

5 Key Takeaways | Design Patents Overview: Preparing an Application

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Kilpatrick's [Katie Apsens](#) recently presented on the topic of "**Design Patents Overview: Preparing an Application**" at a recent firm CLE event. Katie's takeaways from the presentation include:

1. Front-load the planning. Do not rely on later prosecution to save an application. Design applications generally provide less flexibility than utility applications to alter the scope of the claimed design after filing, and the availability of amendments can vary significantly by jurisdiction. Applicants should therefore plan commercially meaningful embodiments before filing, including broader designs and narrower fallback positions that may support later continuation and foreign-filing strategies.

2. A strong design application begins with a strong intake process. Relying only on preliminary images, drawings, or CAD files can create prosecution, enforcement, and foreign-filing issues later. At intake, counsel should work to obtain a robust understanding of the design and product, including, for example, what is visually new, which features are commercially important, what may still change, relevant sizes or configurations, the closest prior art, and whether transparency, texture, color, finish, or other material characteristics contribute to the product's overall appearance.

3. Choose the title carefully because the identified article of manufacture can affect both prosecution and enforcement. A title should accurately identify the article shown in the figures and align with the applicant's filing and enforcement objectives. It should be neither unnecessarily narrow nor overly broad, abstract, or functional. Generic-looking figures alone will not necessarily produce broad protection if the title or claim identifies a narrow article of manufacture.

4. File early, but only when the design is sufficiently settled to support useful protection. Design rights are generally first-to-file rights, and product launches, trade shows, marketing, customer demonstrations, and related utility filings can create urgency. Although some jurisdictions offer limited grace periods, others do not. The best practice is ordinarily to file before public disclosure while confirming that the key visual features are settled and that anticipated changes will not materially alter the design's overall visual impression.

5. Use figures and line conventions deliberately to define the scope of protection. The figures should reflect how the product will actually appear after manufacturing, not merely how it appears in preliminary CAD files or concept renderings. Counsel should consider the complete visual impression of the finished product,

including relevant contours, proportions, transparency, surface characteristics, and visible manufacturing features such as seams, part lines, joints, or other boundaries that may not appear in early design materials. Solid lines generally identify claimed subject matter, while broken lines can show unclaimed structure or provide context. Used strategically, those conventions can focus the claim on the visually distinctive features that matter while avoiding unnecessary limits created by surrounding product structure.

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