

Key copy protection

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There is a persistent myth that so-called 'lifelong trademark protection on key profiles' can prevent key copying. This is false.

The issue of key copy protection

When a facility is considering a new locking system, what are the main requirements it needs to take into account?

Here are some of the common ones:

- ✓ Locks that perform to the right level
- ✓ Locks that can be master keyed to allow for controlled access throughout the site
- ✓ Locks that can be serviced/maintained by local specialists

Needs vary from region to region and building to building. But one thing that is often overlooked relates to the keys. With many cylinder lock systems, extra keys can be legally obtained without the owners' knowledge, presenting a security risk.

There has long been a myth that so-called 'lifelong trademark protection on key profiles' can prevent key copying. This is false.

In this guide, we dispel the myth and explain why misleading claims of trademark protection can reflect back on the supplier.

Trademark protection

A trademark is a recognisable mark that is used to link a product or service to a particular source (e.g. a company), usually by means of a word, phrase, logo, symbol.

Trademarks are important as they give the consumer the assurance that the products being purchased are genuine and of the expected quality. However, the functionality of a product, such as a key, has no legal protection under trademark law.



Design registrations

A design registration is a right given to the visual appearance of a product for up to 25 years. The purpose of the right is to deter a party from copying the look of the product.

Design rights allow customers to identify the originator of a product. Like trademarks, a design cannot be registered if the features of the shape are purely functional. Therefore, design registration provides no legal protection against key copying.



Patent protection

A patent is a right given for an invention to prevent others from making, selling, using or importing a particular product or process for a period of up to 20 years.

For an invention to be patentable, it must be:

- 1 New
- 2 Useful
- 3 Non-obvious

Function over form

Patents are wholly concerned with the functional aspect of a product or process.

A good example is Dyson's Dual Cyclone technology, used within its vacuum cleaners.

In the case of key copy protection, the function of a key is covered within patent law.

Understanding the IP

Trademarks, design registrations and patents are what's known as Intellectual Property (IP). Each of these are different and have their own place within IP law.





Uncovering the myth

The below are all real examples of claims that have been made by suppliers of cylinder locks to promote their products.

Unlimited trademark protection

Lifelong trademark protection

Lifetime trademark protection which protects against illegal duplication of keys

Key profile with trademark protection for lifelong, legal key protection

Trademark on the keys for unlimited protection

The key profile is protected by a registered trademark

Examining the claims

If we look at an actual claim noted above, "Trademark on the keys for unlimited protection", it is reasonable to assume that the keys enjoy protection from unauthorised copying. This is not the case.

As we have discussed, a trademark cannot protect a functional element, in this case the cross-section of the key, and therefore the trademark does not protect the key from being copied.

Let's look at another claim noted above: "The key profile is protected by a registered trademark". The party's key has their trademark formed into the cross-section of its profile, which implies that the trademark provides protection against the key being copied.

Again, because functional elements are not covered by trademark law, the presence of the trademark does not provide legal protection against copying.

Only someone with good knowledge of trademark law is likely to see through these misleading statements.

When the trademark on the cross-section of a key is used in marketing to suggest that it prevents copying, this is a misuse of the trademark.

Misuse of trademarks is a serious offence that can reflect back on the merchant. It can lead to litigation, orders to remove misleading claims, large fines and even imprisonment – not to mention reputational damage.



Validating the facts

In 2016, a court in Germany found an industry manufacturer guilty of making misleading claims in their advertising that their trademarks provided key copy protection.

The company was ordered to remove all claims relating to trademarked key profiles from their advertising.

The judge explained that in cases of this nature, penalties can include a fine of up to €250,000 and up to two year's imprisonment.



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The possible consequences



The informed choice



The only way to validate whether a key and cylinder system is safe from key copy protection is if it is subject to a current patent.

When choosing a cylinder locking system to stock or sell, it is important to ask the following questions:



Does the supplier offer key copy protection?

It is important to understand what the supplier's key copy protection claims are, and their process for managing this. The following questions should be asked:

- What forms the basis of their protection? This should be a patent.
- What management process is supported to ensure your protection against unauthorised key copy protection?

Once you have established this information and qualified the validity of the key copy protection offered, you will be in a position to make an informed decision.



Is the product you are looking at patented?

