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Smart IP for startups: how to avoid the common traps

Early-stage companies can face high costs and little reward if they don't get their IP strategy right from the start, say Graham Phero and Paul Ainsworth of Sterne Kessler.

In the startup world, fast innovation generally wins out. Despite a clear advantage attributable to the first mover, intellectual property can be one of a startup's most valuable assets.

Many early-stage companies, however, often fall into the common traps of 1) over spending on a patent portfolio that delivers little real-world value, and 2) failing to protect vital trade secrets that underpin their true competitive advantage.

With limited resources and high stakes, startups need to be strategic from the start. By focusing on high-impact patents and implementing practical trade secret protections, founders can make IP work for their growth—not against it.

The patent pitfall: more isn't always better

Patents can offer valuable legal protection, especially when launching a defensible, IP-driven product. But filing and maintaining patents can be expensive, often costing tens of thousands of dollars per application, not including international filing and examination fees.

Startups often feel pressure to patent early and often, sometimes to signal value to investors. Unfortunately, this frequently results in portfolios filled with low-value patents that cost more to maintain than they're worth. This can be particularly harmful for early stage companies already operating on a shoestring budget. Common mistakes include:

- Filing too early: patenting ideas before product-market fit is clear can lead to weak or irrelevant protection.
- Over-patenting: trying to protect every feature instead of focusing on what truly differentiates the product.
- Investor signalling: filing patents to "look valuable" rather than to support core business strategy.
- Skipping competitive research: failing to check if the innovation is truly novel or commercially relevant.

How startups can evaluate patent worth

Not every invention should be patented. Startups should assess each potential patent through a business lens. For instance, is this innovation a core differentiator? Will it make the product hard to copy or give you a long-term edge? Can the innovation be reverse-engineered? If the answer to one or more of these questions is yes, a patent may be the only means of protection.

Startups should also evaluate other strategic considerations. For example, will a patent help raise funding or close a deal? Strategic patents can support investor confidence and partnerships. And often, funding is contingent on some kind of IP protection.

Another consideration is whether the patent would be enforceable in the US and/or abroad? Narrow patents that competitors can easily work around may not be worth the cost. Additionally, the pursuit of foreign patent protection may not be worth the added cost unless there is a clear path to market in that foreign jurisdiction.

Finally, startups should consider whether a patent might provide a clear route to monetisation. This could be through increased company valuation, licensing, or the ability to block competitors.

Startup-friendly patent strategies

One doesn’t need a massive budget to establish well-tailored IP protection. Provided below are several startup-focused tactics:

1. Use provisional patents

These low-cost filings (around $140 in fees) provide 12 months to test market fit and improve the invention before committing to a full patent. A provisional patent is not examined, so patent examination fees can be deferred. Upon expiry of the 12-month period, the provisional can be converted to a non-provisional application and/or a patent cooperation treaty application, if foreign protection is desired.

2. File narrowly and strategically

Focus on protecting your core innovation—what sets you apart in the market. Focused patent applications allow a company to focus each application on a discrete idea. If the company later changes course, each discrete idea/patent application can be re-prioritised as needed.

There is often a push to cram all possible “innovations” into a wordy patent application filing. But this is more expensive to prepare and often more expensive at every stage of the patent process in the US and internationally. To the extent foreign patent protection is desirable, a longer patent application will also result in increased translation costs.

3. Delay international filings

Companies, especially startups, often identify potential foreign markets and push to file IP in each of those countries. While it is worthwhile to protect those markets, every additional patent filing adds cost—often tens of thousands of dollars.

Given the potential of drastically increasing costs for foreign protection, startups should instead consider focusing their initial IP efforts on their primary market and waiting for a proven track record or revenue before expanding to international patent filings.

Don’t forget trade secrets

While patents generally get the most attention, trade secrets can be more practical and powerful for early-stage companies. A trade secret is any confidential business information that gives you a competitive edge—like algorithms, formulas, manufacturing processes, pricing models, or customer data.

Unlike patents, trade secrets can last forever. The catch, however, is that the information must be kept secret and safe from disclosure. Accidental disclosure or malicious theft destroys a trade secret and once destroyed, the trade secret cannot be recaptured.

Key trade secret advantages:

- No registration costs
- Immediate protection
- No public disclosure
- No expiration (if managed properly)

How to protect trade secrets on a startup budget

You don’t need an in-house legal team to start protecting your most sensitive information. Here’s what to do:

1. Identify your trade secrets

Make a list of your key confidential assets—proprietary code, customer data, internal processes, etc and where that information is stored. Update the list as appropriate and restrict access.

2. Use NDAs—every time

Always use non-disclosure agreements with employees, freelancers, partners, and even potential investors before sharing sensitive info. And if your business relies on third-parties for performing work related to your trade secrets, make sure those agreements protect your IP even after the business relationship ends.

3. Strictly limit access

Only share confidential information with people who absolutely need it for their role. Use electronic safeguards to limit access to electronic files.

4. Train your team

Make sure employees understand what is confidential and how to handle it—even in small teams. Every employee entering the company should also be advised on their obligations to not bring their former employer’s confidential information with them.

5. Keep your trade secrets safe

How to keep a trade secret safe depends on what the secret it is. If it’s electronically stored information, strong cybersecurity controls and network access restrictions are critical. If it involves physical items, ensuring that the items are stored and kept in a secure manner is important.

6. Create off-boarding procedures

Revoke access when team members leave and remind them of their continuing confidentiality obligations. For critical employees who had access to trade secret information, perform audits of their electronic communications and devices to ensure they complied with their contractual obligations.

Patent or trade secret?

Here's a quick decision guide:

Question	Best option
Can it be reverse-engineered easily?	Patent
Is it expensive or slow to disclose?	Trade secret
Does it offer long-term advantage?	Trade secret
Is it needed for investor confidence?	Patent
Will the details be shared publicly?	Patent

In many cases, a hybrid strategy works best: patent the visible or externally exposed aspects, and keep behind-the-scenes elements—like process optimisations or data sets—as trade secrets. But again, trade secrets must be maintained as secret.

Final thoughts

For startups, smart IP management isn't about the quantity or length of patent filings—it's about making deliberate choices that align with your business model, product roadmap, and long-term strategy.

By avoiding unnecessary patent filings and protecting key trade secrets, startups can turn IP from a budget drain into a growth driver.

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