Protect, Publish or Keep Quiet?

A Strategic Guide for Innovators, Investors and Early-Stage Companies

Executive Summary

For founders, researchers and technical teams, the decision to register for protection, publish or keep an innovation confidential is one of the most significant strategic choices they will make. Companies looking to preserve their competitive advantage should approach IP as a commercial asset that shapes valuation, product lifecycles and investor confidence.

The timing of each IP decision is often as important as the decision itself. Premature disclosure can permanently remove protection options, while delayed action could weaken market position or impede fundraising.

This white paper provides guidance for navigating these choices. It is designed for early-stage companies, particularly those preparing for or entering a seed round. If your organisation is at that stage, you should review **Stratagem's IP Checklist for Seed-Round Readiness**, which complements the guidance set out here.

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The Importance of a Holistic IP Strategy

A coherent intellectual property strategy can be crucial to the commercial success of an innovative business. Through appropriate protection, correct positioning and alignment with an organisation's long-term objectives, intellectual property can enhance a business's value. Investors increasingly expect early clarity on intellectual property ownership, protection strategy and future plans. They also expect founders to understand and have considered the consequences of disclosure, the advantages of different rights and the risks associated with operating in a competitive patent landscape.

The transition from academia into the commercial world requires a fundamental shift in perspective away from the drive to publish research either in peer reviewed journals or via presenting at conferences. The kudos of being listed as an author and the recognition within the scientific community that accompanies journal articles, papers and conference presentations is the lifeblood of the academic community, but the drive to publish can be at odds with IP Strategy. Patent law is unforgiving in this respect: once information enters the public domain, it is generally no longer considered to be 'novel', a key criteria for patent eligibility.

A well-structured IP strategy therefore requires careful sequencing. It must balance the desire for visibility and collaboration with the need to preserve protection options, and it must evolve as the business grows. Identifying protectable output from the business should be integrated into the product development cycle as an enabler for greater growth projections.

The Core Decision: Protect, Publish or Keep Quiet

Every innovative business will repeatedly address the issue of whether to register protection for an invention, publish their research, or keep their ideas confidential. Each option serves a distinct purpose and carries different consequences. As each business is unique, it is important to approach the decision within the unique business context.

Protection - Registered and Unregistered Rights

Intellectual property rights fall broadly into two categories: registered rights and unregistered rights.

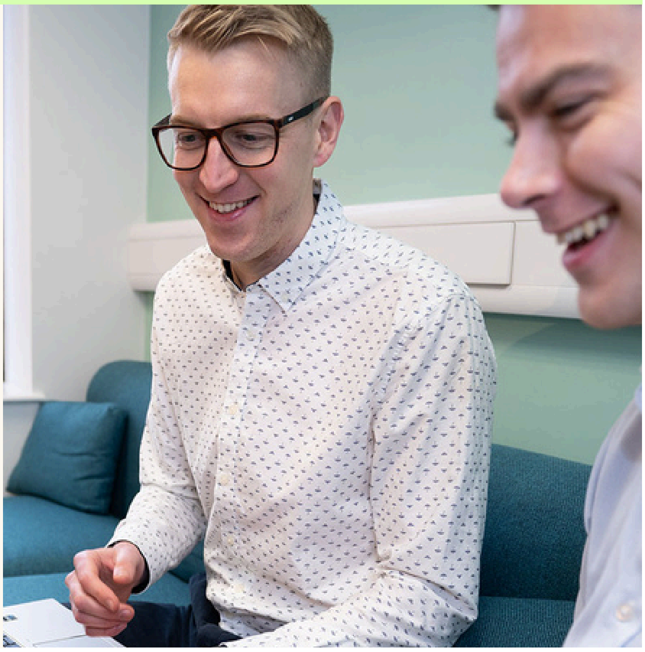
- *Registered rights* such as patents, trade marks and registered designs require formal application and are typically subject to examination. They generally provide stronger, more clearly enforceable protection, without a requirement to prove copying. However, this level of protection comes with associated cost and procedural requirements.

