



There is no 'one-size-fits-all' solution for protecting your new product design. There are multiple methods of design protection available with the United States Patent and Trademark Office (USPTO), each of which has its own requirements as well as its own advantages and disadvantages when compared to the other methods. In a very general sense, some of the basics to consider when filing for design protection in the U.S. are as follows:

TRADE DRESS: TRADE DRESS IS A TYPE OF TRADEMARK PROTECTION THAT IS USED TO PROTECT THE LOOK OF A PRODUCT.

Requirements	<ul style="list-style-type: none"> Design must be nonfunctional and associated in the minds of consumers with emanating from a single source (i.e., have acquired distinctiveness)
Costs per application	<ul style="list-style-type: none"> USPTO filing fee: \$225-400/class depending on type of application USPTO renewal fees: \$200-500/class at five years after registration, then again after each decade for the life of the trade dress registration Drawing costs Legal fees for prosecution may include: <ul style="list-style-type: none"> Communicating with the trademark examiner Responding to office actions
Pros	<ul style="list-style-type: none"> Upfront cost is lower than a design patent filing Protection can be renewed indefinitely so long as trade dress remains in use Can obtain protection more than a year after publically disclosing the design
Cons	<ul style="list-style-type: none"> Cost to prosecute and maintain application may be expensive Difficult to prove that the design has acquired distinctiveness – both at registration stage and for enforceability Requires years of sales and specific marketing for support of acquired distinctiveness

DESIGN PATENT: A DESIGN PATENT PROTECTS THE ORNAMENTAL DESIGN OF AN OTHERWISE FUNCTIONAL ITEM.

Requirements	<ul style="list-style-type: none"> Design must be ornamental and non-obvious
Costs per application	<ul style="list-style-type: none"> USPTO Filing, Search, and Examination Fees: \$960¹ + legal fees USPTO issue fee: \$700 Drawings: approximately \$100/page Legal fees for prosecution include: <ul style="list-style-type: none"> Responding to restriction requirements Responding to office actions
Pros	<ul style="list-style-type: none"> 15 years of protection from date of issue Relatively easy to obtain protection Can prevent others from marketing substantially similar designs without having to prove that the design has acquired distinctiveness
Cons	<ul style="list-style-type: none"> Cost Must be filed within one year after design is first offered for sale, displayed in public or a drawing of the product is published

Trade dress and design patents and copyrights Oh my

COPYRIGHT: A COPYRIGHT PROTECTS ORIGINAL WORKS OF AUTHORSHIP THAT ARE FIXED IN A TANGIBLE FORM.

Requirements	<ul style="list-style-type: none">• Design must be: original and conceptually separable from the utilitarian aspects of the design
Costs per application	<ul style="list-style-type: none">• USPTO filing fee: \$35-55 + legal fees
Pros	<ul style="list-style-type: none">• Relatively low cost• Likely limited additional legal fees as there is generally no lengthy prosecution• No maintenance fees• Protection lasts 95 years from publication or 120 years from creation, whichever is shorter²• Relatively easy to obtain protection• Can obtain protection more than a year after disclosing the design• Can prevent others from making substantially similar design products without having to prove that the design has acquired distinctiveness
Cons	<ul style="list-style-type: none">• Registration is required in order to file an infringement suit• Certain damages and attorney fees are only available if a copyright application is filed within three months of the publication of the design

There are multiple means of design protection and an intellectual property attorney can analyze your design and help you determine the most valuable and cost-effective way to protect your design from infringement.

1. USPTO costs assuming large entity status. The complete USPTO fee schedule is [available here](#).

2. This term of copyright protection is assuming a work made for hire. A work not made for hire is ordinarily protected by copyright for the life of the author plus 70 years. Generally speaking, a work for hire is a work created by an employee as part of his or her job or another limited situation wherein the parties agree to a work for hire arrangement. If you have questions about a work for hire situation, please contact an attorney.