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Filing a Design Patent

Patents are obtained by filing an application to the United States Patent and Trademark Office (PTO). In the application, there must be a clear drawing that shows every point of view of the object. According to the textbook, *Fashion Law* there are various criteria the design must abide by. In order to qualify for a patent, the design must first be “new.” It has to be an original form of work in order to qualify. The design must also not be similar to anything else on the market, it has to be completely brand new. Lastly, the design must be ornamental. It cannot be solely functional or else a patent cannot be obtained. There are different types of patents, some of which are not applicable to fashion. The several forms of patents are Utility Patents, Design Patents, and Plant Patents. Utility patents are what people typically think about when it comes to patents. Utility patents usually include types of inventions. In terms of fashion, one must apply for a design patent, which pertains to an ornamental design. Before applying for a patent, it is good to understand U.S. Intellectual Property law and all of the different patents and what they mean. One must consider every type of protection available to them and their design.

Not only should one have a good understanding of patents and what they mean, but one should also consider the several other Intellectual Property protections offered. Sometimes a design patent is not always applicable. Before applying, it is important to understand what makes a design unpatentable. For instance, if the design is already in

use, has already been patented, the applicant didn't invent the design, or the look isn't unique, then it is not able to be patented. If you are looking to protect a unique logo or piece of artwork, a patent is not applicable. Patents don't cover artworks, symbols, or logos. Instead of thinking about applying for a patent, you should file for copyright or a trademark instead. You can apply for a patent without an attorney, but you have to do extensive research prior to applying. Patents have a lot of expenses associated with them. The prices vary based on if you are an individual, small business, or large business. Lowering your costs can happen if you choose to go through the USPTO's website and use their electronic application. Keep in mind you will be paying for every little thing. Patent searches are a couple hundred dollars, the patent application is a couple thousand, and so are the patent examinations. That is not including fees. You have to pay fees both before and after you obtain the patent.

Design patents only have one claim. You can have several patents for different items, but you will only obtain one claim for each of them. There is no limit to when you need to apply for a patent, you can take as long as you like. Just know that your rights are on the line, and the faster you can try to get that patent the quicker you will obtain protection. The application process can take up to twelve to eighteen months. Sometimes, it takes even longer. The patent application process is very extensive, and that is why most people applying for patents hire a patent attorney. Patents can last up to fourteen years after that, you will have to re-apply for more patent protection if needed.

Now that you have a good understanding of some of the legal jargon associated with patents and intellectual property it is important to take some things into

consideration before going through with the application process. First, you need to know your design like the back of your hand. You need to have a good record of your design. Record each step of your design process in a journal or digital document. Describe in incredible detail everything added. Make sure to include how you came up with this idea. Sign and date each entry with two witnesses. Next you need to verify that your invention will qualify under the rules of patent protection. After this, you need to know your market. Will your design have any potential? This is important to consider prior to spending thousands of dollars for a patent. After this, make sure you conduct a patent search. Several U.S. Government websites have this information. Finally, after taking all of these steps you are ready to file a patent with the USPTO.

Make sure when applying for your patent to pay attention to whether it is provisional or regular. A provisional application gives temporary patent protection, while a regular application is for a permanent and long-lasting patent. When writing an application for patent protection, you must be able to prove and argue that your design qualifies under U.S. patent laws. If you are unsure of if your design could be subject to protection, you can look up a guide on USPTO. Not only will you need to complete the application, but you also have to complete the application data sheet. The data sheet gives a basic description and information about the design and what it was created for. There is a template for the datasheet on USPTO's website. If you have a more complex design, you should consider hiring a patent attorney to help with your application. It is important to understand that obtaining a patent is expensive, and if you need a lawyer you have to keep in mind the legal fees associated with that.

You most likely will not obtain a patent if you don't have a drawing of the design you are trying to patent. Usually, the application for a patent relies on drawings to show what the design will look like. Regardless of one's drawing skills, you have to make sure that the drawing is a high-quality drawing. The higher the quality, the better the chance you will get of receiving the patent. Usually, people hire a professional to do a drawing for them, which also costs a lot of money.

Now that you've followed all of these steps prior to your application, here are the steps in exact order according to a well-known government website. To file a patent you need an Abstract or "Preamble." This is essentially a short introduction to the design. Next, you need a title. Choose a straightforward title that describes your design clearly and concisely. Then, you need a lengthy description. Be sure to be very specific, just like you were in the journal you kept prior to your application. Describe the design and its features in detail, and include any background information that is necessary. After writing the description, you make a claim. As I mentioned earlier, design patents can only include one claim. Next, you need to submit at least seven drawings of your design. They prefer if you have a 3D view that covers all perspectives. Be sure to include images of the views from the back, front, sides, top, and bottom. It is important to note that you can include drawings or photographs but not both. It will not be approved if you provide both. Whatever route you choose, if they are in color a relevant petition needs to be included. After this, you need a description of the figures. You must label each image and include descriptions. Afterwards, you need an oath or declaration. Then, you need an application data sheet which must include information about you. Then you can move on to the final steps, which are the design patent application

transmittal, and the fee transmittal. As mentioned on the USPTO's website the description of your design must be in formal, consistent, terminology. They include specific phrases on the website you must abide by. Phrases such as "the ornamental design for (the article which embodies the design or to which it is applied) as shown." or "the ornamental design for (the article which embodies the design or to which it is applied) as shown and described." The elements of the design patent should appear in a specific order such as this (1) Design application transmittal form (2) Fee transmittal form, (3) Application data sheet, (4) Specification, (5) Drawings or photos, and (6) Inventors oath and declaration. After these steps, you must wait for a response.

Finally, when receiving a response a timely reply to the action needs to be submitted. The reply should include a request for reconsideration (if needed) or further examination of the claim along with anything else. It must be in writing. The reply must specifically point out any errors in the decision and must include every objection or rejection of the action. If it is approved, a reply must be submitted and the reply must include requirements placed by the examiner. In any reply, you must include your application number, group art unit number, filing date, name of the examiner, and title of your design. Upon submission for reconsideration, the applicant's application will undergo the reconsideration process and the reply will be noted. The application will either then be withdrawn and accepted, or a final rejection will be issued. If your application was rejected twice, you can file a claim with the Patent Trial and Appeal Board. You must file another application prior to the original one. All of this information is listed on the USPTO's website, with many graphics, examples, images, and a list of laws that all apply to Patents and the application process. This website also

includes all of the forms, steps, and things to add to your application or to consider prior to submitting the application. This website is a great website full of information that will help you immensely in your patent application. As a result, after taking all of these necessary steps, and viewing the USPTO's website with all of this information; among much more, you will now be ready to file a patent.

References

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