

NEWS ALERT

INTELLECTUAL PROPERTY



Patent Drawings: Are They Subject to Copyright Protection?

By John H. Mutchler | July 1, 2021

When filing a patent application, often a drawing is required if it is deemed necessary for understanding the subject being patented. The drawing must show all the invention's features being specified in the application. Under [37 CFR § 1.84](#) there are specific requirements that must be followed for any submitted drawings.

Oftentimes patent application drawings are featured on private websites or within marketing materials, leading many to question whether doing so is considered copyright infringement. Applicants are permitted to mark patent drawings with a copyright notice pursuant to [37 CFR §1.71\(d\) & \(e\)](#). The regulation provides that an Applicant seeking a copyright notice over a drawing must place the notice immediately below the figure and within sight of the drawing. [See 37 CFR §1.84\(s\)](#). The required notice must state the following:

The (copyright) owner has no objection to the facsimile reproduction by anyone of the patent document or the patent disclosure, as it appears in the Patent and Trademark Office patent file or records, but otherwise reserves all (copyright) rights whatsoever.

[See 37 CFR §1.71\(d\) & \(e\)](#). However, absence of such a copyright notice on patent drawings may not mean that the Applicant has no copyright protection over the patent drawings. For example, the Applicant may have separately filed an application for copyright over the patent drawings.

Under the fair use provisions of [17 USC § 107](#), there are certain limitations on exclusive rights that permit others, besides the owner of the work, to engage in the use of copyrighted works for reporting, research, or teaching purposes. When a copyrighted work is used in one of those manners, it is not considered copyright infringement. Some important factors that are taken into consideration when determining whether fair use provisions apply are: the purpose the copyrighted work is being used for, the nature of the work, the portion of the work being used, and the impact use may have on the market value of the work. If an individual seeks to use copyrighted work in a way that is outside of the scope permitted by [17 USC § 107](#), it will require written permission from the owner of the copyrighted work.

Another consideration in determining if copyright infringement exists is whether the copyrighted drawing was merely used to reconstruct any idea contained in the copyright work. [See RJ Control Consultants, Inc. v. Multiject, LLC](#), 981 F.3d 446, 454 (6th Cir. 2020). Copyright protection does not “extend to any idea, procedure, process, [or] system ... regardless of the form in which it is described, explained, illustrated or embodied in such work.” [See 17 U.S.C. § 102\(b\)](#). While [RJ Control Consultants](#) relates to the use of copyrighted drawings which were not patent drawings, the case provides some valuable insight to determining whether copyright infringement exists. In [RJ Control Consultants](#), the court held that the use of the copyrighted drawings “to manufacture a control

system is not an act of copyright infringement.” Id. at 456. In its decision, the court made clear that while the copyright protection extended to the technical drawing, this only afforded the Plaintiff “the exclusive right to prepare derivative works, distribute copies, and display the copyright” in accordance with 17 U.S.C. § 106, but it did not grant any additional patent law protection. Id.

Based on the foregoing, third parties should understand that patent drawings may have copyright registrations associated therewith, but that there are exceptions available to circumvent copyright infringement. Anyone seeking to use patent drawings on private websites or within marketing materials should be cautious about using an inventor’s patent drawings for commercial purposes.

If you have any questions regarding this bulletin, please contact:

John H. Mutchler, Partner, at 860-240-6021 or jmutchler@murthalaw.com

Anthony P. Gangemi, Chair
203.772.7759
agangemi@murthalaw.com

Richard J. Basile
203.653.5412
rbasile@murthalaw.com

Andy I. Corea
203.772.7739
acorea@murthalaw.com

Elizabeth A. Galletta
860.240.6025
egalletta@murthalaw.com

Raquel Herrera-Soto
203.772.7736
rherrerassoto@murthalaw.com

Stephen N. Kulhanek
203.653.5457
skulhanek@murthalaw.com

Donna L. Lizotte
617.457.4024
dlizotte@murthalaw.com

Mitchell J. Mehlman
203.772.7758
mmehlman@murthalaw.com

John H. Mutchler
860.240.6021
jmutchler@murthalaw.com

Benjamin C. White
203.653.5417
bwhite@murthalaw.com

Joseph R. Conte III, Patent Agent
203.772.7713
jconte@murthalaw.com

Robert J. Kasten, Patent Agent
203.772.7729
rkasten@murthalaw.com

With offices throughout Connecticut, Massachusetts and New York, Murtha Cullina LLP offers a full range of legal services to meet the local, regional and national needs of our clients. Our practice encompasses litigation, regulatory and transactional representation of businesses, governmental units, non-profit organizations and individuals.

**MURTHA
CULLINA**
ATTORNEYS AT LAW

CONNECTICUT + MASSACHUSETTS + NEW YORK

MURTHALAW.COM