Help for inventors

dyson

Protecting your ideas

If you have an idea for a new product you think could be commercially successful, there are several different forms of protection the product can enjoy – at least in the UK.

- There is copyright, which will automatically come into existence whenever an original artistic work (including an engineering drawing) is created.
- There is an unregistered design right, which again is automatically created and protects the look of the product itself.
- There is a common law trademark right, which will build up over time when a distinctive word or logo is used to identify the product in the course of trade.

You don't have to pay for any of these, although you can apply for registration of some designs and trademarks, which will give you a monopoly right effective from the date on which you apply for registration. This can often be beneficial and, generally speaking, these registered rights do not cost an arm and a leg.

So, if you want to protect the look of a product or the trademark you use to sell it, it's not particularly difficult or expensive. You can very often do it yourself using a few brochures from the UK Intellectual Property Office and their user-friendly enquiry line. But neither of these forms of protection can stop someone else from taking the principles on which your product works and making a similar product which looks different and is sold under a different trademark. So how do you do that?

The only way to get protection for an invention is to apply for a patent.

An invention usually relates to a new principle or arrangement that allows the new product to work in a particular way. Many of Dyson's patents relate to features of cyclonic separation technology which increase the overall separation efficiency of a vacuum cleaner. It doesn't matter what the machine looks like or what trademark is used to sell it – any cleaner which incorporates the features of our patent claims will fall within the scope of the patent. Inventions can relate to methods (such as methods of manufacture or industrial processes) as well as to products or parts of products.

Patent history

The patent system was introduced over 100 years ago (although some form of it has been around for about 350 years) as an incentive to get inventors to disclose their ideas to the general public and promote technical advancement among society. In return for this public disclosure, the inventor got a monopoly right for a fixed term and, after that, anyone was free to use the idea and hopefully improve upon it. Life has moved on a bit since then and, although the framework is still the same, the reasons why people apply for patents are different these days. Because a patent gives the proprietor the right to stop someone else making a product having the features of the granted claims, patents are generally regarded today as legal weaponry rather than sources of information.

As you will appreciate, a patent is (or can be) a very valuable piece of property. It is therefore not particularly surprising that it is difficult, expensive and time-consuming to obtain. You will either need to put in a lot of hard work and research yourself, or you will need to pay a professional patent attorney to do some of the work for you. Using a patent attorney increases the cost of getting a patent quite dramatically, but you can be sure of getting good advice and a well-drafted patent at the end of the day. If you were going to use your patent as a legal weapon, surely you'd like it to be as sharp as possible?

Before you apply for a patent

There are some fundamental rules that apply to patents in almost all countries. If you break them, even in ignorance of the consequences, you may still get yourself into an irretrievable situation. So, first and foremost:

Don't tell anyone about your idea before your file the patent application.

This may sound impractical. You do, after all, need to assess whether or not the idea is commercially sound, whether or not it can be manufactured and, if so, whether it can be sold for an acceptable price. But, somehow, you will have to determine these things without actually telling the person you're speaking to what it is you want to make (more specifically, to protect). If you do feel the need to bare all to someone you trust completely, make sure that they know before you tell them your idea that you are telling them this in confidence and that they must not disclose it to anyone else without your express permission.

Ideally, the confidentiality of the disclosure you make should be written down in a confidentiality agreement and signed by the person to whom you are making the disclosure. This is particularly important if you are talking to a commercial contact or potential business colleague. The other way is to get your patent application on file before you start talking to anyone about your idea. You can talk to a Chartered Patent Attorney in complete confidence because all Chartered Patent Attorneys work under strict rules of confidentiality.

The reason for all this confidentiality is that, to be patentable, an invention must be novel. An invention is not novel if it has been made available to the public (anyone will do) before the date of filing the patent application. If you show your idea to a potential manufacturer without a confidentiaity agreement in place, the novelty of the idea is destroyed and you are no longer entitled to a patent for it. This allows the manufacturer to rush off and make the product itself without acknowledging your contribution, financial or otherwise.

Is it an inventive step?

