Channeling Best Mode's Barrier to Trade Secrecy

In the Patent Reform Act of 2010, one of the proposals is to eliminate the “best mode” written disclosure for practicing an invention as a “basis on which any claim of a patent may be canceled or held invalid or otherwise unenforceable.” This proposal follows past patent law reform proposals designed to remove this obstacle to patentability seen as unnecessary, redundant and overly costly. This article examines a basis for maintaining best mode that is often overlooked: its ability to channel inventors away from trade secrecy. I examine recent cases where failure to disclose best mode has been a basis for patent invalidity and the outcomes based upon trade secrecy law and doctrine were best mode a non-factor. I conclude that because eliminating the best mode requirement will only marginally increase the number of patents held enforceable, the loss of disclosure to the public combined with its amplification of the power of trade secrecy is too large a price to pay for a minor and arguable benefit.