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Should we patent it or keep it a secret?

Ariana Gayoso Echevarria of Estudio Colmenares & Asociados evaluates the protection secured through patents compared to trade secrets and offers examples of when each is beneficial.

“The secret of my influence has always been that it remained secret.”

Salvador Dalí

Trade secrets and patents make the difference in a firm's economic success or failure and it is key for a manager to know which intangible assets are valuable to be patented or to be kept private. Taking references from successful businesses can give us insight into what comes into play when deciding on strategies.

For most organizations there is relevance in secrecy. This can encompass all areas of business¹, from publicity strategies, manufacturing processes, new developments, client contacts, etc. that could be protected as copyright. Secrets coming out to the competition are sometimes a threat and managers have to consider how competitors can get that information in bad faith.

When patenting a formula or invention it is required to publish exactly how it can be reproduced and the specific use behind it. This grants exclusivity rights to the owner of the patented asset for a limited time. Trade secrets have no exclusive rights, the information is kept secret simply because it gives the company significant economic advantage over others² and without time constraints. However, these secrets can be broken through independent discovery

and accidental or intentional disclosure³ within the company which drastically affects their image and profit. The main consideration of a patent vs. a trade secret is the cost and the time it takes to be approved.

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A part of Coca-Cola's marketing success was keeping its formula secret.

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As a first example, we have the Coca-Cola formula, a famous trade secret. Estudio Colmenares has patented several inventions in

¹ (William F. Crittenden, 2015)

² (Justia, 2022)

³ (William F. Crittenden, 2015)

⁴ (Radford, 2022)

favor of its client The Coca-Cola Company, but none of those pertain to the specific formula of their popular soda.

Some of Coca-Cola's patent inventions refer to methods that recognize contaminants, specific recipients, refrigerants and other types of sample-taking systems. In a book of "Big Secrets" William Poundstone found some basic components in the formula like vanilla extract, lime juice flavoring and the famous coca leaf that gives it its name⁴. (Coca leaf gives the drink its stimulant properties, it is a plant that derives from South American countries, mainly Peru, and its regular use there is to chew on it to get an energy boost). Nevertheless, the exact composition of the formula is unknown to the public and has gone through many changes over the years.

On the other hand, with today's technological advances, many organizations are able to

This particular case refers to an open sourced patent, meaning that the owner controls how others use their invention but it is not maintained as a trade secret.

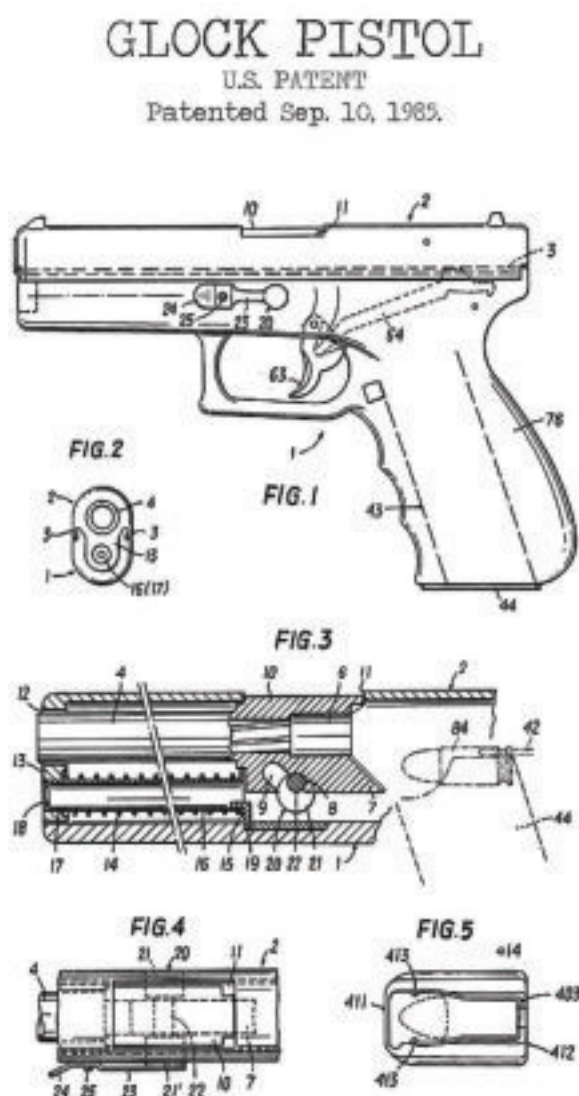


figure out the exact chemical composition of certain pharmacological drugs, drinks and/or manufacturing processes of products, therefore it makes sense to patent and benefit from the time limit for as long as possible for economic and strategic market success.

As a second example, we have a mechanical patent, the Glock pistol that revolutionized the firearm industry due to its lightweight materials, simple use and other properties that made it unique.

Mr. Gaston Glock filed his first patent in 1953, initially meant for the Austrian military and law enforcement because of its fast performance and at the same time providing safety against accidental discharge⁵. The Glock that later revolutionized the market, the G17, didn't appear

⁵ (Suciu, 2021)

