

## &lt; Japan &gt;

**Protection of IP as Trade Secret**

Towa International Patent Firm  
Patent Attorney

**Takeharu Hirabayashi**

Trade secret is usually associated with business information related to client or management. It is getting more and more important, however, to realize that Article 2, paragraph (6) in Unfair Competition Prevention Act regards technical information also as the trade secret, since the relevant protection of the technical information, which is at the heart of intellectual properties, becomes increasingly significant as we are observing rising amounts of news reporting counterfeits these days.

Protection of technical information largely has two ways : taking out a patent or keeping it secret. To decide which way to go, we need to discuss two points : 1. the priority of the information in business (a vertical axis in Figure), 2. the difficulty in reverse engineering, viz. the possibility of copying (a horizontal axis in Figure).

Almost all kinds of technical information should be kept in secret if they are highly prioritized in business and cannot be reached via reverse engineering. It is still advisable to conceal it even if it has low priority in business but will possibly be applied for a patent in future.

"Guidelines for the Management of Trade Secrets" edited by Ministry of Economy, Trade and Industry in Japan were fully revised in this January and are helpful in establishing system to manage technical information as trade secret. "Trade Secret and IP Strategy Consulting Service" launched by JPO in this February is also available. In addition, the system in which the government maintains the coded data of trade secret will be started in a few years and its plan and implementation are worth paying close attention.

Meanwhile, the technical information which is easily analyzed and reproduced should

be protected as a patent. We must judge the content and scope of the patent according to its priority in business, taking into consideration features of the object to be protected, the business strategy, cost and benefit of obtaining patent and of its maintenance.

While protection as trade secret based on Unfair Competition Prevention Act should be born in mind when we consider the protection of technical information, taking out a patent under Patent Act must be strategically conducted together with patent attorneys who are familiar with the technology.

We, Towa International Patent Firm, would like to suggest effective application strategies on how to protect and patent technical information from the viewpoint of clients.

