

Overview of the US Patent System

Types of Patents

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There are three basic types of patents.

a. Design Patents

A design patent can be obtained for a design of an article that is original and new. A design patent protects the way an article looks.¹ The ornamental appearance for an article includes its shape or surface ornamentation that may be applied to the article. The ornamental appearance may include a combination of its shape and surface ornamentation. Importantly, a design patent cannot protect how an article functions.

b. Plant Patents

A plant patent can be obtained for any new and distinct, asexually reproduced variety of plant, including cultivated sports, mutants, hybrids, and newly found seedlings, other than a tuber propagated plant or a plant found in an uncultivated state. Asexually reproduced plants are those formed by actions such as grafting, cuttings and budding.

c. Utility Patents

Most of the time, when we hear people speak of something being covered by a patent, most likely they are referring to a "utility patent." "Utility patent" is a catch-all term used to describe the type of patent that protects systems, products and methods that have practical use. A utility patent protects how things work or their functional features.

Despite widespread use of the term "utility patent," don't try to find it in the patent statute - it's not there. Rather, the term is a short way of describing the spectrum of inventions that are covered by § 101 of the patent statute. Inventions that meet the definition of this section are said to involve "patentable subject matter" or "statutory subject matter." Inventions that do not satisfy the criteria of this section involve "non-patentable subject matter" or "non- statutory subject matter."

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¹ 35 U.S.C. § 171.

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