Keeping Your Idea Confidential: 7 Key Points

Background

Keeping matters confidential can make the difference between an idea that can be validly protected and an idea that cannot be validly protected.

It is not uncommon for businesses and individuals to irrevocably "shoot themselves in the foot" by failing to maintain confidentiality in respect of commercially valuable information.

Below, we cover **7 key points about confidentiality** to ensure you take the right steps to protect your idea.

1. You can disclose information to us

As a firm of Chartered Patent Attorneys, anything you disclose to us is covered by "client-attorney legal privilege" and is therefore automatically entirely confidential.

This is confirmed by Section 280 of the UK Copyright, Design and Patents Act 1988. This provision does not apply to most other advisers therefore you should take care with this.

2. You should be wary of disclosing information to external designers or potential business partners

It is normal to need assistance from external advisers from an early stage once a new idea has been conceived; however, you should take care to ensure that confidentiality is maintained by having such advisors sign a confidentiality agreement.

3. A non-confidential disclosure can invalidate any potential patent application

If you wish to retain the option of filing a patent application for your idea you must ensure that no disclosure of relevant information has been made prior to filing the

patent application. Failure to do so may be fatal to the validity of any granted patent rights. However, a confidential disclosure made prior to filing will not invalidate your patent application.

4. Maintaining confidentiality does not need to be difficult

Provided that it is properly addressed; maintaining confidentiality need not be complex or burdensome. A relatively straightforward confidentiality or "non-disclosure" agreement drawn up prior to disclosing the information to third parties is usually sufficient.

5. It is often better to have a formal patent application on file first

Having a confidentiality agreement in place does not guarantee that its terms will be respected. For this reason, although having one in place is vastly better than not having one in place, there are inherent risks involved in relying solely on confidentiality agreements to preserve the ability to obtain valid patent rights. It is generally far safer to have a formal patent application on file at an early stage prior to discussing a new idea with third parties.

6. Registered design rights are different

It is possible in some countries to obtain design registrations (not patents) even where a product has not been kept confidential so long as the application to register the design is filed within twelve months of the first disclosure. For example, Community Designs having effect throughout the EU may be obtained after the design in question has been disclosed by its designer (or its subsequent owner).

7. You should mark items confidential

At the very least you should mark any material which you consider to be confidential with the term "Confidential". This helps create an implicit understanding between the parties that the information is to be treated as confidential and is not therefore to be considered "public" information.

Can we help you?

Please **contact Avir Patel** for further information or to arrange a free intial consulation.

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