

Training Module for Chapter 15 of the MPEP

(Revised August 16, 2018)

Summary

Chapter 15: Design Patents

NOTE: The provisions of Chapter 15 relate only to U.S. design patents. However, as of May 13, 2015, the U.S. joined the International Hague Agreement as a “Contracting Partner” so that design patent applications may now be made internationally. The details covering international design patent applications are covered in a new chapter, Chapter 29, which is the last one that has been added to the current version of the MPEP. Training Module 29 covers this new chapter.

It should be noted that the Hague Agreement for design patent applications is distinct from the international Patent Cooperation Treaty (PCT) for utility patent applications. However, both are administered by the International Bureau of the World Intellectual Property Organization (“the International Bureau”).

Section 1502.01 – Distinction between Design and Utility Patents

- Design patents (unlike utility patents) are applicable to any new, original, and ornamental design for articles.
- In a design patent application, the subject matter which is claimed is the design embodied in or applied to an article of manufacture, *and not the article itself*.

- Design patents are **NOT included in the Patent Cooperation Treaty (PCT)**. However, as of May 13, 2015, they are covered by the International Hague Agreement. Complete details on this Agreement are covered in MPEP Chapter 29.
- Utility patents protect *functionality* while design patents protect *visual appearance*.
- Some differences between design patents and utility patents:
 - (1) The term of a utility patent is 20 years for the filing date of the earliest application that claims priority. The term of a design patent filed on or before May 13, 2015 is 14 years from the date of grant. This term increases to 15 years from the date of grant for design patents filed after May 13, 2015.
 - (2) Maintenance fees are required on utility patents. No maintenance fees are required on design patents.
 - (3) Design patent applications only include a single claim.

The single claim should normally be to “The ornamentation design for (the article which embodies the design or to which it is applied) as shown.” (See MPEP 1503.01 III.)
 - (4) Restrictions between plural, distinct inventions is discretionary on the part of the examiner for utility patent applications, while it is mandatory for design patent applications.
 - (5) Foreign priority can be obtained for filing a utility patent application up to 1 year after filing in any country subscribing to the “Paris Convention” while this period is only 6 months for a design patent application.
 - (6) There is no such thing as a provisional design patent application!
 - (7) This is no such thing as a Request for Continued Examination (RCE) for a design patent.

- (8) Design patents are not subject to application publishing. (This makes sense since the publishing requirement for utility patents was initiated in 2000 primarily due to alignment with the PCT – and design patent applications are not covered by the PCT.
- (9) Every design patent application must include either a drawing or a photograph of the claimed design. The drawing or photograph constitutes the entire visual disclosure of the claim. Color photographs may be accepted by petition if color is an integral part of the design.

Section 1512 – Relationship Between Design Patent, Copyright, and Trademark

- There is an area of overlap between copyright and design patent statutes where the author/inventor can secure both a copyright and a design patent. Thus, an ornamental design may be copyrighted as a work of art and may also be subject of a design patent.

Selected Questions and Answers for Chapter 15 - NONE

In-Depth Review of Chapter 15

Chapter 15 from the MPEP, in its entirety, is on the selection bar at the top of this page. You are encouraged to familiarize yourself with the general format and structure of the MPEP. However, it is recommended that you quickly scan through most of the chapter - while reading only those sections that are **highlighted in yellow**.

[Chapter 15, MPEP](#)