

# Publications

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## USPTO Reports Faster Design Patent Examinations: What It Means for Seasonal Consumer Products

### Key Takeaways

- Design patents are powerful tools for protecting the visual appearance of products, packaging, surface ornamentation and other consumer-facing features, particularly in the consumer products and luxury goods space. But that power has been throttled the last few years by long application pendency and a large backlog of unexamined applications at the U.S. Patent and Trademark Office (USPTO).
- The USPTO's reported progress on design patent pendency is encouraging for consumer product companies, with first-action pendency now at 14 months. The backlog of unexamined design applications has also fallen more than 28% since January 2025.
- While the shorter 14 month first action timeline does not match the expediency of the suspended Rocket Docket program necessary for seasonal product, it can be highly relevant for future retail cycles.
- Companies should plan early and coordinate design patent filings with the product launch calendar, particularly for design features likely to return annually, evolve into product families, or face copying in later retail cycles.

This month, the USPTO announced continued progress in reducing design patent examination pendency, reporting that time to first-action has dropped from 16.9 months to 14 months, which is the lowest level since fiscal year 2018, while the backlog of unexamined design applications awaiting first action has fallen more than 28% since January 2025.<sup>1</sup> For companies in the consumer products space, this progress is welcome news, even if current timelines remain well above the 1–3-month pendency applicants previously enjoyed under the USPTO's now-suspended Rocket Docket program.

Rocket Docket had permitted applicants meeting certain criteria to expedite their design patent applications for a fee, making design patents a compelling tool for protecting seasonal goods with high commercial value. Since the USPTO suspended the Rocket Docket program for backlog and abuse through fraudulent filings by bad actors, applicants have faced longer timelines for actionable rights as design patent filings continued to rise. Those delays have been especially relevant and problematic for products with short commercial lifecycles, where copycats can move quickly and the most important sales

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### Related Capabilities

- Intellectual Property
- Consumer Products & Luxury Goods

window is brief. While pendency remains elevated, the USPTO's latest numbers suggest the trend is moving in the right direction.

## Why Pendency Matters for Seasonal Products

Seasonal consumer products, such as holiday-themed goods to fashion and apparel, outdoor products, food and beverage packaging and limited-edition goods, often face a timing mismatch. Product development, retailer presentations, manufacturing, marketing and launch, along with the core sales window, may last only a few weeks or months during the relevant season. If design patent examination takes too long, a patent may not issue until after the most important commercial window has passed.

The USPTO's reported improvement in first-action pendency does not yet eliminate that concern, but it helps improve the strategic value of design filings. Absent a long design and development roadmap facilitating an early filing, a first action at approximately 14 months still may not support enforcement during the first season for many products, but it can better position companies to protect products that return annually, are refreshed seasonally, or are likely to be copied in the next retail cycle.

For example, a distinctive sneaker may not receive a first action before its initial selling season under the current timelines. But if certain features of the sneaker are likely to return the following year, or if competitors may carry forward the same look into the next season, the improved pendency increases the leverage a design patent provides.

## Strategic Takeaways for Seasonal Consumer Product Companies

The shorter examination timeline makes it worth reassessing how design patent filings fit into seasonal product planning. To better align protection with future retail cycles, companies should consider the following steps:

- **File earlier in the product calendar.** The improved pendency numbers make design patents more attractive, but they do not make them instantaneous. Companies should consider moving design patent review earlier in the design-development process, ideally before retailer previews, catalog release, trade shows, online listings or other public disclosures.
- **Prioritize products with repeat seasonal value.** Even with timelines at their best, not every seasonal product justifies a design filing. Strong candidates include designs likely to be sold across multiple seasons, hero products, distinctive packaging, product families, designs vulnerable to private-label copying and products expected to anchor future line extensions.
- **Think in features, not in products.** Design patents can claim one or more features of a product, including surface features, portions of the product, colors, shapes and so forth. The strongest design patent strategy broadly claims features that transcend one product and permit variance in appearance for the products as a whole. Use design filings to protect the most commercially important visual features. Filing strategy should be tailored to the features competitors are most likely to copy.
- **Think beyond the first season.** For many seasonal goods, the goal may not be to stop copying during the first selling window. Instead, the goal may be to deter knockoffs in the next cycle, preserve leverage against repeat infringers, support retailer discussions or protect a recurring visual identity across a product family that bolsters branding.
- **Consider a layered protection strategy.** Because design patent rights may still issue after launch, companies should consider whether other tools can help during the first season. Depending on the product, that may include copyright protection for artwork and trademark or trade dress protection for source-identifying features, as well as marketplace enforcement, customs strategies, supplier agreements and

retailer-specific controls.

For more information on design patent strategy for consumer products, contact the alert authors or your preferred Polsinelli attorney.

[1] USPTO Patent Alert, “Strong progress continues on design patent examination,” issued May 19, 2026.