

smore's Oberhaus points out. A utility patent is what most people think of when they think about patents. It protects an apparatus or a process created by the patent holder. A design patent, on the other hand, protects the ornamental look of an item, not how it functions. Copyright and design patents share a lot of similarities.

In more and more cases, Oberhaus says, consumer product companies are pursuing a portfolio of intellectual property protections, filing for utility and design patents, copyright and trademarks on their products.

Technology changes are forcing companies to expand their vision of how to protect their products, says Oberhaus. "In the past you might have thought about a utility patent and not a design patent, or just pursued copyright registration," he says. "It's really about using the whole portfolio of intellectual property protection. You don't know today what you're going to need to leverage in 10 years. You

*"You can have a trademark, copyright and design patent all on aspects of the same thing, and enforce those rights separately depending on what the infringement is and what's happening."*

—Karen Gaunt, Dinsmore & Shohl



put the fence posts up now, because you don't know what the issues will be."

He expects an increase in design patent filings as companies try to protect both the

function of their product and its look from 3-D printing copycats.

"In terms of protection, with a few exceptions, you can have a trademark,

### Ask the Professional



**Holly Kozlowski,**  
Porter Wright Morris  
& Arthur LLP

Holly Kozlowski is a partner in the Cincinnati office of Porter Wright Morris & Arthur LLP and chairs the firm's Intellectual Property Practice Group.

**Question:** The average pendency, or time it takes to obtain a U.S. patent (from filing a non-provisional application to patent grant), is over three years – are there ways to expedite the U.S. patent application process?

**Answer:** Yes. The popular Track One Prioritization requires an increased fee (\$4,140/\$2,120 versus the regular \$1,600/\$800 large/small entity fee) and limits the number of patent claims, with an average pendency of about seven months. Accelerated Examination avoids Track One's increased fee, but further limits claim numbers, and requires patentability search results and an explanation of each claim's patentability – making it less popular, despite an average pendency of about five months. A Petition to Make Special, for inventors 65 or older, and a First Action Interview can also expedite the process.

### Ask the Professional



**Margaret Lawson**  
Chair, Intellectual Property Group  
Taft Stettinius & Hollister LLP  
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**Question:** If I pay a software developer to code specific functionality, and put "work for hire" in the contract, will I own the IP rights in the software?

**Answer:** No, because U.S. copyright law does not include software under the definition of "work made for hire." To own copyrights in software, you must obtain an assignment of all copyrights from the developer. Adding assignment language to your contract also is necessary to ownership of patent rights in the software. Action Interview can also expedite the process.