

Can you spot the difference?



Your list of relevant insights: **BE SMART, BE AWARE!**

1. KEEP IT TO YOURSELF UNTIL PROTECTION HAS BEEN APPLIED FOR.

For an inventive technology to be patentable in Europe it must be new in absolute terms. The invention should thus not have been made available to the public before the date of filing the patent application. Any form of earlier disclosing the invention to a single member of the public can be held against your own application and, even when a patent has been issued, invalidate that patent.

So, if it is needed to show someone the invention before filing the patent application, make sure that this disclosure is covered by a secrecy agreement and obtain evidence of the confidentiality. Your attorney will be able to assist you. If information has unintentionally leaked away into the public domain, contact your attorney straight away.

2. KNOW YOUR FILING DATE AND YOUR APPLICATION.

The filing date determines what is considered as prior art which is used to assess whether your invention is novel over that prior art. In Europe counts “first to file”! Hence, the earlier you file your patent application, the more likely it is that will obtain the exclusive rights and not your competitor.

After filing your application, it is still wise to only disclose as little as possible, so that others are not at a very early stage inspired by your developments. Your application will be published anyway after 18 months, as prescribed by the law.

3. KNOW YOUR RIGHTS.

Once a patent application is published, the applicant has the possibility of having provisional rights, enforceable after grant of the patent. Compensation can under certain circumstances be awarded retrospectively, calculated back from the publication date of the patent application. After grant you can prevent others from making, offering, using the invention.

4. CONSIDER THE USEFULNESS OF A PATENT APPLICATION FOR YOUR INVENTION.

Remember that patent rights can be particularly effective if infringement can be spotted and enforced. Sometimes it is better to keep technology secret, for instance when reverse engineering “to work out the trick” is virtually impossible. But be aware of unhappy employees, walking over to the competitor with too much knowledge. Patent rights are very useful in such circumstances. Make sure that your company is entitled to the patent rights, not the (ex-)employee

5. CLAIM YOUR TECHNOLOGY IN A CLEVER WAY.

Consider claiming the technology such that infringement occurs before products are installed on board of vessels. Consider claiming the technology as it would be explained in a certificate issued by a classification society. Make sure that the application for a patent will be filed before a certificate will be issued, and ideally even before a certificate is applied for.

6. GROW YOUR PORTFOLIO.

Build up a patent portfolio. It allows you to have a position from which you can negotiate. See costs as insurance costs. IPR effectively allows you to run a form of risk management.

7. LET OTHERS KNOW.

Make others aware of the fact that your products are patented and that you are capable of enforcing these rights. Furthermore, flagging up your patents will indicate that you have developed a novel and inventive technology. It will make yards and shipowners think twice before accepting a cheaper copy.

“A patent application was never filed. As a result, copies supplied by others are now often used. Although these may be good ‘look-alikes’, a lack of in-depth knowledge and a strong drive for reduction of cost price has led the copy maker to carry through irresponsible cutbacks in quality, seriously undermining the safety”.

Source: a SME

8. GUARANTEE YOUR BUYERS.

Make sure that yards and shipowners, if buying from you your patented product, have less risk of being accused of infringement. Ideally, you have performed a so-called “Freedom to Operate” study. This will give you insight as to what extent patents of others might cover your product.

Your customers may realise that it is not only marine safety which you can provide, but also legal safety. Interestingly, it often turns out that these two types of safety go hand-in-hand.

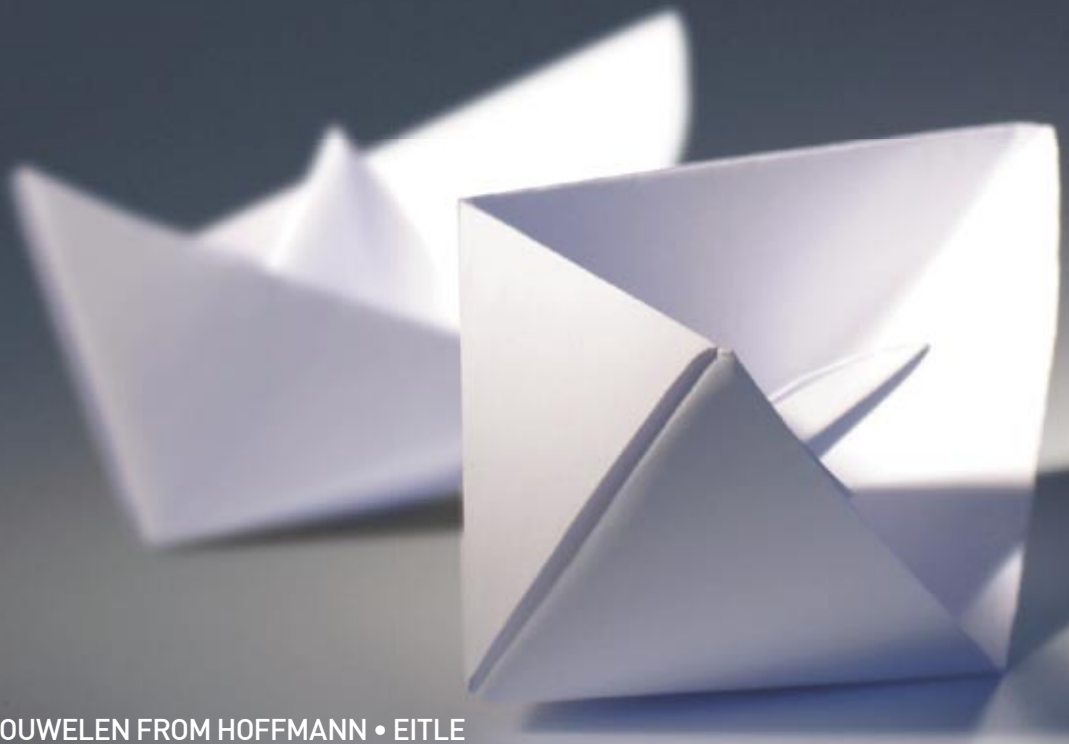
9. PROTECT YOURSELF.

Think about all forms of protection, together with an IPR specialised lawyer. Think also about use of design right, and trade marks, not only from a marketing perspective, but also with an eye on liability.

10. BUILD YOUR REPUTATION.

Make known in the sector concerned that you are operating on a highly professional level towards a launch of a product on the market when it comes to developing safe technology. Completing such R&D entails protecting that technology from being copied by others. It has been recognised, (see for example the quote above), that unprotected, cleverly designed technology will be copied, usually in a fashion wherein quality-related elements are cut out by the copymaker to enhance profit at the price of a poorer performance. Designing novel and inventive technology, and keeping the market free from inferior copies establishes your reputation as a sound and robust partner in the sector concerned. IPR is a complex field, but those who have investigated in getting to know the ins and outs are definitely obtaining a good return on their investments.

What about now?



EMEC is collecting and studying case histories from companies all over Europe, in order to gather and re-distribute knowledge in this field to all participants and associates.

Contact EMEC to request access to the discussion forums on IPR and discuss your experiences on <http://emec.eu/ipr>

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