



Protecting Offshore Production Innovations

By Ed Schlatter • March 4, 2020



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Answers to six key questions regarding protection of offshore production innovations.

Congratulations! You've just redesigned the subsea Isolation valve control system (SSIV) that your company sells for use as part of an emergency shutdown system for an offshore production site. Your sales team is eager to show your SSIV to oil production companies, but you are concerned that the oil production companies may disclose the details of your SSIV to lower cost competitors.

Before greenlighting your sales team, you need to know the answers to the following seven questions:

Is it possible to protect your SSIV as a trade secret?

Yes, so long as everyone who will be exposed to the innovative aspects of the SSIV is subject to a duty of confidentiality. On the other hand, trade secret misappropriation may be difficult to prove and the remedy may be limited to an injunction for the time it would have taken to independently develop the SSIV. In addition, trade secret protection will not protect against a competitor independently developing the same SSIV improvements, and it is even legal for competitors to copy by reverse-engineering aspects of the SSIV.

Is it possible to secure a patent for your SSIV?

Yes, patent protection is likely available if your SSIV is not identical to prior publically-disclosed SSIVs and your SSIV provides significant advantages over prior SSIVs. [Technically, the differences between your SSIV and all prior systems used in any application must be both “novel” and “nonobvious.”] Importantly, the advantages of your SSIV could be based on reliability, safety, ease of ease of installation or any other meaningful measure.

Should I seek a patent on my SSIV?

Yes, if having the exclusive right to make and use your innovative SSIV has sufficient economic value to justify the cost of securing a patent in the relevant countries.

When should I begin the process of patenting my SSIV?

You should begin the process of securing a patent as soon as reasonably possible. Patents are granted based on a first-to-file system. In addition, most countries other than the United States require you to file a patent application prior to any public disclosure of the invention. The United States requires that a patent be filed no later than one year after public disclosure of the innovation.

Moreover, oil production contracts typically claim jobsite innovations for the oil production company. Having a patent application filed prior to entering into the contract can avoid this.



Is there a way to protect against third parties independently developing similar SSIVs, without publishing the details of your SSIV in a patent application?

Yes. The United States provides the option of not publishing a patent application while it is pending, so long as you do not file a patent application outside of the United States. However, once the patent issues, the described details will become public.

Can you hedge against independent development of a similar SSIV by third parties and seek patent protection outside of the United States, while not having all of the innovative details of your SSIV published in a patent application?

Yes. This can be accomplished by only disclosing certain “core” aspects of your innovative SSIV in a patent application while maintaining other aspects of the SSIV as a trade secret. This would allow you to seek patent protection for the “core” SSIV design, while maintaining the additional enhancements as trade secrets. It is not clear that this is allowed under U.S. patent law, however. Although the most recent update to the U.S. patent statutes removed some consequences of not including an inventor’s “best mode” in the patent application, the best mode requirement remains elsewhere in the statutes.

Is filing a patent application all that is required to protect my innovative SSIV?

No. You will not have the right to enforce the patent until it issues. As this could take 2-3 years in some countries, you should protect the confidentiality of your innovations through company policies, employee agreements and security protocols. You should also carefully negotiate all contracts with vendors and customers to protect your company’s innovations.



Ed Schlatter is a patent partner with the law firm of Knobbe Martens LLP. He has represented clients in the petroleum and offshore industries for over 25 years in connection with strategic patent portfolio development, analysis of competitor patent portfolios, agreements and contested matters both in the U.S. and internationally.