

Trade secrets as a competitive advantage in the internationalisation process

What is a trade secret?

A trade secret is any confidential or industrial information that confers a competitive advantage to a company.



Requirements



- ✓ It must be secret
- ✓ It must have a commercial value because it is a secret
- ✓ The holder of the information must take reasonable steps to keep it secret.

“European businesses are particularly exposed to the theft of trade secrets because of their advanced know-how and production development”

Source: [Tilburg University](#)

The sectors which suffer cyber-misappropriation the most at a EU level are:



Manufacturing



Technology
Information and
Communication
(TIC)



Finance



Health and
medical
technologies

Source: [European Union, 2018](#)

What can be protected as a trade secret



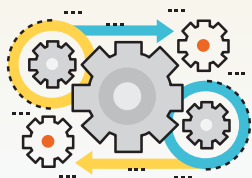
Technical information such as know-how, early-stage inventions, unpatented technologies and unique manufacturing techniques.

Commercial information such as market strategies, financial information, lists of suppliers, customers and distributors.

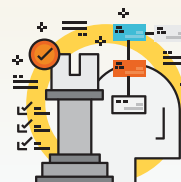
Top 5 tips

- ✓ **Identify** the information that must be kept secret.
- ✓ **Develop an internal protocol** to secure the confidentiality of the information within your business.
- ✓ **Sign non-disclosure agreements (NDAs)** with external parties before disclosing the information to them.
- ✓ **Make use of technical measures** such as password protection, tracking software and network security systems.
- ✓ **Implement physical measures** such as restricting access to documents and storing them in sealed and isolated areas.

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Some key IP strategic and business considerations
to take into account when choosing between
trade secrets or patent protection:



PATENTS	TRADE SECRETS
Restrictions on the protectable subject matter	Unrestricted subject matter
Limited duration (usually 20 years)	Unlimited duration
Exclusive right	Not an exclusive right as information can be used by third parties that found it independently (e.g. reverse engineering)
No IP protection if not granted by the relevant national IP office	Immediate effect anywhere in the world
Expensive	Inexpensive
Costs of national/ international registration + maintenance	Necessary costs to maintain secrecy
Legal certainty	Not easily enforceable
Wide range of exploitation options: sale, licence, cross-licences...	Difficult to commercialise, since the use of trade secrets is only prohibited if it results from misappropriation



Trade secret protection can be strategically combined with other IP rights!

Prototypes, early-stage designs and inventions should be kept secret.

> Designs and patents can only be registered if they have not been previously disclosed!

Specific know-how related to a specific patent may be worth protecting as a trade secret too. E.g. the most efficient way to work a patent

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