- *Unregistered rights* such as copyright and unregistered design rights, arise automatically upon creation and do not require formal registration. However, they can only be enforced in cases of copying, often require detailed evidence of creation and ownership, and may be more challenging to enforce in practice.

No single intellectual property right protects every aspect of a product. The most effective approach is therefore a layered protection strategy. For example, if a product is embodied as a novel and inventive device, its technical function may be protected by a patent, while its appearance can be protected through a registered design. A trade mark can protect the product's name or brand identity, and copyright and trade-secrets can protect elements like software, algorithms, and know-how. Taken together, this combination of rights can significantly enhance overall protection and increase value.

When are Patents Appropriate? Technical Requirements, Commercial Value and Timing

Patents protect technical inventions that are new, inventive and capable of industrial application. Protection can last for up to 20 years, providing renewal fees are paid. A granted patent provides a legally enforceable, territorial right to exclude others from commercially exploiting the invention within the relevant jurisdiction(s). It can strengthen valuation, support licensing discussions and deter competitors. However, to obtain a patent, the applicant must provide an enabling disclosure, meaning the application must describe the invention in sufficient detail for a skilled person to reproduce it. This is a significant trade-off: in exchange for exclusivity, the applicant must reveal the technical workings of the invention.



> "A granted patent provides a legally enforceable, territorial right to exclude others from commercially exploiting the invention."

Since patents are territorial rights, protection must be sought country by country. A granted UK patent prevents infringing acts only in the UK: including manufacture in the UK for sale abroad and goods manufactured abroad imported into the UK for sale in the UK. Developing a territorial strategy for patent protection is therefore a balance between relevance of various territories from a manufacturing and market share perspective on the one side and the resource required to obtain rights on the other side. Coordination of a cross-jurisdictional strategy is critical to supporting a territorial expansion of a business.

For early-stage companies, patents can also play a strategic role in the development of the business in the sense that they can support investment, strengthen negotiation positions, and demonstrate technical differentiation. Stratagem therefore encourages early engagement in order to develop appropriate patent protection strategies.

What is the UK Patent Box Regime?

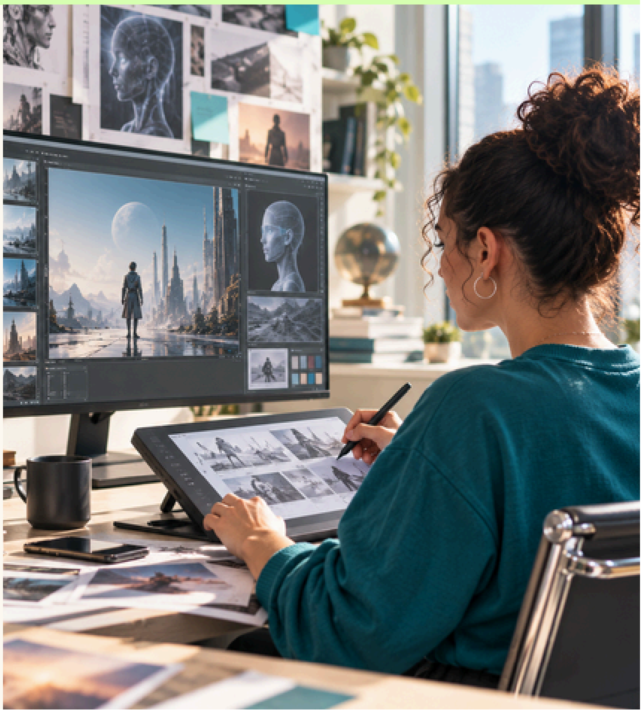
If you are a UK based company liable for UK corporation tax, obtaining a granted UK (or UK-validated European) patent can provide significant tax advantages. Under the UK Patent Box regime, profits which can be attributed to patented inventions may be taxed at a reduced corporation tax rate.

Accordingly, in addition to protecting your innovation, pursuing patent protection to grant in the UK can deliver commercial value through tax savings, particularly where patented technology forms a core part of your business.

AI, Software and the Limits of Patentability

AI algorithms, mathematical models and business methods are not patentable under UK and European patent law "as such". However, patent protection may be available where the invention produces a technical effect or solves a technical problem. This may include for example, enabling faster processing, reducing memory usage, lowering power consumption or enhancing system performance. The criteria for patentability focus on the technical contribution and character of the invention in the real world, rather than the abstract logic itself.

