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## The USPTO explores generative AI's role in design patents

*Design creation and protection in the age of generative AI pose interesting questions to creators and intellectual property offices charged with issuing design rights. This bulletin takes a look at the issue, including feedback received at a recent roundtable on the topic organized by the USPTO.*

Generative artificial intelligence (AI) raises distinct intellectual property (IP) questions for those pursuing utility and design patents. Utility patents focus on functional, technical inventions. They require clear written descriptions of how an invention works, which may implicate other requirements, such as enablement, written description, and inventorship. Design patents, on the other hand, protect ornamental appearance and are determined primarily by drawings and overall visual impression.

While utility and design patents are governed by mostly the same statutory framework (except for the notable 35 USC 101 and 171 dichotomy), the advancement of artificial intelligence may have varied impacts on implementation of these provisions, given the distinct focuses of utility (function) and design (ornamentality) patents.

Much of the discussions related to AI and patents have thus far focused on the impacts generative AI may have on utility patent law. However, unique or nuanced impacts to design practice may be occurring as well. The United States Patent and Trademark Office (USPTO) has been exploring these issues with both U.S. stakeholders and international partners through forums like the Industrial Design 5 Forum (ID5), which brings together the world's five largest industrial design offices.

In late 2025, the USPTO held a public international roundtable on AI and industrial designs. Industry experts with significant AI and legal experience provided a look at how designers are currently using generative AI in the creative process and what new considerations may result.

From that session, it became clear that generative AI is rapidly reshaping creative workflows across industries at every step—from proposing initial designs in the creative process, to selecting feasible design materials, and suggesting revisions to the design. For designers and IP professionals, this shift raises practical and legal questions about how design patent doctrine is applied.

## Inventorship and the natural-person requirement

A foundational issue in both utility and design law is inventorship. U.S. law requires inventors to be natural persons. Court decisions (e.g., *Thaler v. Vidal*, 43 F.4th 1207 (Fed. Cir. 2022)) and recent USPTO guidance reaffirm that AI systems cannot be named as inventors on patents, including design patents. This is also the current prevailing approach across the globe.

The inventorship threshold in terms of human conception is the same in both utility and design patents. However, the way human conception is assessed in light of significant AI involvement may be different for each. This is because a utility patent covers an invention, including the physical characteristics and functional capabilities of the invention. In contrast, a design patent covers the ornamental or visual appearance of an article of manufacture.

As discussed during the USPTO roundtable, it is generally easier for a generative AI system to model the ornamental or visual appearance of a product and it is significantly more difficult for the AI system to account for the physical characteristics and functional capabilities of the product. Thus, the contribution of an AI system in producing a new design may be more significant than the contribution of the AI system in producing a new invention.

During the USPTO's roundtable, industry experts explained that there are many aspects of the AI design process that potentially implicate the inventorship threshold, including:

- ✦ increasing levels of AI autonomy,
- ✦ shifting stages of human engagement in the generative process, and
- ✦ the transformation of a single instance of conception by a natural person on their own into multiple instances of interactions between humans and a generative AI system to arrive at an initial design.

This injection of AI into various stages of the generative process potentially blurs the distinction between human contribution and AI-assistance with respect to generating novel designs.

## Glossary of some key AI and design patent terms

**Design patent:** A patent that protects the visual or ornamental appearance of a product, such as its shape, surface, configuration, etc., as opposed to its function.

**Generative AI:** A subset of artificial intelligence that uses large datasets to create new content, such as text, images, designs, and computer code.

**ID5:** A forum of the world's five largest IP offices, including those of the United States, China, the EU, Japan, and Korea. [www.id-five.org](http://www.id-five.org).

**Natural person:** In the United States, the Patent Act defines an inventor as the living person or persons (as opposed to corporations, organizations, or AI). Only natural persons can be named as inventors on patent applications.

**Obviousness/non-obviousness:** A legal standard, in addition to novelty, used to determine if an invention qualifies for patenting. In the United States, it is defined in the Patent Act at 35 USC 103.

**Utility patent:** A patent that protects functional attributes, namely, new and useful processes, machines, manufacture, or compositions of matter, and improvements thereto.

Allison Gaul, senior legal counsel at the Boston Consulting Group, was among the panelists at the USPTO roundtable who opined on this important topic. "As AI becomes increasingly autonomous," she noted, "some decisions with respect to creativity and invention are going to be made, or some aspects of that process, are going to be made without direct human supervision or intervention. That shifts the nature of the quanta of creativity to, potentially, not just a single moment or act, but rather touch points or bread crumbs along the way, along the process, as the AI is doing what it's doing to accomplish our goal."

## Novelty and obviousness implications

Design patents protect the new and ornamental aspects of functional products. Discussions at the USPTO roundtable highlighted the possibility of generative AI raising the threshold for these standards by accelerating the creation, and thereby the volume, of prior-art design variations. Because an AI system cannot be an inventor, there may be an open question as to whether a design variation—that is solely generated by AI—qualifies as prior art under U.S. design law. Further, this question could be impacted by a human designer subsequently viewing this design variation, recognizing the potential innovative nature or desirability of the design variation, and making the design variation public. Because of these scenarios, design innovators may be faced with a potential flood of incremental variations of known designs, raising questions about novelty and non-obviousness.

Specific to the question of obviousness, the examination process must look at the overall visual impression viewed by the ordinary observer, or—in certain tests—whether a designer of ordinary skill would find the design obvious over prior designs. AI-assisted iterative variations may be challenged as predictable or trivial if the AI merely automates modifications to previous designs.

## Looking ahead

Generative AI is redefining how designs are created, distributed, and protected. While generative AI offers powerful tools for creativity and innovation, it also may require the extension of existing design protection frameworks to accommodate designs created with the assistance of AI. Future discussions on utility patents will delve into some of the same considerations that designers will face, but the impacts of generative AI may be varied. Consideration will need to be given to the unique implications that AI brings to design patents; it cannot be assumed that they perfectly parallel those on the utility side.

To ensure that design protections remain effective in the age of generative AI, the USPTO continues to evaluate its practices alongside evolving technologies (and in consultation with innovators, designers, stakeholders, IP offices, policymakers, and Congress). Just as with advancing technologies in the past, the USPTO recognizes that the goal is not to constrain new technologies such as generative AI, but to ensure that it is duly integrated into an IP ecosystem, that continues to reward innovation and creativity, protect designers, and encourage responsible innovation.

## Learn more

On October 22, 2025, the USPTO hosted an international roundtable, “Artificial intelligence and industrial design,” in Alexandria, Virginia. A recording of the program is available for viewing on the [USPTO website](#).

This report was prepared by the USPTO’s Office of Policy and International Affairs. All information was accurate as of the date of publication, March 2026. For information on the USPTO’s engagement with current international developments that deal with intellectual property (IP) and IP policy, including international trademark policy, visit the USPTO’s [IP policy webpage](#). To keep informed about the latest development in IP policy at the USPTO, subscribe to receive [IP Policy and International Affairs Alerts](#) by email.

