

**PATENT OR TRADE SECRET:
6 POINTS TO CONSIDER IN THE IP MANAGEMENT PERSPECTIVE**

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1. Does the invention will remain commercially viable for a long period of time?

Patent protection lasts only for 20 years. Subsequent to the aforementioned protection period, the invention shall be a public domain. On the other side, in case of Trade Secret, as long as the confidential information can be kept as a secret, the protection will live on. If you perceive the invention to be commercially viable for a period longer than 20 years, thus trade secret protection may be the better option for this case. Meanwhile, if the case is the other way round, patent shall be the best option since it may provide a guaranteed 20 years exclusivity in the market.

2. How much money do you willing to spend to protect your invention?

Obtaining a patent may require a huge sum of money. In addition, maintaining patent is also costly. Therefore, if you do not want to splurge your budget, Trade Secret can be a better option. Nonetheless, objectively speaking, Patent may give a stronger and more certain protection compared to Trade Secret.

3. Do you have to release your invention to the market immediately?

In order to obtain a Patent, an application document would go under a Patent registration process that may take around 2-5 years (or more in some jurisdictions). Oppositely, Trade Secret may gain an immediate protection once the invention is treated as a secret. Assuming that you do not have time on your side, Patent should be stroked out from your plan and consider Trade Secret instead.

4. Is there any substantial aspect of the invention that is not patentable?

The scope of patentable invention is limited. Although there is a general limitation which has already agreed internationally, each jurisdiction may has its own 'touch' on the limitation. For example, in the U.S., business method is patentable while in other jurisdiction business method is considered as unpatentable. On the contrary, Trade Secret is more 'loose' when it comes to the scope. In fact, any information that may give a commercial advantage can be protected as Trade Secret. In considering which option is best for you, the above matter should be thoroughly conceived.

5. Does publicly practicing the invention also requires disclosing any confidential information?

Trade Secret will lose its protection once it is not a secret anymore. Therefore, it has to be protected by using measures that are necessary to keep it confidential. If confidential information has to be disclosed in order to utilize the invention, hence Trade Secret protection will not fit.

6. Does the objective of the invention can be easily achieved by using any other method?

In order to obtain Patent, an applicant has to disclose a complete information on the invention, thus one with ordinary skill in the art would be able to apply it. Sometimes, by going through the disclosed information, an artisan in the art may find a way round to reach the invention's objective. Provided that the invention can easily be reverse-engineered, Trade Secret is the more favorable option.

This article does not constitute as a legal advice. Should you have further questions, please do not hesitate to contact us.