



Intellectual Property Law

Q Our company has developed a process for manufacturing an existing product. Can we protect our new process and, if so, how?

A Depending on the particular facts and your business goals, you might consider patent protection, trade secret rights and/or using contractual agreements.

In most countries, a product cannot be patented after it is commercialized, and in the United States, a product on the market for more than one year cannot be patented. New processes for making such old products, however, may be patented.

Methods of making even well-known products are often patented. In the pharmaceutical industry, patents to new synthetic schemes are common. Similarly, many patents relate to computer-assisted manufacturing techniques and their related software. In addition to “process” claims, you should consider pursuing “product-by-process” claims, which recite products made

by a specified process. You should also consider whether your company developed the original product and whether it would be difficult to determine when competitors use your process, as these and other issues will impact your ability to obtain and enforce your patents.

Trade secret protection should also be considered. Unlike patent protection, trade secret protection is obtained without public disclosure of your process. To protect a trade secret, however, you must take precautions to maintain its confidentiality, such as obtaining written confidentiality agreements from employees, vendors and customers. You may also need to improve corporate security. In any event, you should evaluate all disclosures and consult an experienced intellectual property attorney regarding the most appropriate forms of protection.

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