the competent judge who looks into the subject matter of the case, and the record clerk in a secret pleading session, and that it is also kept in closed places or cupboards that are designated to protect commercial secrets away For other lawsuits in the court whose subject matter is not the subject of the judicial protection of trade secrets, and no one can disclose these files or documents other than the persons authorized to do so in the court.

However, the subject of violation of the commercial secret (the party of the case) and the evidence that is attached to the petition of the lawsuit in closed envelopes, as we

mentioned, must be clear and specified in a way that precludes obscene ignorance, whether by reference to it or to its private location at the time of filing the lawsuit, and it is sufficient that the subject matter of the commercial secrets is known at the time To file a lawsuit, the burden of proving that is on the plaintiff, and accordingly, an essential condition for filing a lawsuit for the protection of trade secrets is that the subject matter of the judicial procedure is available and possible, and it may not be dependent on a condition or added to a deadline.

This idea is similar to the idea of danger in criminal law, which cannot be separated from the value of the legal interest that is infringed upon in cases of protection of trade secrets. If this interest is of great value to preserve the national economy and protect the security and stability of merchants, then the legislator intervenes to protect it from any danger that threatens it.

It is worth noting that the subject matter of trade secrets protection in and of itself must not be prohibited by law and not contrary to public order or morals, otherwise the subject matter of the commercial secrets claim would be invalid. Dealing with information or secrets prohibited by law, such as what was mentioned in the definition of Coalition Provisional Authority Order No. (81) of 2004 in Chapter Three under the title: (Protection of Undisclosed Information)

Where it states in Article 1 that: (Natural and legal persons may withhold information legally).

As a matter of violation, it is absolutely not permissible to withhold information and protect it as commercial secrets if these secrets are in violation of legal texts. And some jurisprudence goes to say that the existence of a legitimate interest requires that knowledge of it remain confined to specific people, and this is what means a commercial secret.

Third: Reasons for Trade Secrets Protection Suit

The judicial procedure, in order for it to be valid, requires that it take place according to the form drawn for it by the Civil Procedure Law, without regard to the intent of this procedure by the litigants or even the court. Some jurisprudence defines the reason as:

The reason can be defined in the trade secret protection lawsuit (it is the direct purpose of carrying out any judicial procedure aimed at protecting a trade secret, and each trade secret protection lawsuit must have a reason mentioned in the lawsuit petition or its supporting documents).

The intent of the procedure submitted by the litigants in the court does not matter as long as these procedures fulfill the legal formality drawn, but if the intended purpose was unlawful, whether in bad faith or gross negligence, then it is considered arbitrary in the use of the right and bears the consequences of what this arbitrariness entails with its legal effects. The judiciary is an arena of justice and it must be protected from any abuse in order to achieve the right, and it is the duty of litigants and even their attorneys to adhere to the provisions of the law and good faith in all judicial procedures. Thus, justice is considered an element of true peacemaking.

In French law, legal capacity is a necessary condition for proceeding with a lawsuit. It is really necessary to be legally qualified in order to be able to take legal action in cases of protection of trade secrets.

This means that ineligible adults and minors are subject to special rules due to their incapacitation in French civil law, and there are legal protection systems such as judicial protection, guardianship and guardianship in trade secret lawsuits.

With regard to minors, they are in principle powerless until they reach the age of majority. However, in some cases, especially if he (the minor) is the subject of the lawsuit

for the protection of his trade secrets, it is otherwise as the rules relating to minors are contained in Article 388 et seq. of the Civil Code French Law No. (131) of 2016 amended by Law No. (287) of 2018 dated April 20, 2018.

Article (117) of the French Civil Procedure Law No. (13) of 1990 states that: (Fundamental violations affecting the validity of litigation are:

A- Inability to litigate

B- The lack of authority of one of the parties or the person who appears in the proceedings as a representative of either a legal person or a person who suffers from the inability to initiate the lawsuit;

C- The inability or power of the person representing a party in the court to litigate).

It is clear to us from this article that the capacity for litigation is an objective condition for accepting the procedure, and a distinction is made between the ability to exercise rights and the ability to enjoy them.

It can be asked whether the person himself is able to exercise his rights in cases of protection of trade secrets in French law?

The ability to exercise consists of a right that a person enjoys, without having to be represented or assisted by a second party. This ability to exercise rights presupposes the existence of a legal personality.

