

BUSINESS GUIDELINE 14 GB

PIRACY OF SPARE PARTS

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1. Introduction

- 1.1 Supplying users with spare parts is an important part of a pump manufacturer's business. Piracy can arise at this point, in the sense of theft of intellectual property for the purposes of commercial advantage. The problems involved are frequently not recognized to their full extent. These guidelines are intended to illustrate certain aspects.
- 1.2 Preventing piracy in spare parts involves extensive precautionary measures on the part of the manufacturer and constant vigilance.
- 1.3 Each manufacturer must decide in principle what its stance is on this issue, and must notify all its sales staff accordingly.

2. Definitions

- 2.1 Piracy is where users or third parties without authorisation from the pump manufacturer produce and supply spare parts. Manufacture of spare parts by a third party give rise to the danger of confusion with the original spare parts.
- 2.2 Piracy involves recording of part dimensions, including dismantling a pump, making draw drawings of important parts, and recording dimensions which are subsequently used to prepare workshop drawings.

3. Industrial property rights

- 3.1 Imitation is basically permissible in most countries, unless there is some special property right. It is not permissible where there is a danger of confusion between the imitation parts and the originals.
- 3.2 Copyright protects intellectual property against unlawful use.
- 3.3 The pump manufacturer's patent and design rights help to prevent imitation of spare parts.
- 3.4 A trademark can be used to distinguish the pump manufacturer's product from similar products. The mark is registered, so that action can be taken against misuse.

4. Causes

- 4.1 The cause of piracy can be excessively long delivery times and/or excessively high prices for a pump manufacturer's part. The user may under these circumstances feel that he must obtain the necessary spare parts from other sources.
- 4.2 This can result in copying of spare parts by the user or a third party. It is also possible that the user may be supplied by the pump manufacturer. It is not difficult for the subcontractor to establish after a certain time which users receive the spare parts supplied by him.

- 4.3 Piracy is therefore encouraged by pump manufacturers putting out work providing an opportunity for the subcontractor to contact the user directly.
- 4.4 Occasionally, users request production drawings (these do not include sectional or exploded drawings forming part of the operating instructions). This can also lead to piracy, even where the drawings are explicitly marked confidential and the property of the manufacturer.
- 4.5 Another possible source of supply are former employees who know the user and its requirements and are familiar with the pump manufacturer's know-how for production of the spare parts.
- 4.6 The problems increase where one pump manufacturer copies spare parts of another manufacturer.

5. Precautionary measures

- 5.1 The best protections against piracy are good customer relations, quick delivery and a fair pricing of spare parts.
- 5.2 A good protection is through patents. These are, however, not easy to obtain and have a limited life. Further measures are design rights and trademarks. Registration of design drawings can also – where possible – offer protection for a certain period. This is, however, considerably less effective than a patent.

Maintaining the confidentiality of know-how can prevent imitation. One result is that spare parts cannot be exactly copied. Where, however, know-how is provided to subcontractors, this can make imitation easier.

- 5.3 Where there are no special industrial property rights, it is difficult to take legal measures against piracy. Besides a large number of other international conventions, use can be made of the Bern Convention, the Universal Copyright Conventions and the Vienna Agreement.

It is not possible to cover the legal situation in detail here, as this varies from country to country.

- 5.4 Most industrialised nations have safety regulations which can be used to prevent the use of spare parts other than those of the original manufacturer. The pump manufacturer should notify the user that the use of imitation parts will release the manufacturer from its obligations to the user and its employees regarding the safety of the item supplied.

The pump manufacturer should also notify the user that the installation of imitation spare parts will release the manufacturer from all guarantee obligations.

- 5.5 The pump manufacturer should further state that its original spare parts continuously incorporate technical innovations giving better performance and longer service life. This should lead the user to reject imitation spare parts.
- 5.6 Marking the original spare parts with a trademark can help.

- 5.7 It is recommended that the pump manufacturer makes its spare parts so that it is easy to determine which are original parts. Such markings should not be placed where operations will make them illegible.
- 5.8 The use of special materials for original spare parts makes imitation difficult and facilitates detection. Restrictions may be required on supplies to third parties by foundries.
- 5.9 Special production processes which are difficult to copy may make imitation harder (e.g. CAD/CAM).
- 5.10 Pump manufacturers should persuade users to keep a stock of spare parts. To help users with efficient stock-keeping, the manufacturers can supply spare parts lists and parts usage schedules. The manufacturers should also offer price incentives for initial stocking.
- 5.11 The pump manufacturers should maintain a high supply capability for spare parts.
- 5.12 Pump manufacturer should not supply spare parts for competition pumps (see 4.6), unless these are original spare parts.
- 5.13 It is important to state in the conditions of sale that the warranted properties and guarantee obligations will only be observed if original spare parts are used.
- 5.14 It is important for the pump manufacturer to learn of cases of piracy as quickly as possible. He should notify the user without delay of possible risks (e.g. operating security).

6. Subcontractors for pump manufacturers

- 6.1 Direct supply by subcontractors to users is probably the most frequent kind of piracy. This should be prohibited in the agreement between pump manufacturer and subcontractor.
- 6.2 Recommendations for subcontractor obligations.
 - 6.21 The subcontractor for parts of ABC pumps hereby undertakes to produce these exclusively for the manufacturer of these pumps and to supply these only to the said manufacturer.
 - 6.23 The subcontractor hereby undertakes to return all drawings, specifications, pattern, moulds, jigs and other production materials and all copies to the manufacturer of ABC pumps on demand, and in any event not later than the conclusion of the contractual relationship.
 - 6.24 The subcontractor hereby acknowledges that all drawings, specifications, patterns, moulds and other production materials supplied to him by the manufacturer of ABC pump remain the unrestricted property of the said manufacturer; the subcontractor hereby undertakes not to use these materials or copies thereof to manufacture spare parts for any third party.

7. Effects on a Company's Reputation

Where a user has problems with a pump as a result of using imitation parts, the user will nevertheless blame the pump manufacturer, whose reputation will accordingly suffer unjustly.

8. Evidence of Piracy

- 8.1 In disputes over piracy, it is important to present unambiguous evidence, particularly where legal action is to be taken. This is difficult without assistance from the user.

