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# Share it or hide it: what should you do with your stroke of genius?

**A**s you very well know, engineering is the source of a great many innovations. However, when you are the inventor of a process, the "idea person" behind a concept or the author of a plan, can you protect your product? If so, how are the best ways to proceed? In a nutshell, there are two paths that you can follow: you can either shield your "treasure" in secrecy or display it for the whole world to see.

Under what circumstances should one share an innovation as opposed to keeping it secret? What sets these situations apart? In this complex field regulated by several laws, an engineer may have to refer to a number of texts such as federal or provincial charters of rights, the Québec Civil Code, the Professional Code and the Code of ethics of engineers, not to mention the jurisprudence applicable in any given case. Sometimes, there is no clear cut answer, despite all the research. One must then consult an expert in such matters, a professional.

## FIRST ALTERNATIVE: DISCLOSURE

Sharing a creation may present many advantages as much for the engineer, his or her employer or client as for any other person intrigued by the subject matter. In fact, intellectual property ("IP") rights conveyed by a patent or copyright, for example, allow the engineer to develop an activity and profit from his or her creative endeavour, all the while excluding others from "making, selling or using it in the area where the protection applies without necessary authorization." (Intellectual Property: A Guide for Engineers, p. 4)

Furthermore, documents accompanying intellectual property protection applications are easily accessible given that they are published in many countries, thereby promoting the dissemination of knowledge as well as research and development. In the case of patents – an important form of IP for engineers – this means the most up-to-date information because it is made public long before the patent is granted or refused. The same information often does not appear in trade journals for five years or more after publication of the patent application.

In Canada, all IP applications must be submitted to the Canadian Intellectual Property Office (CIPO), a government agency which includes the Patent Office, the Patent Appeal Board, the Industrial Design Office, the Copyright Office, the Trade-marks Office and the Trade-marks Opposition Board.

Moreover, a patent or trademark agent can assist you in submitting your request and then follow through with the application process. On this point, the document Intellectual Property: A Guide for Engineers provides a Web list of authorized patent agents.

## SECOND ALTERNATIVE: SECRECY

This can be a sound choice for trade matters or strictly professional issues.

The recipe for Coca-Cola soft drink is a very well known example of a trade secret. A trade secret can provide a great competitive edge to its holder, be it a person or a business, given that the holder is often the only one who possesses information which is highly sought after by competitors. Another noteworthy characteristic: trade secrets offer protection which is unlimited in time but becomes obsolete once the information is public, out-dated or known by competitors through their own engineering efforts.

In Canada, protection relating to confidential information and ideas falls under provincial jurisdiction. It bears reminding that in Québec, this matter is governed by civil law whereas in other provinces, it falls under common law. For more information, please refer to the section dealing with "Trade secrets" on the Indian and Northern Affairs Canada site.

## A BRAND NEW GUIDE

This past summer, the Ordre des ingénieurs du Québec (the "OIQ") published a new document entitled Intellectual Property: A Guide for Engineers, in order to shed some light on these important issues.

This guide was prepared in close collaboration with the Canadian Intellectual Property Office, the authority in this matter. The guide is completely topical; it takes into account the economic context in this time of global competition and explains how important it is for engineers to adequately protect the outcome of their intellectual work. The guide also details the various means of protection – patent, industrial design, trademark, copyright – and provides, for each of these categories, the advantages, the steps one must take to submit an application for such protection, the term and scope of protection, the possible legal remedies, the international applications, etc.

Finally, the guide includes a number of hypertext links leading directly to very useful sites, institutions and various texts. Here are but a few examples:

- the Canadian Intellectual Property Office;
- American, European and Japanese patent offices;
- the document entitled Stand Out From Your Competitors;
- the Patent Cooperation Treaty relating to international patent applications;
- the Trade-marks Act;
- the Universal Copyright Convention;
- and many others.

In short, this guide is a little bible of sorts which one should always keep close at hand. You can easily find the guide on the OIQ's extranet and download it from the site.



As regards professional privilege, this is a concept which can vary greatly from one profession to the next. In Québec, professionals are subject to certain provisions in the Professional Code relating to confidential information, namely sections 60.4 to 60.6, which state, among other things, that:

- Every professional must preserve the secrecy of all confidential information that becomes known to him in the practice of his profession.
- He may be released from his obligation of professional secrecy only with the authorization of his client or where so ordered by law.
- The professional may, in addition, communicate information that is protected by professional secrecy, in order to prevent an act of violence, including a suicide, where he has reasonable cause to believe that there is an imminent danger of death or serious bodily injury to a person or an identifiable group of persons. However, the professional may only communicate the information to a person exposed to the danger or that person's representative, and to the persons who can come to that person's aid. The professional may only communicate such information as is necessary to achieve the purposes for which the information is communicated. (Professional Code, section 60.4)

More precisely, the Code of ethics of engineers deals with professional privilege in sections 3.06.01 to 3.06.04:

- An engineer must respect the secrecy of all confidential information obtained in the practice of his profession. (s. 3.06.01)  
An engineer shall be released from professional secrecy only with the authorization of his client or whenever so ordered by law. (s. 3.06.02)
- An engineer shall not make use of confidential information to the prejudice of a client or with a view to deriving, directly or indirectly, an advantage for himself or for another person. (s. 3.06.03)
- An engineer shall not accept a mandate which entails or may entail the disclosure or use of confidential information or documents obtained from another client without the latter's consent. (s. 3.06.04)

Finally, let us remember that throughout his or her career, an engineer may come across different situations involving innovations, advances or confidential information which need safeguarding. He or she will do well to make sure that all relevant provisions are stipulated in his or her employment or business agreement before accepting a mandate. Once again, for all such complex matters, why not speak to... a professional!