

Assets Unprotected May Be Assets Lost

Businesses which own patents need to have a system in place to ensure that they do not lapse by default. Failure to pay patent renewal fees will mean that the patent lapses and the previously patented material is then capable of being exploited by anyone.

Although the UK Intellectual Property Office (UKIPO) has the power to restore a lapsed patent, it will consider all the circumstances when such an application is made. If the lapse is due to failure to take reasonable care to ensure that the fees are paid by the due date, it is highly probable that the application will fail.

In a recent case, a company had failed to pay a patent renewal fee due in September 2004 on a patent which accordingly lapsed when the six-month grace period expired in March 2005.

The position was complicated because the firm owning the patent was experiencing financial difficulties and was engaged, during the relevant period, in transferring the management of its patent portfolio from one firm of patent attorneys to another.

Nonetheless, the UKIPO refused to reinstate the patent after an application to restore it was filed in April 2006. The decision was upheld by the High Court.

It is critical that where intellectual property (IP) is owned which is of value to a business, a system is put in place for making sure that the commercial rights with regard to it do not lapse. In particular, notices relating to renewals or challenges to any form of IP need to be dealt with promptly.

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