Design Patents

35 U.S.C. §§ 171-173, with §§ 102, 103, 112, and other sections being applicable as well

Enabling statute: 35 U.S.C. 171 Patents for designs: "Whoever invents any new, original, and ornamental design for an article of manufacture may obtain a patent therefor, subject to the conditions and requirements of this title. The provisions of this title relating to patents for inventions shall apply to patents for designs, except as otherwise provided."

Requirements:

- novelty
- originality
- non-obviousness
- ornamental (not dictated by function)
- on a functional article
- enabling disclosure

Statutory bars apply. Priority based on foreign applications is different than with utility patents.

Term: 14 years from issuance

Design can include configuration/shape of article, surface ornamentation, or a combination of shape and surface ornamentation.

Claimed with a single claim that references the drawings: "The ornamental design for [the article] as shown."

Design patent numbers have a "D" prefix.

Much less commercially valuable than utility patents

The most recent is D0656295 for a headstone enhancement, issued March 20, 2012

Semiconductor Chip Protection Act (1984)

17 U.S.C. §§ 901-914

Protects original mask works for making semi-conductor chips

- A mask work is a two- or three-dimensional layout of an integrated circuit on a semiconductor chip.

Must be registered with the Copyright Office for protection to commence.

Duration of protection is 10 years.

To date, 19,263 mask works have been registered, the most recent on June 14, 2011

Vessel Hull Design Protection Act (1998)

17 U.S.C. §§ 1301-1332

Requirements:

- Subject matter: vessel-hull designs
- Must be embodied in an actual vessel hull. (There is no protection for designs existing only in models, drawings, or representations.)
- Staple or commonplace designs cannot be protected.

Must be registered with the Copyright Office for protection to commence.

Made-public bar: An application for registration must be filed no later than two years after the hull was publicly exhibited, or distributed or offered to the public for sale with the design owner's consent.

Duration of protection is 10 years.

To date, 505 designs have been registered, the most recent dated February 15, 2012

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Plant Patent Act (1930)

35 U.S.C. §§ 161-164

Requirements

- Subject matter
  - Asexually reproduced (budding, grafting)
  - Plant (including macro fungi, but not bacteria)
- Distinct
  - Must be clearly distinguishable from other varieties (color, taste, disease resistance)
- New

Can be invented or discovered if discovered in a cultivated area

Covers the entire plant

- Not infringement to sell fruit, flowers, seeds, etc.

Like utility patents, administered through the USPTO

Sports (somatic mutants) are non-infringing of the parent patent and are potentially separately patentable

Duration: 20 year term of protection from filing of application

Description requirement is relaxed compared to utility patents

In practicality, an infringing plant must be a vegetative descendant of the patented plant

The most recent is PP022602, issued March 20, 2012 for an Echinacea planed named "Marmalade"

Plant Variety Protection Act (1970)

7 U.S.C. §§ 2321-2582

Requirements

- Subject matter
  - Sexually reproducing
  - Plant (not bacteria, fungi)
- New
- Distinct
- Uniform
- Stable

Comparisons to patents:

- Administered through USDA, not PTO
- Protects against creation of derivative plant lines
- Allows farmers to save and plant seeds (otherwise, seed sales are infringing)
- Research exemption allows use for breeding to develop a new variety

Covers first-generation hybrids

Duration: 20 years generally, 25 years for trees and vines

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