

DESIGN PATENTS

by

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The purpose of this article is to explain to the independent inventor some basic concepts about the coverage and uses of design patents. By understanding these basic concepts, the independent inventor may assess the potential benefits as well as the limitations of a design patent. Please recognize that this article is not intended to be a comprehensive explanation of design patents, nor is this article offered as specific legal advice.

A design patent covers the ornamental or decorative features of an article of manufacture. For example, design may relate to the shape or surface ornamentation of the article. It is very important to understand that a design patent protects only the ornamental design of the article. A design patent does not protect the actual article including the ways that the article is used and works. A utility patent protects the actual article such as the way that the article is used and works. In short, a design patent protects the way the article looks. A utility patent protects the way the article is used and works.

Like all patents, design patents should serve a business purpose. Companies in industries where the article is not protectable by a utility patent but has a unique ornamental design use design patents. The design patents prevent competitors from copying their designs. For example, design patents are common in the furniture industry. Furniture manufacturers use design patents to prevent competitors from selling copies of their chairs, lamps, and so forth. As an example, see US patent D618,844 for a lamp to Huangslite Industrial Co., Ltd. (The D in the patent number indicates that this is a design patent.) The way the Huangslite lamp is used or works may not be protectable by a utility patent, but Huangslite can still protect the appearance of their lamp with a design patent. Other companies can sell lamps, they just cannot sell lamps that look like this Huangslite lamp in the U.S.

As another example, Porsche AG holds a number of design patents on various auto body parts such as door panels, front bumpers, fenders, and so forth. An example of a Porsche design patent is US patent D616795 on a fender. Among other purposes, Porsche may use their design patents to maintain control of the market for replacement auto body parts for their vehicles by preventing others from making or selling such replacement parts. Other companies can make or sell fenders, they just cannot make or sell fenders that look like the Porsche fender.

A design patent may be used to give additional protection to a product that has a unique design and that is protected by one or more utility patents. An example is US patent D542,288 to Apple Computer, Inc. This design patent protects the design of the computing device. This design patent is probably in addition to one or more utility patents that protect the ways that this computing device is used and works. There may be more than one design patent that covers this computing device, and there may be several utility patents that cover various parts of this computing device.

The key point the independent inventor should understand is that these design patents protect only the design of the lamp, the design of the fender, or the design of the computing device. These design patents do not protect the actual article, *i.e.* the lamp, the fender, the computing device, although there may be additional utility patents that do protect the actual article. Other manufacturers can market all the lamps, fenders, or computing devices they want. But, other manufacturers cannot make lamps, fenders, or computing devices that are substantially similar in design (*i.e.* looks like) to the Huangslite lamp, Porsche fender, or Apple computing devices because these designs are protected by design patents. The other manufacturers would need to avoid any utility patents that protect the lamp, fender, or computing device, as well.

As an independent inventor, please make sure that you clearly understand the protections afforded by a design patent and the limitations of those protections. Furthermore, make sure that the protections afforded by a design patent serve a business purpose for you before you obtain a design patent. Again, a design patent only protects the ornamental design of the device. If your device is protected only by a design patent, someone else can make, use, and sell a device that works or is used in the same way as your device as long as it does not include the ornamental design covered by your design

patent.

Additionally, the subject of a design patent must be patentable subject matter and must meet generally similar requirements for novelty and non-obviousness as the subject of a utility patent. Public disclosure will result in loss of the right to secure a design patent after one year, just as public disclosure will result in the loss of the right to obtain a utility patent after one year.

In conclusion, design patents have valid uses, but also have limitations. These uses and limitations should be clearly understood by the independent inventor. The independent inventor should seek out a reputable patent agent or patent attorney for additional guidance in these matters.