

Essential Information on Confidentiality

With very few exceptions around the world, a patent will be invalid if an invention is disclosed publicly before a patent application is filed. Non-confidential disclosures of your invention to family, friends, suppliers, customers or anybody else must not be made before an application is filed. Anybody to whom you disclose your invention must agree in advance that it is confidential and that the information will not be used by them or passed on. Outside an immediate circle of family and possibly friends, you should have a written confidentiality agreement signed. The safest thing is to limit disclosures strictly until a patent application has been filed.

If there have already been disclosures of your invention, you should give us details of those. In many cases they may be treated as confidential in any event but we need to assess the situation. Even if patent protection cannot be obtained in the UK or elsewhere in Europe, there will be other countries where it may be possible. One of those is the United States, where a patent application can be filed up to a year after your own disclosures.

Once a patent application has been filed, you have what is called a “priority date” for your invention which can be relied on in most countries of the world.

In theory you can disclose your invention after your priority date, without damaging your chances of obtaining patents around the world, provided you take action within twelve months of your priority date. In practice you should keep your invention confidential for as long as is feasible commercially. Your patent application will be published by the Patent Office eighteen months after your priority date but until then you should not disclose it unless we are certain that the time is right.

The problem is that after the patent application has been filed, you may make developments. These could be important commercially and could also be important from a patent perspective. It may be necessary to file one or more additional “top up” patent applications including the new material. You should not disclose a development publicly until a top up patent application has been filed for it. However, even if you intend to discuss only the basic invention publicly, there is a risk that you will prejudice protection for the development.

If you believe that somebody has disclosed your invention in breach of confidence, you should let us know immediately. It maybe possible to retrieve the situation but there will be a deadline of six months from the date of the disclosure.

Finally, everything you discuss with us will be treated in confidence. There is no need for a special confidentiality agreement.

Further advice

If you would like any further advice please contact us at Dehns using the details below.

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