Article (31) of the French Civil Procedure Code of 1990 refers to the legitimate interest in the success or rejection of the case, as well as the persons whom the law gives the right to act and who are entitled to file a claim or defend a specific case, which states that: (The case is open to all those who They have a legitimate interest in the success or dismissal of the lawsuit, subject to cases in which the law gives the right to act only to persons qualified to bring or litigate a lawsuit in defense of a particular interest).

Section Two

Substantive Conditions in the case for the Protection of Trade Secrets in the Anglo-American School

In United States law, the Federal Rules of Civil Procedure govern proceedings in the United States District Courts, the purpose of which is "to secure a fair, prompt, and inexpensive determination of each proceeding."

Article (17) of the American Civil Procedure Code for the year 2020 states that: (The plaintiff and the defendant have the legal capacity to plead on:

(A) The real party in interest

(1) In general, the lawsuit must be filed in the name of the real party concerned, and each of them may:

(a) plaintiff, (b) responsible, (c) legal guardian, (d) full-fledged, (e) guardian by express document of court, (f) the party with whom or in whose name the contract is entered into for the benefit of a third party, (g) the party authorized under the law.

(2) ACTION ON NAME OF THE UNITED STATES FOR THE USE OR BENEFIT OF ANOTHER PERSON When a federal law so requires, an action must be brought for the use or benefit of another person on behalf of the United States.

(3) Inclusion of the real party in interest, the court may not dismiss the lawsuit because of failure to sue in the name of the real party in interest except after an objection, a reasonable time is allowed for the real party in interest to ratify, join or replace the lawsuit in another proceeding. After ratification, annexation or substitution, the proceeding continues as if it had originally been initiated by the real party involved.

We see that these procedures can be practically applied to commercial secrets protection lawsuits in US civil courts, since the US Unified Trade Secrets Protection Act of 1985 does not provide for the general conditions that must be met for eligibility to litigation, but rather we return to the general rule found in the US Civil Procedure Code in question.

Where an opinion goes in Anglo-American jurisprudence to comment on this article that this rule provides access to the court system for individuals who are deprived of legal capacity because of childhood or incompetence where the rule allows a minor or incompetent to sue or be prosecuted when accompanied by an adult representative (Guardian).

The court does not require the appointment of a dedicated guardian for each minor, and the court must also have been satisfied that the child has given it permission to proceed and there is nothing in the language of the law that requires parental consent. If the minor needed an adult representative to administer the litigation, they could enter litigation at this stage in two ways: intervene and oppose the representation of the court-appointed guardian or they could petition the court.

Article (20) of the same law states that:

((A) A case in which a minor is a plaintiff entitled (a: minor - b: guardian) against the other party defendant, and the name of the minor is identified by the initials of his first name and his last name.

(B) The first petition submitted on behalf of the minor plaintiff must mention the name and address of his guardian and the relationship of the guardian, if any, to the subject matter of the case or to any of its parties, and in the event that the person chosen is a guardian (guardian) appointed by any court of jurisdiction or a will that has been verified of them as to be pleaded, the preliminary pleading must contain a reference to the appointment record.

This matter is similar in fact to what is found in Iraqi laws, where the Iraqi courts initially accept the lawsuit filed by the minor if he is a plaintiff or a defendant, but they do not initiate pleading except after appointing a guardian for him to represent him before the court, and this means that the court does not reject the lawsuit directly after File it, but after completing the litigation procedures, and the same applies to lawsuits for the protection of commercial secrets related to the incompetent.

2nd Requirement

Formal Conditions in the Trade Secrets Protection Suit

Formalism is not considered a novelty in carrying out judicial procedures, but rather it is parallel to the emergence of the judicial work itself, as its justification was according to the ancient laws of the pagan thought that ascribes importance to the aesthetic phenomenon and imagines the importance of work in the visual form.

As for the prevailing view in modern legal jurisprudence, formalism is a group of obstacles that prevent the speed and ease of resolving lawsuits and hinder the establishment of rights. In the end, formalism leads to individuals losing their rights because they did not pay attention to the specific form of it according to the law, and this matter directly leads to a conflict with justice. , and slowness in the procedures, which prompts the right holder to sacrifice part of his right to reconcile with his opponent without resorting to litigation procedures, and therefore this will contradict, in one way or another, with the most important judicial principle, which is the achievement of a prompt and fair court.

However, regulating the legal path that the judge and the litigants must take to institute a lawsuit for the protection of trade secrets will definitely be a factor of confidence and

reassurance that is planted in the hearts of those who want to resort to the judiciary, and an effective element of the legal credit for the protection of rights and legal positions.

