



## The Use of Design Patents to Protect Apparel Dresses, 1910 to 1950

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Intellectual property pertains to the intangible aspects of the mind (Scafaldi, 2001). It refers to creative ideas that have commercial value and may receive the same legal protection of a tangible property right. Often, one thinks of movies, music, software, and pharmaceuticals as being protected by intellectual property laws. Design piracy of apparel is possible within the United States because intellectual property rights do not fully protect clothing design (Magdo, 2000). However, since the beginnings of the ready-to-wear industry designers and manufacturers have attempted different approaches to protect their creative property. Most recently, fashion designers backed by industry groups such as The Council of Fashion Designers of America and the American Apparel and Footwear Association have sought legal remedies to curb piracy. First introduced in 2007 as the “Design Piracy Prohibition Act” and then reintroduced in 2010 as the “Innovative Design Protection and Piracy Prevention Act;” these bills proposed to give fashion design short term protection (Ellis, 2012).

The purpose of this study was to examine the efforts of apparel designers and apparel companies to protect their fashion designs through patents. Begun in 1790, patent laws conferred the right to exclude others from making, using, offering for sale, or selling the invention in the United States or importing the invention into the United States. Utility patents protect machines, processes, devices, and other “useful” objects (even plant varieties). Design patents provide short-term protection to all inventions and designs that meet the requirements of novelty and “non-obvious-ness” not readily apparent to someone skilled in the art. As such, they represent a separate and unique category of patent protection within the U.S. Patent and Trademark System (U.S. Department of Commerce, 1983). Thus, for example, a design patent for a nursing brassiere protects only the appearance of the product rather than the underlying technology that allows the garment to function (Raustiala & Sprigman, 2006). Because clothing relies on ornament and surface variations, design patents may seem to apply perfectly, but there are challenges to their use. It can take up to three years to secure a patent. Thus by the time a patent is obtained, the design would likely have already completed its life cycle. In addition, patent infringement suits have been notoriously unsuccessful in the courts.

Despite the problems of protecting apparel through patents, many designers took this route in an attempt to safeguard their creations. In the current study, we analyzed design patents from 1910 to 1950 registered in the category of “dress.” The primary purpose of the initial phase of the study was to examine the types, locations and timing of businesses and designers who patented dress designs. The *Official Gazette of the United States Patent Office* published weekly beginning January 2, 1872 lists all patents granted by the U.S. Patent Office. The issued patents

include: the title of the item, such as dress or coat, the date on which the application was filed, the inventor's name and city of residence, the date the patent was issued, as well as the serial number for the patent. Design patents also include a very brief description of each invention and a diagram or drawing of the invention. Garments classified as "dress ensembles" were not included in the data analysis as these often included additional jackets or coats.

Through data collection, we found the number of dress design patents issued in a single year from 1910 to 1950 ranged from zero to 1,276. The years with the greatest number of design patents were between 1937 and 1942. Between 1941 and 1950 over 2,500 dress patents were issued, with 50% of these in 1941. The vast majority of the patents were issued to designers and manufacturers in New York City and environs. Of the 2,500 patents, 5.5% were issued to St. Louis companies, while only 1.1% had a Chicago address. Only a few of the patentee names would be recognized today. These include Molly Parnis, Germaine Monteil and Bonnie Cashin. Many of the listed names were business owners. Some most likely represented large manufacturing firms, while others may be individual designers. The researchers contend that the impact of the Great Depression on trade practices and the creation and success of the Fashion Originators' Guild of America (FOGA), an industry group that sought to eradicate design piracy, increased awareness of and activism concerning the piracy problem. The Supreme Court decision to end the FOGA in 1941 may have impacted the numbers of designers and firms seeking intellectual property protection for their apparel in the years immediately before and after. By 1950, only 22 patents for dress designs were issued. No additional organization took the place of the FOGA to protect design, so the reason for the decline in patents may be in part due to their inefficiency in protecting apparel design. While this represents a preliminary study of design patents, additional research related to company names, other design categories, and secondary markets such as St. Louis, will continue to add an important missing piece to the history of the ready-to-wear industry and to issues related to design piracy.

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