

Patent Pointers

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There are increasing numbers of automotive suppliers with active patent protection programs who obtain several patents each year. As a result, these companies are carving out a market niche for themselves while making it increasingly difficult for others to compete with them in a particular function area.

Generally speaking, patents protect the functional aspects of a product, and cover more than exact duplicates of a product. Patents that are well researched and prepared properly should block a competitor who makes a product that functions similarly to your patented product, even though the two products might look entirely different.

Patent process tips:

1. Core Products and Core Markets

- Use your patent dollars to protect your most important products, and cover your most critical markets first.
- The most important countries to cover are those where you *sell* your product, not necessarily the countries where you manufacture the product. For example, if you want to make the product in China and sell it in the United States, your priority should be to obtain a patent in the U.S.

2. Disclosure

- Do not disclose the invention without first deciding whether you want to patent it.
- If you decide an invention is worth patenting, discuss it with a patent agent or legal advisor before disclosing it.
- Disclosing your invention before filing a patent application will bar you from getting a patent in many countries, i.e. all of Europe, China and Japan.
- If you have already disclosed your invention, you may still be able to obtain patent protection as some countries such as the U.S. and Canada permit certain types of disclosure of the invention if a patent application is subsequently filed within a certain time limit.

3. Record Keeping

- Keep good records of your development of the invention. Unlike the rest of the world, the U.S. (often your most important market) operates on a 'first-to-invent' system instead of a 'first-to-file' system as is done in Canada. Therefore, you may be called upon to prove your date of invention to the U.S. patent office if there is a co-pending application for a similar invention by another party.
- A simple policy that is very useful and can be critical to proving a date of invention is to ensure that your R&D people use bound lab books with numbered pages. Make sure records are written in ink and be sure that any entries in the lab books are dated.

4. Ownership

- Do not assume that you are the rightful owner of any intellectual property rights in a product simply because your company is footing the bill for its development. Just because the product is developed by your employee or by an outside designer under contract to you does not mean you own the rights to the product. In fact, the law is quite grey on this issue. Making this assumption can cause you enormous grief down the road when it becomes apparent that the product is very important to your company.
- To avoid problems, ensure that explicit provisions are included in any employee agreement or any design/development contract, which make it clear who will own any IP that results from the work.

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