

## **Understanding the Limitations of a Design Patent**

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Inventors can obtain three different types of patents in the United States, namely, plant patents, utility patents, and design patents. Plant patents are rare and are used to protect a new plant that the inventor has produced asexually (without using seeds). A utility patent can be used to protect the way a new technology functions and is used. A design patent protects the visual characteristics of an item.

There is often confusion among inexperienced entrepreneurs and inventors regarding the differences between utility and design patent protection. It is important to understand that a design patent protects only the appearance of an article and not its structural or functional features. It is different than a utility patent because it offers no protection for the way an article works and can only protect the unique visual “look” of a new item. As such, if you are looking to protect the way your invention works, a utility patent should be pursued.

The proceedings relating to granting of design patents are similar to those relating to utility patents with a few differences.

A design patent has a term of 14 years from grant, and no fees are necessary to maintain a design patent in force. If upon examination it is determined that an applicant is entitled to a design patent under the law, a notice of allowance will be sent to the applicant or applicant’s attorney, or agent, calling for the payment of an issue fee. The drawing of the design patent conforms to the same rules as other drawings, but no reference characters are allowed and the drawing should clearly depict the appearance, since the drawing defines the scope of patent protection.

The claims of a design patent are different from a utility patent. A utility patent has multiple claims while a design patent is limited to a single claim. The drawings of a design patent provide a visual disclosure of the claim.

In light of the differences between utility and design protection, it is important that an inventor understand the limitations of a design patent. A design patent should be filed only if the appearance of an invention is

important. If it is possible to change the appearance of an invention without significantly altering its function, a utility patent is more appropriate.

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