

## topic: PATENT LAW

### Should i monitor my competitor's patents?

#### advice:

Yes. Not only will this help you avoid infringement claims, it may also provide valuable intelligence as to the research and development efforts of competitors. In addition, early awareness of pending applications and issued patents provides additional opportunities to challenge their validity or scope.

On average, the patent examination process takes around 3 years to complete. However, most U.S. patent applications are published 18 months after filing. Monitoring published applications will therefore allow you to analyze a competitor's patent application before it becomes an issued (and enforceable) patent. You are also permitted to submit prior art and comments to the Patent Office for a limited period of time following publication in order to bring relevant information to the examiner's attention (i.e., to prevent patent issuance or limit the scope of the patent). Monitoring issued patents also provides several opportunities to challenge their validity or scope at the Patent Office. While these procedures are not cheap, they will usually be less expensive than defending a patent infringement lawsuit.



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### What is a design patent, and is it worth the cost?

#### advice:

Patents in the U.S. come in several different flavors: utility, design and plant. Utility patents are what most people think of when they hear the word “patent,” and protect the functional or utilitarian aspects of an invention.

Design patents protect the ornamental design of an article of manufacture. A design patent protects a product’s appearance, rather than its function. Design patents can even protect “virtual” designs, such as a smartphone’s graphical user interface. While a design must be “ornamental” to be entitled to design patent protection, this simply means that the design cannot be dictated solely by functionality.

While design patents are usually less expensive to obtain than a utility patent, they provide relatively narrow protection. A competitor can sell a device which is functionally identical as long as its visual impression is different from that depicted in a design patent. Nevertheless, design patents can be a valuable component of a company’s intellectual property, as demonstrated by Apple’s recent \$1 billion judgment against Samsung for infringement of its utility and design patents.



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