Where no technical effect can be demonstrated, protection may instead be sought through copyright, trade secrets, and strong branding for example through registering designs, trade marks and domain names.



Registered Designs and Trade Marks

Registered designs protect the appearance of a product rather than the technical function. They may be used to protect, for example, the shape or configuration of a product and surface ornamentation. They are relatively quick and inexpensive to obtain.

Trade marks protect brand identity, including names, logos and distinctive signs. They can be used to build long-term brand value and to prevent others from trading under confusingly similar identities. Investors increasingly expect early trade mark protection as part of a coherent brand strategy

Copyright and Software Protection

In the UK, copyright arises automatically and can protect original written and artistic works, including some software code, documentation and digital assets. For some businesses, copyright forms a useful part of the overall intellectual property protection framework. It does not require registration and can be enforced against unauthorised copying and use of the work, although it does not prevent independent creation of similar material.

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Publish

The publication of your idea can be valuable for academic credibility, visibility and collaboration. It can help to attract interest in a business, to build reputation and to demonstrate expertise. However, in most jurisdictions, once an invention has been publicly disclosed, the ability to obtain patent or registered design protection is removed or becomes strictly time-limited.

The law defines publication broadly. It includes anything made available to the public by written or oral description, by use, or in any other way. There are no geographical or language restrictions. Publication therefore does not only refer to articles in scientific journals. It includes:

- Conferences and presentations
- Social media, for example LinkedIn, Instagram and WhatsApp
- Websites/blog posts
- Conversations without NDA or confidentiality obligation
- Informal discussions, including disclosure to a single person, either online or in-person.

Conversations with patent attorneys are protected by legal professional privilege and do not constitute publication.

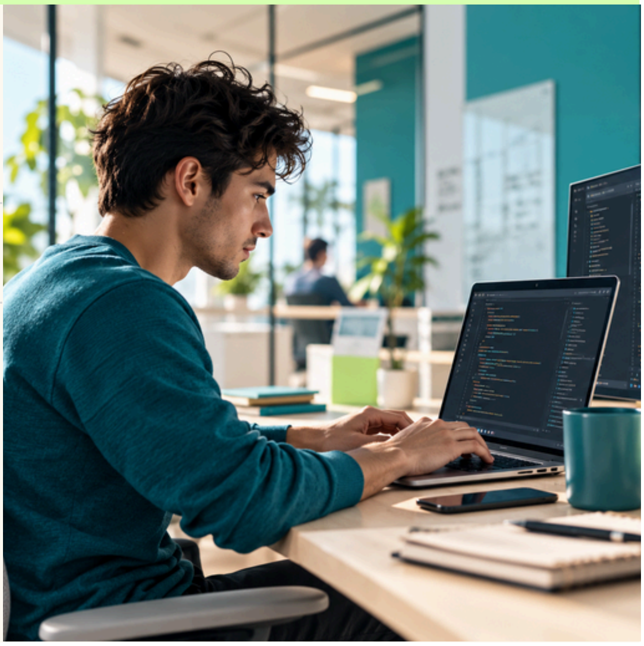
Publication of your ideas therefore should be carefully timed and should not occur before appropriate protection has been arranged. To avoid accidental disclosure, organisations should implement contractual safeguards and ensure employees are trained on the value of intellectual property, confidentiality and the risks associated with publication. Founders should also establish robust record-keeping processes and limit the spread of sensitive information.

Keep Quiet

Choosing not to disclose your ideas and instead keeping them confidential can prevent competitors gaining access to them.

When Trade Secrets Are Preferable

You may choose to protect your idea as a Trade Secret, which can be particularly valuable where the idea is not visible in the final product or cannot be easily reverse-engineered. This approach is increasingly relevant for software logic, data handling methods, manufacturing processes and internal algorithms.



For information to qualify as a trade secret, it must:

- Be secret – it can't already be known or readily accessible in the public domain;
- Have commercial value because it is secret; and
- Be subject to reasonable steps to keep it secret.

