

## DESIGN PATENTS VS. UTILITY PATENTS

A utility patent protects the structural and functional aspects of a new or improved product or system, and is the most popular type of patent. A design patent, on the other hand, covers the unique appearance of an item. A design patent embraces elements such as a specific product shape, color arrangement, or surface ornamentation. For example, the shape of a laptop computer or a flower vase may be protected with a design patent. If you recently purchased headphones, you may have noticed that they came in a sleek-looking container with a unique fabric pattern. The shape of the container and the fabric pattern may be the subjects of design patents.

The content of the two types of patents also differs. A design patent consists primarily of drawings and little text other than brief descriptions of each drawing orientation and explanations of the drawing conventions used. A utility patent, on the other hand, routinely includes many columns of text that describe the various embodiments of an invention, and ends with one or more claims that define the scope of the invention. A design patent has only one claim – a short characterization of the illustrated device, such as “The ornamental design for a medical device as shown and described.”

Just as with a utility patent, a design patent may be directed at only a part or subassembly, rather than the device as a whole.

A design patent remains in force for a different length of time than a utility patent. A design patent is in force for 15 years from the date it issues as a patent. A utility patent has a term of 20 years (with some exceptions) as measured from the filing date.

Once a design patent is issued, no further action is required to keep the design patent in force. In contrast, to keep a utility patent in force, maintenance fees must be paid on three separate occasions to the U.S. Patent and Trademark Office. These fees are due 4 years, 8 years, and 12 years after the issue date. Failure to pay any of the maintenance fees will cause the utility patent to lapse.

As the differences between utility and design patents can play an enormous role in your company’s success, diversifying your IP investment with design protection may be a strategic move worth making.