Design Patents, an Essential Part of Your IP Protection Strategy

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In the ongoing Apple v. Samsung litigation, Apple won a $1 billion jury verdict against Samsung. The verdict was largely based on Apple’s design patents for the iPhone. Though the amount was reduced after appeal, it currently stands at a still respectable $930 million. Granted, few companies have as much at stake as Apple does in this case, but it illustrates the powerful protection that can be obtained with design patents. Design patents are an essential part of an overall patent strategy.

A design patent protects the ornamental design of an article or product. This can include the product’s configuration, shape and/or surface ornamentation. Design patents do not cover structural or utilitarian features.

Many different types of products and aspects of products can be protected by design patents. Not only can you obtain protection for consumer goods like sun glasses, bicycles and shoes, but you can also get design protection for products as diverse as medical devices and electronic user interfaces.

Design patents offer a quick and relatively inexpensive avenue for obtaining patent protection. Design patents are generally less expensive than utility patents to obtain and have no maintenance fees. They have a high allowance rate and generally issue more quickly than utility patents. For example, in 2013 the average time from filing until issuance was 14.4 months for design patents. This is in contrast to the current average pendency of 38 months for utility patents. Expedited examination can result in issuance of a design patent in as fast as three to four months. Once a design application is on file, the product can be labeled as "patent pending." Like utility patents, the product is "patented" once the design patent issues.

Design patents can be very useful in stopping others from making or selling knockoffs or products with a substantially similar design. Conversely, design patents offer limited to no protection for the basic idea or function of the product. This is the domain of utility patents. A strategic combination of utility and design patents can create robust protection for a company’s products, and more options for enforcing its intellectual property rights against others.

Design, as a means to stand apart from the competition, is playing an ever increasing role in today’s economy. Design patents can play an important role in protecting innovative products and keeping competitors at bay, whether they are used alone or in combination with other components of a strategic intellectual property portfolio.

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