

PATENT PRACTITIONER 2.0: USPTO INTRODUCES NEW DESIGN PATENT BAR

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The New Year has launched a brand-new chapter in U.S. patent law practice. On January 2, 2024, in a historic move, the U.S. Patent and Trademark Office (USPTO) amended its rules of practice and established a separate design patent practitioner bar. See 88 FR 78644. Design patents relate to the unique ornamental or decorative aspects of a product.



Design patents are routinely used to protect a variety of consumer products from Coke bottles to iPhones. They are less technical than utility patents. Up until last year, practitioners wanting to file and prosecute patents before the USPTO – whether utility, plant or design patents – were required to possess a scientific or technical background and pass the patent bar examination. To qualify for the patent bar exam, applicants were required to have a degree (or its equivalent) typically in engineering, computer science, biology, physics, chemistry and the like. See 37 CFR 11.7(a)(2)(ii).

Now under the new rules, USPTO expanded the eligibility criteria for patent practitioners to cover those who possess a visual arts-based background, for dealing only with design patent matters. In other words, no need for the more stringent science background. To qualify for this new design patent bar, applicants require a bachelor's, master's or doctorate degree (or its equivalent) in any of these areas: *industrial design, product design, architecture, applied arts, graphic design, fine/studio arts, or art teacher education.*

These degrees have traditionally been acceptable for patent examiners examining design patents at the USPTO. The new rules thus aim to, among other things, bring consistency between design patent examiners and design patent practitioners.

The new rules do not affect existing patent practitioners already admitted to the patent bar. Thus, there are now two categories of patent practitioners:

- (i) regular patent practitioners who handle all types of patent matters, and
- (ii) design patent practitioners who handle only design patent matters

To make the distinction clear and avoid any confusion, design patent practitioners are required to always add the word “design” next to their signatures. They will also be assigned a special registration number from a separate design registration number series.

Allowing individuals with specialized design background to become practitioners is meant to not only promote broader participation but also improve the quality of design patent prosecution. It also encourages more under-represented groups to practice before the USPTO. Notably, it opens up a potentially new area of practice for some IP lawyers! A win-win for everyone!

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