Accordingly, we will address the formal requirements according to the Latin and Anglo-American schools

First Branch

Formal Conditions in the Protection of Trade secrets According to the Latin School

In Iraqi law, in order for the judicial procedure in commercial secret cases to produce the intended effect, it must match or agree with the model drawn by the law for it, and the form in the judicial procedure in commercial secret cases does not have special texts, but rather the general rules found in the Civil Procedure Law that can be relied upon to it to prepare the requirements of the formal case, and it may be:

A- (Form) An element of the judicial procedure in cases for the protection of trade secrets

The judicial procedure in cases for the protection of commercial secrets requires that the petition of the case be submitted in writing and not in an oral form, just as the Iraqi Law on Legal Fees No. (114) of 1981, as amended, indicates that the case is not considered valid except from the date of payment of the fee for it, and therefore the case for the protection of secrets Commercial documents are not legally recognized until they fulfill the formal aspect of them, which is that they are in writing and that a fee is paid for them. Also, testimonies or personal evidence when pleading in cases for the protection of trade secrets must be oral and not written, as stipulated in the first paragraph of Article (95) of the Law Iraqi Evidence No. (107) of 1979 states that: (Testimony shall be given verbally, and written notes may not be used except with the permission of the court if the nature of the case so requires, as in specifying specific numbers or a specific date).

We also note that the matter does not end when fulfilling the legally intended form in commercial secrets protection lawsuits, but rather it must be one of its requirements. When filing a commercial secrets protection lawsuit to the court, the plaintiff must attach copies of the lawsuit petition as many as the number of defendants, but we do not find there is an urgent need To present the case documents and evidence, but it is preferable to present them in the pleadings in order to preserve the privacy of commercial secrets cases.

This necessitates the existence of a special pleadings law for commercial secrets, formal and objective at the same time. The legal rules in general are based on goals that aim to achieve them, represented by social stability, achieving justice and supporting development in society.

B- Form as a temporal or spatial circumstance in commercial secret protection lawsuits

With regard to the place of the judicial procedure, for example, the law requires that there be specific jurisdiction over the cases heard by the courts, and with regard to commercial secrets, the courts of first instance may consider them in their original capacity, and the court of first instance specialized in commercial cases may consider them. This last court hears cases if one of the parties to the case is a foreigner, the government or The contract applies the investment law, and otherwise it is considered by the courts of first instance, and accordingly, commercial secret lawsuits may be heard by the courts of first instance in their original capacity, and may be heard by the courts of first instance specialized in disputes or commercial lawsuits according to the parties to the case and its subject.

We can also see the legal effect of the judicial procedure in Articles (18) and (37) of the Commercial Civil Procedure Code, which outline the general lines for judicial notifications and the spatial jurisdiction of real estate, which must apply to commercial secrets cases as they apply to other cases.

As for the time of the judicial procedure in cases of commercial secrets, we can find the general rule in several legal texts of the Civil Procedure Code, including the text of Article (70/1), which sheds light on the case occurring until before the conclusion of the case (), and this matter can apply to The commercial secrets lawsuit is also possible, if another violation of the commercial secrets belonging to the same litigants or parties to the lawsuit is detected, and other reasons may arise during the pleading that necessitate the filing of an incidental lawsuit, whether it is (opposite or conjoined), i.e. by the plaintiff or the defendant, and we exclude the issue of filing an accidental lawsuit from The third person is for the privacy of the case that is being considered and the assessment of that is left to the judiciary, as it has a wide discretionary power in assessing each incident or case.

It is also possible to monitor another issue that can be applied to commercial secret lawsuits as a time for the judicial procedure, which is the text of Article (171), which clearly indicates that the periods specified for methods of appeal in the Civil Procedure Code are periods of lapse and not periods of prescription.

Accordingly, the appeal submitted in commercial secrets cases is rejected by the court on its own, if it exceeds the periods stipulated in the rules of the Civil Procedure Law.

As for French law, formality constitutes an essential and important part of the French Civil Procedure Code, as Article 5 states that: (The judge must rule on everything he requests and only on what he requests) ( ) Therefore, the civil judge is determined according to what the plaintiff requests in his petition It is not permissible for him to overstep and judge more than what was requested of him in the petition.

