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DESIGN: The New Frontier of Intellectual Property

We must move beyond the traditional silos of patents, trademarks and copyrights to a dialogue about how the system as a whole can champion design in the 21st century.

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APRIL 22, 2013

The ever increasing functionality of the man-made devices in our lives—from our automobiles to our mobile phones to our clocks—has brought with it increasing complexity. We have to program our cars to get them working properly with our mobile phones; our home thermostats have capabilities requiring advanced skills and extensive efforts to reach; and our wristwatches—well, as they say in Brooklyn, “Fuhgeddaboutit.” All this capability has brought with it incredible complexity.

Enter design. The discipline of design—the “form” that makes “function” accessible—has never been more in demand. Design enables us to simply, intuitively, use all these wonderful product capabilities that otherwise might as well not exist for the vast majority of us.



DAVID PAUL MORRIS/BLOOMBERG VIA GETTY IMAGES

3D PRINTING: When end users are able to print products on demand, it is the design of those products that will represent their primary value.

That is the story of design—innovators blurring the lines of the traditional intellectual property realms of patents, trademarks and copyrights to deliver not just new products, but entirely new markets by matching form with function and making “complicated” “simple.” For these innovators, the new frontier for IP

now and tomorrow is in the increasing convergence of IP embodied in design.

Some might disagree, arguing that innovation has always been about “design.” In one sense, they are right—innovation has long involved design if the definition is “design in the small.” Automakers, computer companies, cellphone suppliers, to name a few, have

always strived to establish identifiable designs in their products and brands to stand out from their competitors. Often, this approach has centered on changing the look and feel of the product (smaller, lighter, sleeker) and incrementally adding new features (data connections in cars, lighted keyboards on laptops, higher resolution screens on phones). Interesting and beneficial, but not market-making.

But for the breakthrough innovators of the 21st century, design has moved onto a much larger stage. It is where high function meets high style. And the traditional disciplines of IP—patents, trademarks and copyrights—are no longer ends unto themselves but are now viewed as component parts of a larger whole. This “design in the large” is driving new business strategies and success as never before, as leading-edge companies harness the power of converging IP disciplines to deliver brands, inventions and content that differentiate not just their products in the market, but the companies themselves.

This is not to say that the traditional disciplines are becoming unimportant. They will remain critical as the building blocks of design in the large. But innovative 21st century companies understand that design is larger than these individual components—much larger. Consider the ecosystem that Apple Inc., the standard bearer of design in the large, has created around mobile devices. The magic of the iPhone and iPad is not just in the content that can be accessed on the devices, or in their format, or the software that makes them work. The magic is the overall design—Apple’s ability to manage the convergence of the

brand, the inventions and the content to revolutionize a market.

And while Apple is the popular example, there are other companies on this leading edge that are weaving together aspects of IP to create new markets. Consider Amazon.com Inc. Known initially for selling books, the Amazon brand has expanded far beyond its roots. Amazon has grown to become a technology company. Through its consumer products such as the Kindle, Amazon has developed a highly advanced cloud-computing platform that undergirds the familiar Amazon.com, as well as an entire scalable technology architecture available on demand for any type of business. This is not the result of simply filing for a few patents and registering a few trademarks covering a better widget. It is the result of coordinated large-scale design over the course of years, protected by a seamless web of IP assets.

And this focus on design as a nexus for IP, with all of its constituent parts, will only continue to grow. New technology such as 3D printing, just emerging on the industrial scene, will soon reshape markets. When end users or contract manufacturers can print products on demand, it is the designs of those products—the combination of the designing company’s brand/trademarks, know-how, content and patents embodied in those designs—that will represent their primary value.

Equally as important is that design is a discipline accessible to innovators in developing markets. It does not require enormous research-and-development investment. It embodies the essence of human creativity, as where the artist captures the nuance of an expression—

simple, appealing, intuitive. Creative people everywhere can, and do, create new designs. And where better to invent them than in developing markets, where inaccessible function is effectively irrelevant function?

Reveal: the dilemma of our time—how our IP system will deal with these next-generation challenges of protecting designs spanning diverse disciplines, created by diverse innovators. We have already seen the strains of protecting the IP in books, music and movies as their distribution moves from physical media to electronic formats. The continued evolution of product design will push our IP system even further. Our public dialogue on IP must move beyond arguments rooted in the traditional silos of patents, trademarks and copyrights—to a dialogue about how the system as a whole can champion design in the 21st century. In doing so, we will be recommitting ourselves to the ambition that our IP system must grow to keep pace with human creativity, if it is to continue serving as the foundation incentivizing innovation as enshrined by our founding fathers in the Constitution.

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