

## Protect Your Green

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The demand today for renewable energy and other clean technologies is driving innovation worldwide. In order to secure the investments needed to bring these technologies to market and earn a return on such investments, innovators should take appropriate legal measures to protect their technology.

Most innovations in clean and green technology are likely to find legal protection as either trade secrets or under patent law. A trade secret is simply technology or other know-how that can be maintained as a secret and that has value because it isn't known to others. For example, the formulation of a better biofuel additive or the software code needed to operate a device more efficiently can be protected as a trade secret. Protecting a trade secret involves taking precautions to keep the technology secret, such as by limiting access to the trade secret information and by binding individuals who have such access under confidentiality agreements.

Products that can be reverse engineered (e.g., mechanical devices such as wind turbines and fuel cells, for example) are not candidates for trade secret protection, however, and are likely to be best protected under patent law instead. Patent protection is available for any useful improvement to a product or process, as long as that improvement is new and meets the legal threshold of being enough of an improvement to be "non-obvious." Green innovations involving increased efficiencies, reduced costs, lower emissions, or other benefits will likely meet the threshold for being non-obvious.

Here are a few tips for making the best use of the patent system to protect your green technology.

**Think Globally.** The world's major economies face similar issues of energy dependence and environmental pollution. The U.S., Europe, China, Japan and India, for example, all

lack sufficient domestic fossil fuel energy sources and are therefore markets for renewable energy technologies. Consider filing patent applications in countries with large potential markets for green technology products.

**Act Quickly.** While global markets for green technology present a business opportunity, global demand also means that research and development in this area is happening worldwide. In rapidly developing fields, it's important to file patent applications as soon as possible. Although the U.S. patent system will award a patent to the earliest inventor of a particular technology, the rest of the world is on a strictly first-to-file system, so the first patent application filed for a particular technology wins. Also, in most of the world, patent applications must be filed before any commercialization or public disclosure of a technology.

**Make the Investment.** Patents must be filed early in a product's development cycle, and the cost of patent protection can be a significant early investment in the product. Patent protection enhances the value of technology to investors, however, and early decisions about intellectual property protection may affect a company's ability to raise capital later on.

In the global, rapidly developing field of green technology, having an intellectual property strategy will be important to the success of many green products. Innovators in this area should therefore take steps to protect their technology in order to protect their "green."

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