



Webmarking of patented products – business guidance

Current situation

If a patent holder wishes to be in with the best chance of being awarded financial remedies in the event their patent is infringed, they should mark their product with the word “patent” or “patented” together with the number of the patent.

This is because damages are not payable by a patent infringer who is able to prove that they were not aware of the existence of the patent, and had no reasonable grounds for supposing that the patent existed, at the time of the infringement. The current law says the infringer cannot rely on this argument to avoid paying damages if the patented product is marked in the way described above.

What’s changing

From 1st October 2014, patent holders who have marked their patented product with a web address will be able to benefit in the same way – provided that the webpage clearly associates the patent number with that product.

Removing the need to mark the patent numbers directly on the product will reduce burdens and costs for businesses and individuals who own patents, and will make it easier for the public to access up-to-date patent information in relation to a product.

Options available

Patent owners will continue to have the option of marking their product with the relevant patent numbers if they prefer.

Also, they will continue to have the option of not marking their products at all, and this will have the same consequences as now - reducing the likelihood that they will successfully claim damages from an infringer.

Detail

It is in the patent owner's interest to ensure that clear and accessible information is provided on the webpage, making it easy for the public to ascertain which patents apply to the product. Providing clear information will ensure that the patent owner is in with the best chance of benefiting during any infringement proceedings.

The web address provided on the product must direct the reader to a webpage which clearly associates the product with the relevant patent number. The product must be clearly identified, e.g. by including any relevant model numbers and variants that exist.

An example is provided at www.tivo.com/patents (as US law has already changed).

Providing the web address of the home page of a company website is unlikely to suffice - unless on that home page there is a clear association between the product and the relevant patent number.

It is advisable to keep the web page as up-to-date as possible, reflecting any recent changes to the patent details for each product. Otherwise an infringer may be able to claim that they weren't aware of the patent at the time of the infringing action.

Where a dispute arises, it will be for the courts to decide whether sufficient notice had been provided.

A QR code won't in itself provide all members of the public with notice of the relevant patent rights, but patent owners may provide a QR code on their product if they wish. They could do so in addition to providing the patent number(s) or a web address.

June 2014