While the carpet industry is a relatively tightly knit community due to its concentration in north Georgia, it remains a highly competitive business. Manufacturers are continually searching for new styles and designs that provide a unique position in the marketplace, while simultaneously beating back attempts from competitors to offer imitative designs at lower prices. As a result, the intellectual property laws are important tools used by innovators in the carpet industry. Historically, patent protection has been the central linchpin for protecting innovation in the industry, although with the tufting machines now providing control over the placement of single tufts of yarn, copyright now assumes a significant role. An examination of the use of utility patents, design patents, and copyrights in the carpet and rug industry is instructive.

Patents protect new, useful, and non-obvious inventions. In the carpet industry, patents are most commonly found for new or modified manufacturing equipment, improved materials, or for methods of operating equipment to produce different styles of carpet. For instance, with yarn feed mechanisms there have been patents over the decades on roll feed, scroll, full repeat scroll, encore, and single-end devices.

The uses of new and improved materials for yarn treatment or backings, as well as new structural designs for specialty items or carpet tiles are also patented. In unusual circumstances, even designs such as the orthogonally ambiguous designs developed by Interface for carpet tile, may be patented. While there has certainly been some question as to the enforceability of this type of patent, the orthogonally ambiguous patents were the subject of substantial litigation. First litigation was resolved and Interface’s patents remained on the patent register.

The use of utility patents to protect carpet design or appearance is unlikely to be applicable in many instances, and the cost prohibitive in all but the most unusual circumstances. Design patents, however, provide rights for a fourteen year term to new and ornamental articles of manufacture. Design patents have been utilized intermittently in the floor covering industry for over 100 years. In most cases, however, design patents were better suited to the carpet industry of the 20th century, where manufacturing equipment did not offer the nearly limitless design options that are provided by new top-of-the-line tufting machines. Design patents are not inexpensive, often entailing a cost of several thousand dollars per registered design. In addition, the validity of design patents can be attacked on the grounds of both lack of novelty and of obviousness. Thus, even if a carpet designer creates an original design, a design patent on the design is subject to challenge if a nearly identical design can be located anywhere in the history of fabrics or floor coverings.

The design is also subject to challenge as being only an obvious modification of pre-existing designs, whether the particular designer actually referred to any earlier similar design during the development process or not. Thus, for the carpet manufacturer that creates its own designs or contracts with designers for their creation, copyright is likely to be the most economical form of intellectual property protection. While copyright exists automatically for original works of authorship, it is necessary to secure a copyright registration before bringing a lawsuit for copyright infringement in the United States. In addition, when copyright infringement occurs after the registration of the copyright, the remedies available to the copyright owner are substantially increased.

There are some limitations on the effectiveness of copyright: copyright is not available to protect simple geometric designs, and copyright only protects against copying and does not provide a remedy against a competitor who can show that a similar design was created independently. Indeed, an examination of the Copyright Office records discloses that the major carpet manufacturers are now filing several dozen copyright applications each year for their designs.
Given the importance of copyright protection to the industry, it is instructive to examine how copyright protection for carpet designs have been enforced in the courts. In the case of Tufenkian vs. Einstein Moomjy, Inc., Tufenkian created its Floral Heriz carpet design by modifying the central portion of an antique Persian carpet design and adding a border from a second carpet and two original minor borders. A design called the Bromley 514 was created by Nepalese contractors for sale by Einstein. These contractors had access to the same two prior public domain carpet designs utilized by Tufenkian, as well as Tufenkian’s Floral Heriz design. While the trial court originally granted summary judgment of no infringement, holding that the similarities in the two carpets were due to public domain elements and that the designs had an overall distinct “look and feel,” the Second Circuit Court of Appeals found that sufficient areas of the carpet were substantially identical in order for it to determine that the defendants had improperly copied Tufenkian’s original expression. On remand, the case was settled before trial. Tufenkian was on the opposite side, defending a claim in Nichols v. Tufenkian Import/Export Ventures. Nichols created a carpet design named Prado that included 20 equal size circles arranged in five rows and four columns with rectangular bands, some of which transect the circles. Nichols sued Tufenkian, asserting that its Total Eclipse design was copied from the Prado design. This Total Eclipse design included four rows and three columns of circles, again with rectangular bands transecting circles, but with no frame surrounding the border of the carpet. Since the test for copyright infringement requires evidence of copying which Tufenkian denied, Nichols had to show Tufenkian’s access to the Prado design. At trial, the presiding U.S. Magistrate found Nichols’ evidence lacking. The Magistrate went on to find that there was also no probative similarity — similarities between the two works that would not be expected to arise if the works had been independently created. The Magistrate also held that the two designs were not even sufficiently similar in relation to protectable elements or overall feel to constitute infringement. Finally, he found that Tufenkian had proved independent creation of the Total Eclipse design. In Odegard v. Safavieh Carpets, Odegard claimed that its Takyu III design had been copied in Safavieh’s Mahogany carpet. Access to the Takyu III design and validity of the copyright were not contested. Safavieh instead argued, and the Court agreed, that the Takyu III and Mahogany designs were not substantially similar in protectable expression. The

Over time, as fashions change, different designers’ styles rise and fall in popularity. Over the last decade, Angelia Adams Licensing’s curvy organic designs have been in fashion and have led to at least a dozen lawsuits. As reflected by comparing one of Adams’ copyrighted designs, Lulu, to two accused infringing designs, “Goa” and “Bahia,” the simplicity and organic nature of the designs present many avenues for defense based upon independent creation and lack of similarity of protectable elements. Nonetheless, because of the size of the potential damage awards in copyright cases, most of these actions have been settled with the accused carpets being modified or removed from the market. The importance of integrated copyright and design/utility patent filings in the protection of carpet design assets is apparent and generally recognized throughout the industry. However, equally important is the maintenance of proper records of design creation to avoid or defeat unfounded claims of copying as manufacturers may find themselves on either side of an infringement claim.