

Patenting - balancing protection with secrecy

The dilemma of whether one should patent what may essentially be a recipe - for example, as part of the trade-off for obtaining exclusivity in respect of one's newly concocted perfume - is the one has to disclose to the world what one's invention comprises.

By [Alexis Apostolidis](#) 14 Oct 2011

Like any invention that's capable of being subject to patent protection, a new perfume, cosmetic or cold drink for example must not only be new in its own right - never have been done before anywhere in the world - but must also be inventive. It cannot simply constitute a mixture of ingredients that are commonly used in the trade unless that very mixture is something startling. This is just one hurdle all inventors face.

If it were a perfume, then one would have to disclose those ingredients that it is made up of - essentially a recipe - for which one has sought protection. Of course, the ingredients would have to be listed on the packaging in a general sense, but not the exact proportions, or the manner in which they are mixed. However, the downside is that a competitor may design around this perfume (or cosmetic etc) and achieve a similar product whilst avoiding the infringement of the patent.

Secrecy may pay

A prime example of non-registration is the recipe for Coca Cola. It has never been patented and has been kept as a trade secret. Many competitors have similar products but none has managed to make the product taste the same.

So, unless your product contains an indispensable ingredient without which the product would simply not be the same and, unless the indispensable ingredient is not easily substitutable with another ingredient, which would have the same effect - keep the recipe close to your heart, as a trade secret and keep your rivals guessing.

Of course, as in life, there are always exceptions and, if you think you have something new, always chat to your patent attorney for guidance.

ABOUT THE AUTHOR

Alexis Apostolidis is a partner - Patent Litigation and head of Competition Law at Adams & Adams.