

Energy Market Drivers Series



Protecting Innovation: Patent Basics and Contract Risks Every Energy Company Should Know

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In an industry increasingly driven by technology, data, and innovation, intellectual property (IP) is no longer a niche concern, it's a core business asset. From patents and trade secrets to trademarks and copyrights, understanding how IP rights are created, protected, and transferred is critical to preserving value and avoiding costly disputes. This Alert breaks down the fundamentals and highlights key contractual considerations recently presented at GableGotwals' Annual Energy Market Drivers and Current Legal Issues Seminar.

Key Takeaways

1. Intellectual Property Comes in Multiple Forms – Each with Distinct Protections

The primary types of IP include:

- Patents (protect inventions and processes)
- Trademarks (protect brand identifiers such as names, logos, and slogans)
- Copyrights (protect original works of authorship)
- Trade Secrets (protect confidential business information)

Each of these categories has different legal standards, duration of protection, and enforcement mechanisms.

2. Patents Provide Powerful, but Limited, Rights

Under the U.S. Patent Act, patents protect new and useful inventions, processes, or improvements. To qualify, inventions must be novel and non-obvious. Patent holders gain the right to exclude others from making, using, or selling the invention. Rights generally last 20 years from filing.

3. Timing Is Everything – Early Disclosure Can Destroy Patent Rights

Patent protection can be lost if an invention is:

- Publicly disclosed
- Offered for sale
- Used publicly before filing

While U.S. law provides a limited grace period, disclosing the invention to the public prior to filing presents risks. Be sure to file early or risk losing protection entirely.

4. Ownership Is Not Always Automatic

By default, inventors own patent rights. An employment relationship can change this, but the best practice is to address IP ownership through employment agreements and assignment provisions.

For copyrights, “Work made for hire” doctrines may assign ownership to employers, but only in specific circumstances.

Failure to properly address ownership of IP can undermine ownership claims.

5. Trade Secrets Require Active Protection

Trade secrets include:

- Proprietary data
- Processes
- Software or formulas

Protection depends on maintaining secrecy and implementing reasonable safeguards (e.g., NDAs, access controls). However, once disclosed, protection may be lost permanently.

6. Contracts Are the Front Line of IP Risk Management

Key contractual considerations include:

- Ownership of newly developed IP during a project
- Assignment obligations for inventions
- Confidentiality provisions to preserve trade secrets

Agreements should clearly define:

- Who owns what

- Who can use what
- Under what conditions

7. Licensing Strategy Can Make or Break Value

Patent licenses can:

- Be explicit or implied (though explicit is best practice)
- Be limited by geography, time, or field of use, or other parameters

The patent exhaustion doctrine (or first sale doctrine) may prevent enforcement after an authorized sale of a particular item.

Poorly structured licenses may unintentionally give away rights.

8. IP Rights Must Align with Business Strategy

Patents function as a limited legal monopoly, but only within defined boundaries. Risks to manage include:

- Expiration of rights
- Loss through litigation or administrative challenges
- Failure to maintain patents (e.g., unpaid fees)

Be sure to align IP protection and licensing strategy with long-term commercial goals.

The Bottom Line

Intellectual property is one of the most valuable and most misunderstood assets in the energy sector. Without careful planning, companies risk losing rights, undermining deals, or exposing themselves to litigation.

By proactively managing IP through thoughtful drafting, early filing strategies, and clear contractual frameworks, energy companies can protect innovation, preserve competitive advantage, and unlock long-term value.

[GableGotwals Intellectual Property Practice Group](#) advises clients on patents, trademarks, copyrights, trade secrets, licensing, and other intellectual property matters. The team regularly works with clients across a variety of industries, including the energy sector, to help protect innovation, manage intellectual property risks, and develop strategies tailored to each client's business objectives. For questions regarding this topic or other intellectual property matters, please contact the authors or a member of our [Intellectual Property team](#).

This series covers topics featured during GableGotwals' Annual Energy Market Drivers and Current Legal Issues Seminar. To receive Alerts and information on future Firm events, [subscribe to our mailing list](#).



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