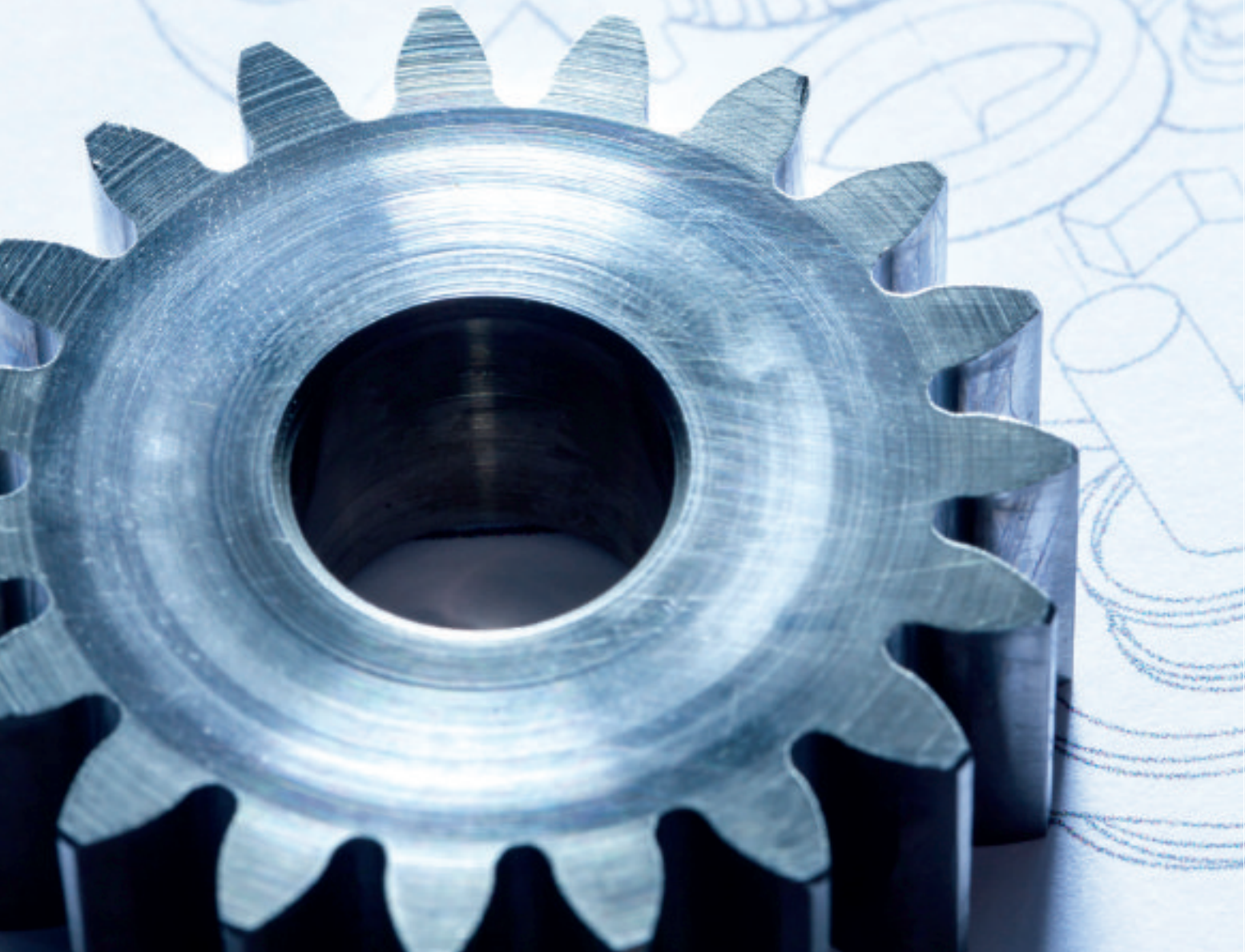
until 1985 in the United States (issued Patent Number 4,539,889). The Glock pistol's design was innovative, easy to build and extremely durable.

From a business point of view, it was a smart strategy to patent the Glock design as it could be easily replicated. After the lapsing of the Glock patent, many gun companies have manufactured guns with the same properties that once were unique for The Glock Inc. But having exclusive rights gave the brand recognition and leadership; meaning that a patent can be an investment for businesses to remain top players in the market after it expires.

Returning to the opposite example, if Coca-Cola had filed its formula as a patent their competitors would have already begun selling generic versions of the product that would be

almost identical to the original. A part of Coca-Cola's marketing success was keeping its formula secret, not only as information that derives economic value but as a mystery that continues to keep customers interested. People naturally gravitate towards the hidden and mysterious, giving it intrinsic value. This is related to how the customer perceives the brand. Perception, as a psychological concept, is how people picture, interpret or understand the brand in their minds. This has great impact on their behavior, which is what a company is interested in: purchases and loyalty.

On a third but different example, we have Elon Musk's company: Tesla's electric cars have changed how we view the car industry. This particular case refers to an open-sourced patent, meaning that the owner controls how others use





their invention but it is not maintained as a trade secret nor are others legally prevented from using it. In this case, according to Tesla, there is no specific economic plan behind this action but rather an altruistic one. Their enemies are the big gasoline car companies; therefore, they wish to create more competition from other electric car companies for a more sustainable future and address the carbon crisis⁶.

Here, we observe a business model that shares their patents because otherwise it would be against their mission. According to their ideals, true competitive advantage comes from innovation instead of preventing competition advancement. They want the future of electric cars to accelerate in order to help the environment and they even made the statement that their goal wasn't to make profit. This business model is completely different from the other two we observed before, Tesla does not patent their cars or use trade secrecy. They believe this system will strengthen Tesla's position instead of weakening it.

To summarize, here are some practical solutions to the question of how to strategize intangible assets in a business. If opting for a patent, having an exclusive register that gives

a limited use of time can be an economic advantage when having an easily replicated invention. It can also grant the company status and positioning in the market, forming customer loyalty. When opting for a trade secret a business has to evaluate if they have the resources to maintain the secret as long as it has commercial and economic value, the secret has to be characteristic, and irreplicable. Finally, there are additional innovative options that do not fit into either category, these are outside of regular parameters which give us a new outlook towards new ideas of business and IP protection.

⁶ (Musk, 2014)

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