

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.

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