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Patent Marking Strategies: Why & Where

Overview

- What is Patent Marking?
- Why Mark?
- Where to Mark?

■ What is Patent Marking?

- "patent pending"
- "patent applied for"
- "GB Patent application No.001001"
- "granted GB patent no. 123 4567"
- "GB 123 4567"

A legally ineffective example

- “patented or patent pending worldwide”

Why Patent Mark?

- The Law (s.62(1) PA 77)
- Implications for recovery of damages
- Benefit of the public
- Prevent fraud
- Deter competitors

When to Mark?

- Operational issues for engineers and designers.
- Moulds
- Packaging
- Clearance

International Patent Marking Law

- No EU harmonisation
- US position
- China

= Barrier to trade

Problems with Marking

WHAT AND WHERE

- Product itself
- Packaging
- Instructions Leaflets
- Containers
- Small items
- Multiple patents / jurisdictions

Patent Marking Strategies

- Where protection is weak
- Where there is a truly inventive step or a ground-breaking innovation
- Best way to mark the patent number

If you are a Defendant

- ● Was the article marked?
- ● Does the patent include claims to a process and an article?
- ● If there was marking, was it sufficient?
- ● In the absence of marking was there notice to the defendant?

Patent Marking & IP Education

- Who needs to know more about patent marking?
- How will they learn more?
- Not part of any curriculum

Current Patent Marking Research

- Dennison Research Grant to visit WIPO Law Library in Geneva to further comparative “patent marking law” research.

Future Research

- Overlap between patent markings and advertising and marketing laws
- Tensions between regimes