Patent 101: Design vs. Utility Patents

Automakers have drastically increased the number of design patents they've applied for over the past 20 years, roughly 250% in at least one case[1], by patenting both the overall look and individual elements of the car, like headlamps and side mirrors. So, what is a design patent? How is it different from a utility patent, which protects an invention? Why does a spike in design patents matter to consumers? Here's a closer look:

A patent is an exclusive right that allows its owners to prevent others from making, selling, or using a product. When used appropriately, patents protect and encourage new inventions and discoveries.

There are two key types of patents granted by government:

DESIGN PATENTS

Design patents protect the visual and nonfunctional appearance of items.

Design patents include clothing, jewelry, computer icons, and even 'rectangles on a screen.'

UTILITY PATENTS

Utility patents protect the functional features of an invention and are often found in innovative sectors, like pharmaceuticals and aerospace.

Utility patents include the telephone, bionic eye, and stealth technology, like the B-2 bomber.

When misused, patents smother competition and drive up prices.

A patent thicket is a web of overlapping patents that act to prevent others, especially small businesses, from entering industries.

Design Patent Applications Are Skyrocketing

Design patents are easier to apply for, and more likely to be approved than utility patent applications, which cost more to file and take more time for the U.S. Patent and Trademark Office (USPTO) to review. From 2000-2019, design patent applications increased by 156% outpacing the 73% growth in utility patent applications.[2] [3]

- Design patents have a **rejection rate of 10%**,[4] [5] while utility patents have a **rejection rate of 80-90%**.[6]
- The average review period for utility patents is approximately **6 months longer** than design patents.[7][8]
- It's **30% cheaper** to apply for a design patent than a utility patent.[9]

These actions reduce competition and limit choice for consumers – making it increasingly difficult for consumers to choose affordable aftermarket parts when repairing their cars. The SMART Act works specifically to address the misuse of design patents in the auto industry.

[1] https://www.youtube.com/watch?v=8qg3t2DnZnk&t=11s
[2] https://www.uspto.gov/web/offices/ac/ido/oeip/taf/us_stat.htm
[3] Denotes utility patent applications of U.S. origin
[4] https://patentlyo.com/patent/2010/01/design-patent-rejections.html
[5] https://www.patenttrademarkblog.com/design-patent-probability-of-success/
[6] https://www.patenttrademarkblog.com/design-patents-vs-utility-patents-differences/
[7] https://www.uspto.gov/dashboard/patents/design.html
[8] https://www.upcounsel.com/how-long-does-it-take-to-get-a-utility-patent
[9] https://www.uspto.gov/learning-and-resources/fees-and-payment/uspto-fee-schedule

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