Reasonable steps to maintain secrecy include active management. A formal record system should identify what the trade secret is, where it is stored, who has access to it, and what safeguards are in place. Access should be restricted to a need-to-know basis, and regular reviews should confirm whether the information still qualifies as confidential. Additional measures include implementing non-disclosure agreements (NDAs) where appropriate and ensuring robust contractual and internal confidentiality controls.

Trade secrets can last indefinitely, but only if the information is actively protected. However, they do not prevent independent discovery or reverse engineering. Once information enters the public domain, trade secret protection is lost.

In practice, the strongest strategies combine all three approaches – registered protection, publishing ideas and keeping information confidential, at different stages of development.

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NDAs, Employment Contracts and Internal Governance

Strong internal governance is essential for protecting innovation. Employment contracts should contain clear IP assignment clauses to ensure that all intellectual property created during employment belongs to the company. Exit interviews should reinforce confidentiality obligations. NDAs should also be used whenever technical detail is shared externally, especially before filing registered IP protection applications.

NDAs can provide contractual remedies in the event of breach and can support legal arguments relating to non-prejudicial disclosure. They must be carefully drafted, and at Stratagem, our in-house solicitor can review clauses, prepare agreements, and ensure contracts are aligned with your business interests.

What do Investors Expect from your IP Strategy?

Investors now commonly expect to see clear ownership, evidence of protection, and an understanding of the competitive landscape. They also commonly expect founders to demonstrate freedom-to-operate awareness and to present a scalable protection plan.

Getting your IP Investor Ready Summary:

Check out our IP Checklist for Seed-Round Readiness for a more detailed list of practical steps

- Audit your current IP protection
    - Is your core technology protected? Consider getting a focused patentability check on your core inventions.
    - Is your brand protected? Are your company and product names registered as domains and protected by trade mark?
    - Is your confidential information secure? Do you have active management systems in place for “know-how” and trade secrets? Are you using NDAs or confidentiality clauses for sensitive conversations?

> **“Maintain executed NDAs, collaboration agreements, and related contractual documentation ready for investor due diligence”**

- Ownership
    - Check that ownership of your existing IP is formally assigned from inventor/creator to the applicant/company.
    - Ensure your employment and contractor agreements assign IP to the company.
    - Ensure all collaborations with third parties are governed by clearly defined contractual arrangements with unambiguous ownership terms in place.
    - Maintain executed NDAs, collaboration agreements, and related contractual documentation ready for investor due diligence.
- Freedom to operate (FTO)
    - Have you considered your FTO position? Consider having a short, practical FTO summary prepared for investors noting any risks and mitigation.
    - Keep an eye on relevant competitors IP publications.
    - Consider running a full FTO review before manufacturing, marketing or major partnerships.

What does Freedom to Operate (FTO) mean?

Freedom to operate refers to the ability to commercialise a product without infringing third-party intellectual property rights. Importantly, ownership of IP does not in itself guarantee freedom to operate. An FTO assessment involves systematically reviewing relevant patents in target markets to identify potential overlapping or blocking positions and to assess associated infringement risks.

FTO is therefore best understood as a proactive risk management and strategic planning tool, rather than a source of absolute certainty. Early identification of potentially relevant third-party rights can help avoid obstacles in development pathways, inform design choices, and support more efficient commercialisation strategies.

For this reason, at Stratagem, we encourage founders to engage early on freedom to operate considerations as part of a broader, commercially focused IP strategy.

Conclusion

An ideal Intellectual Property strategy should be a holistic, layered approach that supports business growth, protects ideas and creates a competitive advantage. The most effective strategies combine patents, strategic publication, trade marks, designs, copyright, trade secrets and strong contracts where appropriate.

At Stratagem, we work with our clients to understand their business and develop clear, investor-ready IP strategies that provide confidence to investors and peace of mind to founders.

We can support your business at any stage. If your company is approaching a seed round, please review **Stratagem's IP Checklist for Seed-Round Readiness.**

To discuss your IP position or obtain tailored advice, you are invited to **book a free 30-minute consultation with a Stratagem specialist.**

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