

IP Rights and Innovation in the Nuclear Industry

Should the nuclear sector worry about intellectual property (IP)?



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At first glance, perhaps not – patents afford a 20 year monopoly, but the regulatory approval processes surrounding new build are lengthy and necessitate early disclosure. Ownership of IP rights can also be complicated by the number of stakeholders - investors, designers, shareholders and Governments in the UK and abroad. Besides, what use are IP rights if your business has been successful without them so far?

If you are innovating, or solving problems, however small, you already own IP. The IP in your inventions can be protected, primarily through patents, and can strengthen your business. Patents protect the innovative solutions you've devised to solve a technical problem.

IP rights generate value for businesses by deterring competitors (preventing competitors making, selling or importing (amongst other acts) into a territory). The rights can be enforced against competitors, ensuring that others do not benefit from your investment in product development. They also provide a tangible asset

recognisable to investors that can be treated much like any other i.e. sold, licenced or mortgaged.

In the nuclear sector particularly, the case for IP is growing. The UK is positioning itself at the forefront of the global civil nuclear industry, with exciting progress in areas such as advanced robotics for decommissioning and small modular reactors (SMRs). In these sub-sectors, ownership issues are straightforward, compared with complex GW-reactor projects.

In the rapidly developing decommissioning and SMR industries, regulatory issues may be simplified, leading to a quicker time-to-market for end products. In addition, much of the technology can be directly transferred to overseas markets. Your products/systems could be replicated once your technology is disclosed, or reverse-engineered, so in these circumstances, the 20 year patent lifespan can provide a valuable monopoly.

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The following are our “top tips” for success:

- + **Have an IP strategy.** Know what IP you already have, and what you can protect via patents, design registration or other IP. Consider which of your IP may be most valuable to your business, for example which innovations are most important to patent (predicting the future is not always an easy task!). Understand your competitors - know what IP rights they hold and understand the risks for your business.
- + **Understand the costs and timescales** involved in obtaining registered IP rights.
- + **Don't disclose!** You cannot seek patent or registered design protection for your inventions if the ideas have inadvertently been publicly disclosed at a conference, or communicated in a business conversation outside of a NDA. Maintain confidentiality until after the patent/design filing date.
- + **Consider IP ownership early.** The original owners of patent or design rights are the inventors/designers, though the rights to inventions/designs made in the course of employment automatically pass to the employer under UK patent law. Any assignments required to transfer rights between parties should be executed early on, to avoid complications later on. It is good practice to check contracts for IP clauses.
- + **Don't confuse IP rights with freedom-to-operate.** The owning of a patent or registered design to a product or process does *not* confer a right for you to use/make the

product or implement the process. It allows you to stop others copying your invention, but does not necessarily mean you don't inadvertently infringe a third party's existing IP rights. Issues surrounding your freedom to bring a product to market must be separately evaluated.

- + **Remember that IP rights are territorial.** IP rights must be obtained separately for separate jurisdictions, and have national effect once granted. They do, however, prevent importing/exporting into a territory so patents in a limited selection of key territories is normally enough to protect your primary markets.

Whether you are newly entering the nuclear sector, or an established supplier to the industry, there are IP issues to consider – freedom to operate issues, and/or ideas which warrant seeking protection.

Abel and Imray is closely following developments in the nuclear sector. Feel free to contact us for an initial consultation to discuss how intellectual property rights could benefit your business - you may be surprised by the outcome. As an SME, you may qualify for a Government subsidised IP audit – see our website [here](#).