



Why researchers should care about patents

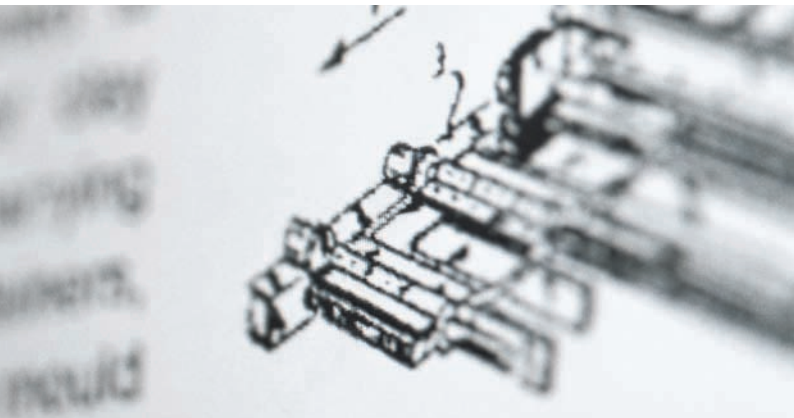


Why should I search patent literature?

Before starting a R&D-project, an effective study of the **state of the art** is useful and advisable. It should not only focus on books and scientific journals, but also take patent information into account.

The patent system is the most prolific and up-to-date source of information on applied technology. **Patents** contain detailed technical information which often cannot be found anywhere else: up to 80% of current technical knowledge can only be found in patent documents. Moreover, this information is rapidly available, as most patent applications are published 18 months after the first filing, irrespective of their country of origin.

Searches in patent literature can be conducted by anyone by using the free-of-charge *esp@cenet* patent data base on the Internet. It provides access to more than 60 million patent documents from all over the world. All documents are classified by technological areas on the basis of the International Patent Classification which is the world-wide standard.



There are good reasons to search patent literature:

- **Avoid duplication of R&D efforts and spending**

Patents are the broadest source of technical information. Many companies do not disclose their R&D results in any other form. Looking up patents therefore is an efficient way to avoid duplication of R&D work: up to 30% of all expenditure in R&D is wasted on redeveloping existing inventions.

- **Find solutions to technical problems**

Even if a patent is still in force, the information it contains can be freely consulted, and used for experimental purposes (under certain conditions). Given that the majority of all patents – around 85% – are no longer in force, a vast number of inventions is available for free.

- **Gather business intelligence**

Patent information not only reveals the state of the art in a certain technology areas, but also enables monitoring the innovation strategies of competitors and other players at a very early stage.

It is important to recall that, in the context of the European Community R&D Framework Programmes, participants need to demonstrate the innovative character of the project they propose. A proper analysis of the state of the art is one of the criteria project proposals are evaluated upon, and therefore technology-based proposals should preferably include patent searches.

Why and when should I consider patenting in a R&D project?

Patents grant their owner a **monopoly** over an invention (a product or process that is new, involves an inventive step and is susceptible of industrial application) as defined by the “claims”. European patents are only granted after a thorough examination procedure which can lead to the grant of a patent or the rejection of the application or a limitation of its scope. It is advisable to entrust the preparation and processing of a patent application to a skilled professional, for instance a patent attorney, as this requires detailed knowledge of the applicable rules and procedures.

The legal protection conferred by a patent gives its owner the possibility **to prevent** others from using, manufacturing, selling, importing, etc. the invention in the country or countries concerned, during up to 20 years from the filing date. This provides the patentee with a competitive advantage.

Patents can also be licensed or used to help create or finance a spin-off company. It is therefore possible to derive value from them even if their owner does not have its own manufacturing capability (e.g. universities). The patenting process should form a part of the overall innovation and business strategy envisaged for the invention. **The timing** of that process strongly depends on this strategy, on the sector concerned, etc.

In many cases it is appropriate to keep an invention secret before filing a patent application. Indeed, any disclosure, for instance at a trade fair, in a catalogue or at a conference, if it takes place before filing, would render the invention unpatentable.

Inventors – including academics¹ – should therefore consider the benefits of filing a patent as soon as possible in their research activities (anyway before any publication).