The next thing you need for your idea to be patentable is an inventive step. This means that the invention must not be obvious to someone who is "skilled in the art" to which the invention relates. How you assess whether something is inventive over and above what is already known just cannot be explained in a note like this, but it is something in which patent attorneys develop experience and on which they can give advice. Do not expect the UK Intellectual Property Office to offer advice on this – it is not within its remit.

To decide whether your idea is inventive, you need to find out what has been done before in the relevant field. You can instruct professional searchers to look through earlier patents and patent applications, but this will inevitably be expensive (it can cost several thousand pounds) and will probably only result in you being sent a small mountain of documents in several different languages that you will then have to try to decipher. There are other ways. Look on the internet. Go to the British Library or a good regional library with a patent information section and make maximum use of the helpdesk. Hopefully, you have some knowledge of the field relevant to your invention, so do some digging around (without disclosing to others what you're actually looking for).

Assuming that you believe that your idea is novel and inventive, you have to decide whether you are going to apply for your patent yourself or employ a patent attorney. If you don't have an endless supply of free evenings and can afford the charges, go to a patent attorney, at least for an initial consultation. Many private practice firms will give individuals an initial consultation (about half an hour) free of charge. Make sure the patent attorney you will be seeing has the correct technical background – you don't want a chemist trying to deal with something which is electronic, for example. The Chartered Institute of Patent Attorneys also offer clinics where individuals can get free advice. If you go to a solicitor for advice, make sure that they have experience in patent matters.

You won't get a draft application out of a first consultation. You should get a professional opinion as to whether your idea is generally patentable (although the patent attorney will not be able to guarantee anything because they will not have details of everything that has been done before) and whether there is any point in you continuing with your application. Make sure you are told what it will cost to continue and the patent attorney outlines the whole procedure so that you have a general understanding of what lies in store. You may decide, when you hear what the costs might be, that the whole thing is a waste of time and money. But remember that, if you do not apply for a patent at the outset, you cannot file for one retrospectively unless you have not disclosed your invention in the meantime. Filing a patent application can also help convince a potential partner or manufacturer that you are serious about your idea and have been prepared to put your own time and money behind it.

Getting a patent

The basic procedure for getting a patent in most countries is as follows:

- The application is filed at the relevant Patent Office and contains a full description of the invention and a set of claims defining the scope of protection requested by the applicant;
- A search is carried out by the Patent Office to see if they can find any earlier published documents that affect the novelty or inventive step of the invention as claimed;
- The application is published, usually about 18 months after the application is filed;
- The applicant requests examination of the claims;
- The Patent Office carries out a detailed examination of the claims and the application as a whole, raising objections where appropriate and giving the applicant an opportunity to amend the application to overcome the objections;
- The patent will be granted if all objections are ultimately overcome.

This is just an overview of the typical procedure. Some countries have very different procedures and some roll various parts of this type of procedure together. There will be formal requirements to be met at different stages of the procedure as well, such as filing powers of attorney, making sure that the drawings meet specific requirements and so on. The time taken to complete the procedure varies from country to country but typically takes between three and five years.

Useful contacts

The UK Intellectual Property Office

The government body responsible for granting Intellectual Property rights in the UK.

www.ipo.gov.uk

Tel: +44 (0)1633 813930

Concept House
Cardiff Road
Newport
South Wales
NP10 8QQ
United Kingdom

Inventorlink Ltd

Inventorlink Products Ltd specialises in helping inventors and innovative companies introduce their products to the market place.

www.inventorlink.co.uk

Tel: +44 (0)20 7582 2333

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London,
SW8 1SY

The Chartered Institute of Patent Attorneys

The professional and examining body for patent attorneys in the UK.

www.cipa.org.uk

Tel: +44 (0)20 7405 9450

95 Chancery Lane
London
WC2 1DT

UK BI National network

UK Business Incubation

www.ukbi.co.uk

Tel: +44 (0)121 250 3538

Faraday Wharf
Aston Science Park
Holt Street
Birmingham B7 4BB

The British Library

http://www.bl.uk/bipc/protect.html

A key source of information on intellectual property.

The European & Innovation Centre Network

The reference point on innovation, incubation and entrepreneurship in Europe.

www.ebn.be.