

Legal Methods to Deter Copy-Cats

Getting a patent for your invention is only the first step in protecting your invention. Patent protection should be seen as an insurance policy. You apply for a patent in the hope that other people will take note of the fact that the invention already exists and that there is a patent out for it. Most people would rather not take the idea and copy it and risk having to go to court.

The fact that not many cases go to court and the high cost of ensuring legal battles deter even the most enthusiastic copy-cat. Most alleged infringements are settled out of court by way of warning letters and some form of licensing agreements.

A further deterrent to would-be infringers is to put out a warning notice in the national dailies informing the public that the invention (which is produced as a diagram on the notice) is awaiting grant of a patent and is further protected by the law of copyright.

The two-dimensional drawing of the inventions as contained in the notice would enjoy copyright protection under Malaysian law as an artistic work. This means that if the permission of the author were not sought, the reproduction of the drawing would constitute infringement. Similarly reproduction of drawing into three-dimensional work would also constitute an infringement. Copyright vests in the author of the original work at the time of expression and does not require registration.

You could go even further and apply to have the design of the invention protected. The law relating to design protects the shape of the design (features which appeal to the eye).

There is no machinery for the registration of designs in Malaysia. However design that are registered in the UK will be equally protected in Malaysia without the need for any formal registration of any kind in this country under the UK registered Design Act.

As registered design in the UK takes between six and eight months to grant and is valid for up to 25 years provided it is renewed every five years and it is not only valid in Malaysia but in Singapore and Brunei as well.

It is also possible to protect your invention by means of a trademark. A trademark is a distinctive mark which is associated with particular product or class product. For example, if you invent a new multi-purpose cleaning formula for washing all types of household items, you could patent the formula as well as registering a trademark for your product, such as "Kleenall".

Anyone who uses a deceptively similar mark such as "Kleen-all" or has similar markings on their products would be infringing your product and could be brought to court.

A trademark is initially valid for seven years and it can be renewed for seven years and it can be renewed from time to time for a further period of fourteen years by paying the required annual fees.

It is therefore possible that a product might come under all four areas of legislated protection: patents, copyright, design and trademark. The more steps you take to protect your invention the less likely your invention will be infringed.

There are also others ways to protect your invention. Since the patent system forces you reveal all the aspects of your invention, sometimes it is better not to reveal the secret, especially in the case of formulas for pharmaceutical drugs and recipes. The most famous recipe that is being kept a secret is Coca Cola.

Trade secrets come under the law of confidence which prevents a person from divulging information which has been given to him in confidence. The major limitation of this form of law that the information concerned must be of a strictly confidential nature.