You need to ascertain whether the product you are considering is patent protected. Points to consider:

- When was the patent filed?
The patent can last for up to 20 years from filing.
- Is there is a current patent in the country where the product will be used?

Conclusion

We have explained the myth surrounding claims of indefinite trademark protection on key profiles. As seen, claims of indefinite trademark protection on key profiles is not only misleading, but also offers no legal value. The only way to ensure key copy protection is by using key and cylinder lock solutions which have legally enforceable patent protection.



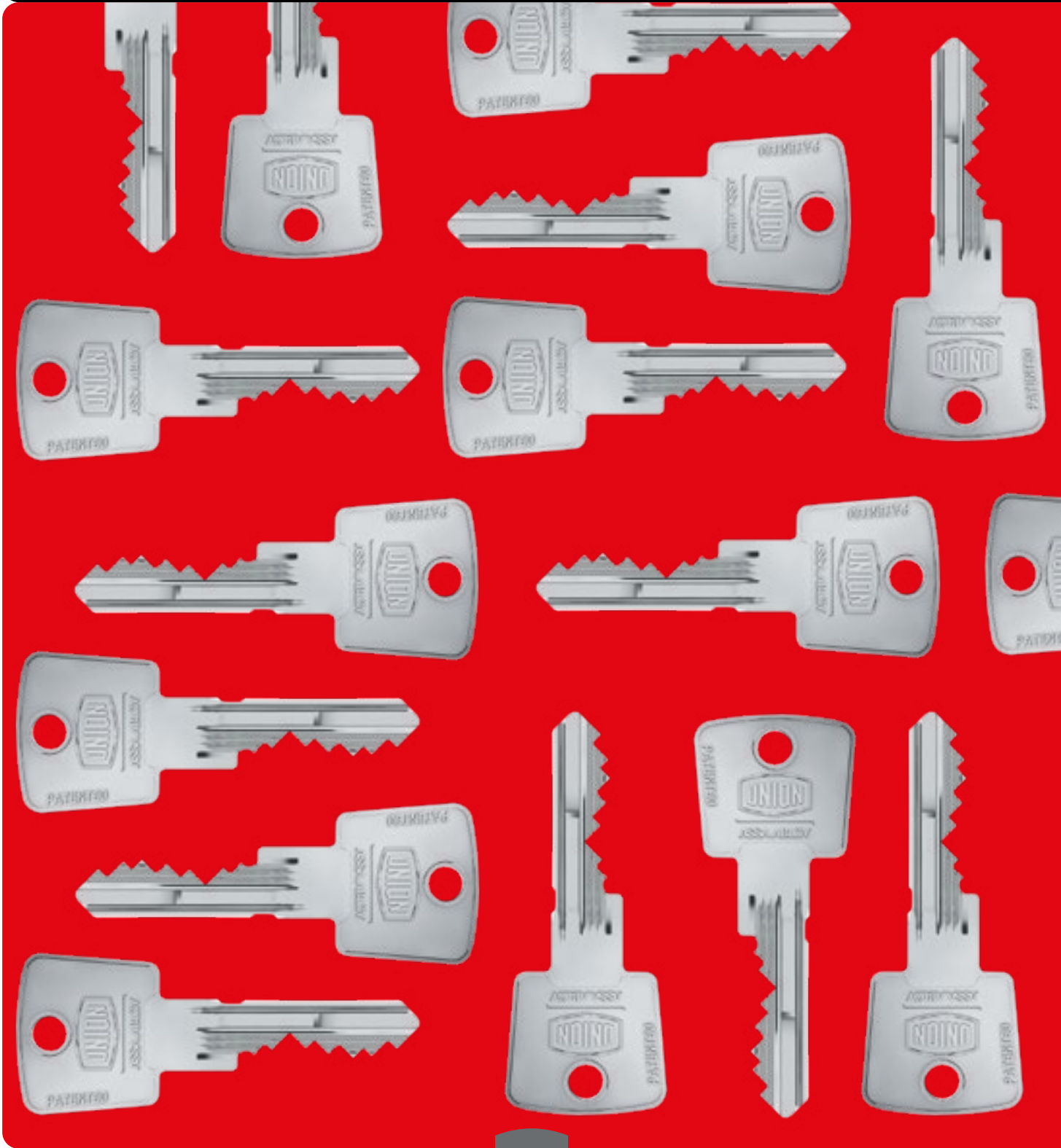
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