



# Cost-Effective IP Strategies for Biotech Startups



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A well-devised intellectual property (IP) portfolio can go a long way to ensure a startup biotech company's success in the marketplace. In general, patents allow the owner to exclude others from making, using, offering to sell, selling or importing the claimed invention during the lifetime of the patent (35 U.S.C. §154). Typically, the IP investments of biotech startups are primarily comprised of utility patents designed to protect functional inventions and thereby serve as barriers to entry against competitors. When faced with budget constraints, however, biotech startups can tap into other forms of IP protection to ensure that the visual/ornamental aspects of their products, which can be just as valuable as the functionality of their products, are still protected.

## **Design Patents**

A valuable, yet often overlooked form of IP protection, is a design patent. Unlike a utility patent, which protects the functional aspects of a product (35 U.S.C. §101), a design patent protects the ornamental appearance or visual characteristics as they are applied to a functional invention (35 U.S.C. §171). Where the aesthetic features of a product (e.g. in consumer products such as computer mice, speakers, phones, watches, etc.) are important to establishing and/or maintaining a brand and breed customer loyalty, design patents can be secured to protect the configuration, shape, or surface ornamentation of the product in a cost-effective manner. For example, novel and ornamental three-dimensional (3D) designs applied to electronic or robotic medical devices, as well as two-dimensional (2D) graphical user interfaces (GUI), can receive design patent protection. One could posit that it may even be possible to receive design patent protection for the 3D ornamental representation of antibodies, drugs, and chemicals, whether as part of a GUI or a standalone 3D structure.

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