

THOUGHT LEADERSHIP

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Beyond Utility: How to Protect Corporate Value with Design Patents

Utility patent protection is typically the first thing that comes to mind for protecting a product; however, such protection may not be available when the product has been on the market a long time or is dominated by non-functional aspects. For example, consumable wear products, like seals and valves, often enjoy high margins but have simple designs that are susceptible to copycats. Their profitability justifies aggressive efforts to put in place IP protections, but traditional utility patents might fall short.

Design patent, trade dress (a form of trademark protection), and copyright protection can all be used to protect non-functional aspects of a product's design. Each offers varying protection under federal law, including the right to stop infringing activity as well as recover monetary damages. While there are pros and cons to each, they can be used together to build a strong web of protection that can last indefinitely, especially when utility patents are of limited use.

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