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In this article, we will briefly introduce and explain the concept of 'Design' within the framework of Intellectual Property. We will explore how this concept of design overlaps with the concepts of patent, copyright, and trademark.

Intellectual Property (IP) is intangible property. It is something you, your mind has created. It can be a design, a logo, a name, a number, a business model, a novel, a story, an article, a music composition, lyrics, research, and so on...

Broadly IP can be classified into three different categories. Trademark, Copyrights and Patent and 'Design' can fit within all three broad categories of IP. So, let us dive into the concept of 'Design'.

So what exactly is Design?

A Design is an artistic presentation of lines drawn in different ways by creator / inventor. They can be with color or without any color. It can be anything - design of flowers, stones, mountains, ornamental designs, human, birds or animal drawings, or some symmetrical or asymmetrical design - a design which is an independent creation of art. What is important here is that 'Design' can be one of the very important intellectual properties and can be exploited commercially.

From an IP perspective, the concept of 'Design' can get confusing especially with the different aspects of its protection and corresponding registration. A 'Design' can be registered as Copyrights, it can be registered as Patent, and it can be registered as Trademark. To further complicate things, it can be registered in any of these three categories, Copyrights, Trademarks, Patent, individually or in a set of two or as all three.

Overlap of Design - Patent / Copyrights / Trademarks

One can register a 'Design Patent' for the visual characteristics of an object for example an ornamental design. Furthermore, an ornamental design with an independent aesthetic feature is an art of a creator and therefore it can be subject to registration and protection of Copyrights as well. However, it can only be copyrighted, if aesthetic feature of patent-design is independent of invention and is an original creation of art by a creator. If the same design includes Trademark of one's business then it can also be registered and protected under the Trademark laws, if certain conditions are met. Conditions like those of trademark in drawing disclosure of patent application, or a subject design of a Patent is serving as a source indicator for that design to qualify for registration and protection under Trademark and Patent laws. Ideally, one could register for all three - Patent / Copyrights / Trademark, if available for registration, and can exploit the benefits of all three of them commercially.

The registration process can be complicated and the qualifications for registration of different protection can get severely confusing. When registering with a commercial perspective, one is advised to solicit legal advice to ascertain and understand whether your design is eligible for registration as patent design and copyright or patent design and trademark, or trademark and copyrights or patent design and copyrights and trademark. If it can be registered and protected under more than one provision, then you need to follow proper procedure for registration in each law i.e. Patent Laws, Copyright Laws, and Trademark Laws. It is very important that creator / inventor understand the Design's legal rights and protects its creation / invention.

Where to Register a Design?

Registration of Design will depend upon the feature and use of design. If it is determined that it can be registered as a 'Design Patent', then it needs to be registered with United States Patent and Trademark Office. If it is ascertained that the 'Design' is eligible for registration as Copyrights then it needs to be registered with Library of Congress. If it is used as Trademark, then it needs to be registered with United States Patent and Trademark Office.

If there is an overlap of rights and protection with patent, then one needs to register with specific averment of overlap of rights and specific registration under that provisions i.e. of Copyrights or Trademark or both. It is advisable to seek legal assistance for these important and valuable assets of your business, especially if there are possibilities of overlap of registration.

It should be noted that Trademark and Copyrights are not required to be registered, however, registration gives better protection and monetary value in court of law if the IP is infringed by others. As an example, if someone else in their business without your consent or knowledge uses your business name, logo, or design then you are eligible to claim monetary damages. Another important point is that one can register even after many years of use or creation of their mark, design, or logo as in the United States, the rights vest in the person who created first, in the area of Copyright Laws, and who used first if subject to Trademark Laws for respective mark, design, or logo, if certain legal conditions are met. One must seek legal assistance to ascertain their legal rights if one seeks to register its design after many years of creation or use. One can also challenge others' registration if their creation / invention was created prior to registration of any other person's Copyrights, Trademark or Patent. Such objection or challenge is complex in nature and is subject to certain legal impediments and therefore it is advisable to seek proper legal assistance to understand it before taking any legal action.

The life of every Intellectual Property Rights (IP), i.e. Trademarks / Copyrights / Patents, varies from Country to Country. Some rights expire in some years and some are for subject to renewal. One must take legal help to protect and enforce their rights.

If your business is global in nature then you might want to protect your rights worldwide, if so, then one needs to register their IP in different countries and comply with each country's law.

It is very important that you protect your rights. You can protect your rights by registering your rights, taking opposition action against the registration of identical or confusingly similar mark before respective registry, raising objection to register some other author's rights similar to your rights, or by taking infringement action before appropriate authorities.

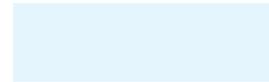
Law Office of Heena N. Kampani can help to protect your business mark, creation, or invention by registering or renewing with appropriate authorities, or by taking necessary action against infringement of your rights. Contact our office to bring valuable commercial viability to your business, creation, or invention.

With that note, we conclude this article. However, before leaving we would like to leave you with a quote that impresses the importance of IP and IP protection in today's global world.

Recent court decisions show how patents can protect small businesses. The U.S. Supreme Court ruling forced the software giant Microsoft to pay \$290 million to i4i, a small Canadian tech company for a patent on XML editing technology that is alleged Microsoft used in its software package.

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