

IP isn't brain surgery (unless it is)

Be clear on who owns what IP

Healthcare innovation can often draw on expertise from different technical disciplines, such as product designers, therapeutics, materials, electronics and clinical scientists, and increasingly digital / AI experts. This sometimes means multiple teams being involved in delivering a marketable solution, perhaps in the form of a joint venture, or contract research. It is important to ensure that **suitable IP agreements are in place to make it clear who owns existing IP and who will own IP developed during any collaborative research.**

Don't disclose too soon

In most major markets, **you can't get a patent for something that has already been disclosed outside of a confidential setting.** Seek advice from an IP expert as to what you can disclose, to whom, and when. That investor meeting or conference may need careful attention.

Ensuring confidentiality

Developing products for the health care market often requires an external source of funding. The steps involved can often require discussing aspects of your technology with a funding party; be that a grant funding body, or private investor. When engaging in discussions with any third party, or even when arranging for a material transfer, **ensure suitable non-disclosure agreements are in place.** Also ensure your employees are bound by a duty of confidentiality, and are aware of this duty.

Don't leave it too late to register IP

Securing your IP at an early stage not only helps to protect your market position, but **adds value to your company.** IP can be transferred or licensed like other aspects of property, and is attractive to investors. Having registered IP in place can simplify commercial discussions with manufacturers, distributors and overseas companies. Registering trade marks in overseas markets can avoid local distributors registering first. Speak to an IP expert as to when is the right time.

Identify your market

Patents and trade marks aren't just for big businesses and can be even more important to protect your market as an SME. These are territorial rights, and **there is a limited window of time in which global protection can be sought based on an initial application.** Identifying where your health tech product will be commercialised, manufactured, stored and distributed; and identifying where any competitors are based, will give a good indication of where IP protection should be sought.

Ensure you have adequate data

A patent application needs to credibly demonstrate that a special technical effect has been achieved. For health technologies this generally means presenting robust characterisation and performance data attributed to the invention being claimed. Our life science patent experts can advise on what data may be required to support a health tech patent application and whether more experiments are required to support an application.

The importance of record keeping

Make sure you **keep a record of when and how experiments were performed, along with associated raw data.** Good record-keeping helps prove when something was created, which can in some countries affect who is entitled to a patent. In addition, it can also help you to identify inventions which you may otherwise have overlooked.

Are you free to operate?

Regardless of whether you obtain IP protection for your invention, or whether you have obtained market authorisation from regulators to market your product, **you may be prevented from marketing in view of IP rights owned by other parties.** Performing a freedom to operate analysis (i.e. clearance) before entering the market is an important step in informing you of the competitive landscape and possible risks of being sued for IP infringement upon launch. Identified risks can often be mitigated or avoided if spotted early. Speak to an IP attorney early on in the product development pathway.