Article 975 of the French Civil Procedure Code also states that: (The appeal petition includes:

1- For appellants who are natural persons: a statement of the surname, first name and address;

For applicants of the petition from legal entities and legal persons: indicate their form, name, registered office and, in the case of administrative or judicial authorities, their name and place of establishment;

2- For the natural persons appellants: a statement of the surname, first name and place of residence;

For the legal persons appellants: indicate their form, name, and registered office, and in the case of administrative or judicial authorities, their names and place of establishment;

3- Appointing a lawyer from the State Council and the Court of Cassation for the appellant;

4- A statement of the contested decision, and the appeal petition is signed by a lawyer at the State Council and the Court of Cassation).

We conclude from the above article the formality drawn up by the Civil Procedure Code regarding the information that must be mentioned in the petition of appeal whether the appellant or the respondent is a natural or legal person, and that these general rules undoubtedly apply to cases for the protection of commercial secrets, since the French Trade Secrets Act of 2018 is devoid of These detailed materials for the petition or appeal, which forces us to resort to the general rules established in the Civil Procedure Code.

In the French Trade Secrets Protection Act of 2018, the third chapter deals with procedures for protecting trade secrets under the title (General Measures for the Protection of Trade Secrets before Civil or Commercial Courts).

Where Article L153-1 states: (When the aim of the court is to conduct an investigation required before any trial on the merits or when a proceeding is made on the merits, the communication or presentation of the document alleged by a party or a third party is

stated or ordered to be is likely to violate the confidentiality of the work, the judge may ex officio or at the request of a party or a third party if the protection of such confidentiality cannot be otherwise guaranteed and without prejudice to the exercise of the rights of the defense:

1- To read this document on his own, and if he deems it necessary to request the report of an expert and to request the opinion of each of the parties, or a person authorized to assist or represent him, in order to decide whether it is necessary to apply for the protection measures provided for in this article;

2 decides to limit the transmission or production of this document to some of its elements, or orders that it be sent or produced in summary form, or restricts its access to each of the parties, and prohibits its access to more than one natural person and a person other than those authorized to assist or represent it;

3 decides that the discussions will take place and that the decision will be taken in the council chambers;

4- Adapt the reasons for its decision and the procedures for its publication with the requirements of protecting commercial business confidentiality.

Article states. L153-2. Provided that: (Any person who has access to a document or the content of a document that a judge considers to be covered or likely to be covered by business confidentiality is bound by a confidentiality obligation that prevents him from any use or disclosure of the information it contains.

In the case of a legal person, the obligation stipulated in the first paragraph of this article applies to his legal or legal representatives and to the persons who represent him before the court.

Persons who have access to the document or its content are not bound by this obligation either in their relations with each other or in relation to legal or legal representatives of the legal person party to the proceeding.

“Persons authorized to assist or represent the parties are not bound by this obligation of confidentiality with respect to them, except in the case provided for in 1 of Article L153-1.

“The obligation of confidentiality continues at the end of the procedure (however, it ends if the court decides, by a non-appealable decision, that there are no trade secrets or if in the meantime the information in question ceases to constitute a trade secret or becomes easily accessible).

With regard to the electronic communications of the French procedural documents, the provisions related to the electronic communications of the procedural documents are numerous, to the extent that the texts follow one another, overlap and intertwine. Therefore, the article must be explained to accurately reveal the legal system of the new formalities and then requires a general understanding of the rules of the new form to determine the goal, the protection of rights Is it one of the basic traditional forms, and is it the same for the new formalities? Answering this question requires thinking about the function of the new formalism.

A- New Formalism System

Virtual Courtroom Text The virtual courtroom building scripts are multiple and varied in nature. Decree No. 2005-1678 of December 28, 2005

He founded it because it is the origin of Title XXI of the French Code of Civil Procedure entitled “Communication by Electronic Means,” which includes Articles 748-1 through 748-7.

The plans had already been drawn up by an agreement signed by the French Ministry of Justice and the National Bar Council on May 4, 2005 with the aim of forming non-physical exchanges between lawyers and courts and which allowed electronic exchange between lawyers and courts in appellate proceedings without mandatory representation.

The digital winds have recently blown jurisdictions; Decree of June 21, 2013 expanded the new formalism to include commercial courts as well. The new formalities are in principle optional - the address related to communication is set in book 1 of the French Code of Civil Procedure devoted to common provisions and begins with Article 748-1 that indicates this. The new formalities relate to “sending, delivering and notifying Procedural documents, exhibits, notices, warnings or summonses, reports and minutes, as well as copies bearing the form of enforceable judicial decisions. Then the legal article specifies that this method of communication is optional in principle.