Moreover, patents are not the only form of knowledge protection. In some cases it may be appropriate to keep an invention **confidential** (trade secret), or to place it in the **public domain** in order to freely share it with other users while preventing future patenting by third parties. The respective decisions (at least for patenting and confidentiality) need to be taken before the invention is published in any way.

For different legal reasons, researchers are advised to maintain laboratory notebooks according to proper standards², to help prove when an invention was developed and by whom.

It is finally recalled that, in the EC's Framework Programmes, there is an obligation for participants to protect any results which are “capable of industrial or commercial application”.

¹ Interestingly, patents now form part of the background literature which is referred to in certain top scientific journals such as Nature.

² see e.g. www.btgplc.com/btguploads/BTG_LabNotebook_Mar06.pdf



Respecting third parties' rights

While this may look strange, it is important to note **that a patent does not automatically authorise** its owner to carry out, produce or market the patented invention. Indeed, it is possible that a patented invention is an improvement of pre-existing techniques, which may themselves be patented and would then require the authorisation (typically a license) from the patent owner(s) concerned.

Therefore, companies and businesses wishing to use a certain technique (manufacture it, sell it, import it, etc.) need to identify possible patent rights of their competitors and other players **before** any actual use of the technique (or marketing, importation, etc.). A search performed by a patent information specialist, combined with a detailed legal analysis of the potentially relevant patents and patent applications, can help identify possible blocking patents and avoid violation of other parties' rights. It should be borne in mind that infringement (counterfeiting) can have severe judicial and financial consequences.


Where appropriate, similar analyses should also be carried out in respect of potentially relevant trademarks, industrial designs, copyrights, etc.


For more information, see: www.wipo.int/sme/en/documents/wipo_magazine/9_2005.pdf

Some facts about patent documents

Patent documents consist of:

- a **first page** comprising basic information, such as the title of the invention and the name of the inventor, etc.
- a detailed **description** of the invention, indicating how it is constructed, how it is used, and what benefits it brings, compared with what already exists
- **claims** which are a clear and concise definition of what the patent legally protects
- **drawings**

(19) 



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(54) **System for construction of swimming pool edges**

(57) System for construction of swimming pool edges, being of use in the construction of swimming pools, both those which are overflowing and non-overflowing with skimmers (figure 5 of the designs), the top of which is finished in accordance with any of the known systems, in such a manner that the system comprises at least two backed pieces (A) and (B) of porcelain material, a first piece (A) of porcelain material of parallelepiped general

shape defining the perimetric end of the swimming pool and the second piece (B) of porcelain material and of U-shaped cross-section defining the outlet channel (2), such that the first piece (A) has its upper exposed surface (3) grooved, while the flanges (4) of the second piece (B) with a U-shaped cross-section display a lower height on the internal side of the backed piece, the pieces (A) and (B) constituting with their exposed surfaces, preferably enamelled, the frame and the lining.

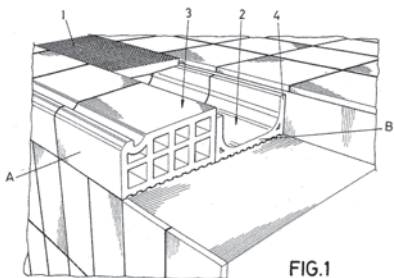


FIG.1

EP 1 764 458 A1

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Where can I get more help and information ?

- **National patent offices**
*[www.epo.org/focus/ip-webguide/
IPofficesmembers.html](http://www.epo.org/focus/ip-webguide/IPofficesmembers.html)*

- **European Patent Office**
www.epo.org

esp@cenet database:
www.espacenet.com

Other patent information products:
www.epo.org/patent-information

- **PATLIB Centres**
(Patent information, technology watch):
*[www.epo.org/patents/patent-information/
patlib.html](http://www.epo.org/patents/patent-information/patlib.html)*

- **National and European patent attorneys**
information and professional assistance on how
to patent my invention, how to enforce my rights,
...

The database of professional representatives:
*[www.epo.org/patents/Grant-procedure/
representatives.html](http://www.epo.org/patents/Grant-procedure/representatives.html)*

- **IPR Helpdesk**
(assistance on the IPR rules of the EC
Framework Programmes; general information
about IPRs):
www.ipr-helpdesk.org