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## “Tip of the Month”

### **Should I Apply for a Design Patent?**

A design patent is a type of intellectual property that protects novel ornamental characteristics embodied in or applied to an article of manufacture. In contrast to a utility patent, which may protect the structure and function of an article regardless of what it looks like, a design patent protects the visual ornamental design or “look” of an article. Articles protected by design patents include things such as smart phones, vacuum cleaners, vehicle windshields, shoes, lighting, and computer-generated icons displayed on a screen.

Compared to utility patents, design patents are less expensive and they issue much faster (average 12-14 months’ pendency for design vs. 3-3.5 years for utility). A design patent has a term of 14 years from the patent issue date, compared to 20 years from the filing date for a utility patent, and requires no maintenance fees during the life of the patent.

A design patent may provide protection of an article that is unique in appearance but that is not functionally or structurally unique (i.e., incapable of utility patent protection). Accordingly, design patent protection is useful to protect an article’s appearance from being copied whether or not the copy has the same function and structure of the protected article.

From a marketing perspective, obtaining a design patent on an article has the advantage of allowing one to label the product as “patented” without having to obtain a utility patent. In some cases, design patents have been used to protect the shape of an article that is not capable of trademark rights until that shape has acquired secondary meaning as a source identifier. Secondary meaning requires continued use for at least five years.

Despite having many benefits, design patents have limitations. The design patent only protects the ornamental design pictured in the application. That means the design patent can often be easy to avoid because one need merely “design around” to change the appearance of the article and be outside the scope of the patent protection. Also, an article having several different versions or models may need a separate design patent for each model, thus reducing the cost advantage of design patent protection.

Overall, a design patent can be a valuable intellectual property asset to an individual or company. If you would like to protect your design with a design patent, have questions about doing so, or have questions about intellectual property law in general, please call the attorneys at Mesmer & Deleault at 668-1971 or contact us by email at [mailbox@biz-patlaw.com](mailto:mailbox@biz-patlaw.com).

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