

Indirect infringement

Will 3-D printers end your ability to protect IP?

As the availability and use of 3-D laser based printers proliferate, IP related issues need to be considered.

The use of lasers for rapid prototyping has existed for a number of years as a process of making molds and models in the early stages of production. However, with improved technology 3-D printers are becoming used as a means to make finished products.

For patent owners, the ability of large numbers of individuals (with 3-D printers) to produce products will increase the difficulty of enforcing patent rights. Particularly, 3-D printer technology will act to fragment the target of potential patent enforcement, says Mark Svat, a patent attorney at Fay Sharpe LLP.

For example, an infringer who produces 5 million patented widgets is a clear target for the patent owner. If, however, 5 million people can produce that widget on their own, the patent owner might need to target each individual infringer to put a stop to the infringement.

Additionally, there are concerns about 3-D printing related to other types of intellectual property, including, for instance, copyrights such as found in artistic works. Artists can have their designs lifted and potentially turned into any number of products, reducing the market for their merchandise.

Smart Business spoke with Svat about the threat 3-D printing creates for businesses.

Why might the ability of companies to protect their patents be insufficient now that 3-D printing is more available?

A patent owner often looks to a party that is directly infringing its patent. As 3-D printing becomes more common, the direct infringer often will be an individual that

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is operating a 3-D printer in his/her own home. Stopping each individual infringer can be quite an onerous task.

A more efficient manner to stop the infringement would be to stop the party providing the data files used to create the infringing product. This could be the person running the website through which the data files are made available and/or it could be the party that created the data files being used to print the infringing product. However, neither of these entities is directly creating the infringing products. Their actions are therefore more likely an indirect infringement, which is often more challenging to litigate.

Particularly, indirect infringement may require an additional level of proof, which means more obstacles must be overcome to prove indirect infringement. This extra burden increases the costs associated with a lawsuit and allows for more defenses to be presented, further complicating an already complex process.

What other challenges might arise as 3-D printing becomes more common?

In addition to patent-related issues, 3-D printing also raises issues related to copyright infringement. For example, widespread use of 3-D printing could cut into licensing opportunities for creators of artistic works. A third party might generate

a data file for a copyrighted work and then place it online where others would generate unauthorized 3-D printed versions, cutting out the creator for merchandise revenue.

To stop unauthorized use, if the data file is from the creator or inventor, he or she may attempt to use technologies similar to a digital rights management (DRM) system to combat piracy. In one embodiment, DRM systems embed code into the data files, only allowing reproduction if proper credentials are used.

Other issues with 3-D printing include the possibility of expanding the physical locations around the world where counterfeits can economically be produced. Similarly, where now a counterfeiter might 'specialize' in, say counterfeit shoes, an advanced 3-D printer would allow the counterfeiter to easily switch among a large number of different products.

What should companies that are vulnerable because of 3-D printing do to ensure their patents are enforced?

Companies should pay attention to advancements in 3-D printing, such as new materials that would allow the printers to make one of their products.

Another step is to consider monitoring websites such as www.thingiverse.com that permit individuals to share 3-D printing designs. ●