Our opinion on the subject:

Through research and familiarization, we find that the digital or electronic pleading for trade secrets claims is the culmination of what can be reached in terms of development in the principles of the French Procedural Code or in the general comparative legislation in question, but we will face another danger, which is the violation of the virtual world and the control of the data of the lawsuits by piracy Fake networks, etc., and the judiciary remains responsible for any violation, as it allowed electronic litigation for cases of protection of trade secrets.

Second: Formal conditions in protecting trade secrets according to the Anglo-American School

In the law of the United States of America, we do not find in the Unified Trade Secrets Act of 1979 and amended in 1985 special rules for the form of claims for the protection of trade secrets.

(I) the validity or capacity to sue; or legal existence.

(1) The jurisdiction of the court is not raised except when necessary to prove that the court has jurisdiction, there is no need to claim:

(A) the ability of a party to plead or bring a lawsuit;

(B) the power of the parties to bring a claim or to bring a claim in a representative capacity; or

(C) The legal existence of an association or organization of all its members that is partisan.

(2) To raise any such issues, either party must present it by a specific denial, which must state any supporting facts which are specifically within the knowledge of the party concerned.

(ii) fraud or error; Conditions of Eligibility In alleging fraud or error, the party must state in particular and detail the circumstances that constitute fraud or error, bad faith, lack of knowledge, and other circumstances may generally be alleged to exist relating to a person's sanity and capacity.

(D) The previous conditions must be ascertained in pleading with previous conditions, and it is sufficient to claim in general that all the previous conditions have been ascertained or implemented. But when denying any previous condition that occurred or was implemented, the party must do so in all privacy.

(E) The official legal document, an official document or power of attorney must be pleaded, and it is sufficient to claim that the document was legal issued by the parties or the act was legal.

Article (10) also provides for the form of the pleadings, which states: (The lawsuit petition contains the names of the parties, the name of the court, the address of the parties, and the lawsuit number,

(A) the title of the lawsuit must identify all parties; The title of the other pleadings, after naming the first party, may refer, in general, to the entry of other parties into the case.

(B) Writing Paragraphs with Separate Statements, the litigant must state claims or defenses in numbered paragraphs, each limited to the extent of the claimant for one set of circumstances. Each request is a separate lawsuit at a later time that may be litigated.

A person will decrease capacity if they cannot understand or retain information relevant to a decision or use the weight of that information as part of the decision-making process or communicate the decision (by any means) and their inability to do so is due to a defect or disorder in the functioning of the person's mind or brain.

## Conclusions

At the end of our research, the mechanism of judicial protection against infringement of trade secrets, we include the most important findings we have reached as follows:

First: The need for a formality of the lawsuit petition, which is considered the subject of judicial action in a lawsuit for the protection of trade secrets, Article (46) of the Iraqi Civil Procedure Law No. (83) of 1969, but we strongly oppose the application of Paragraph (6) of the same article, which states that: (The facts of the case, its evidence, the plaintiff's requests and its support) because of the privacy of this case that requires the protection of its information.

Second: Unqualified adults and minors are subject to special rules due to their incapacity in the French Civil Code, and there are legal protection systems such as judicial protection, guardianship, and custodianship in cases of trade secrets.

Third: The Iraqi and American laws are similar, as the Iraqi courts initially accept the lawsuit filed by the minor if he is a plaintiff or a defendant, but they do not initiate the pleading except after appointing a guardian to represent him before the court, and this means that the court does not dismiss the lawsuit immediately after filing it, but rather after completing the litigation procedures The same applies to commercial secrets protection lawsuits related to the incompetent in American law.

Fourth: We note that the matter does not end when fulfilling the legally intended form in the Commercial Secrets Protection Lawsuits, but rather it must be one of its requirements. When submitting a commercial secrets protection lawsuit to the court, the plaintiff must attach copies of the lawsuit petition as many as the number of defendants, but we do not find there is a necessity It is urgent to present the case documents and evidence, but it is preferable to present them in the pleadings in order to preserve the privacy of commercial secrets claims, which necessitates the existence of a special pleadings law for commercial secrets, both formal and objective.

Fifth: Through research and knowledge that the digital or electronic pleading for commercial secrets cases is the highest development that can be reached in terms of the principles of the French Procedural Code or in the general comparative legislation in question, however, we will face another danger, which is the violation of the virtual world and the control of the data related to the cases by Piracy, fake networks, etc., and the judiciary remains responsible for any violation, as it allowed electronic litigation for cases of protection of trade secrets.

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