Design Patent

A design consists of the visual ornamental characteristics embodied in, or applied to, an article of manufacture. Since a design is manifested in appearance, the subject matter of a design patent application may relate to the configuration or shape of an article, to the surface ornamentation applied to an article, or to the combination of configuration and surface ornamentation. A design for surface ornamentation is inseparable from the article to which it is applied and cannot exist alone. It must be a definite pattern of surface ornamentation, applied to an article of manufacture.

Design patents are last for only 14 years, are very weak and are appropriate only in limited circumstances. Nevertheless, design patents can be a useful tool in your intellectual property arsenal, particularly when you are attempting to create overlapping protection, thereby developing a true intellectual property portfolio. Having said this, it is important to know the limitations of design patents. Design patents do NOT protect an idea or an invention, but rather only protect ornamental design of exactly what is pictured. They are VERY easy to get, which is why many invention and idea companies push them on people, who unsuspectingly think they have broad protection of their idea or invention. Many patent professionals will refer to a design patent as a picture patent. This is helpful when understanding the limits of the protection. What is protected is only what is exactly pictured, nothing more, no matter how small the difference may be. Those who know patent law realize this is something of an exaggeration, but not by much. Do not rely only on design patents.

As with any general statement there are exceptions. The truth is that if you only have a design patent you will likely be dissatisfied with the strength of your protection. Design patents can, however, take on great strength when they are acquired in bulk (i.e., a significant number of design patents cover essentially identical variations of a single thing). If you have 30 or so design patents on similar variations you harness the power of a portfolio rather than relying on any single patent. If a competitor were to want to step in they would have to get around 30 weak patents, a task that is not very easy to do in many cases. Furthermore, although weak, design patents do give the owner the ability to use the coveted terms "patent pending" and "patent issued," as is appropriate. Some individuals are only interested in a design patent for this very marketing purpose. There is nothing wrong with this, and if that is why you want a design patent you will certainly get your money worth for the cost.