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Wearables Highlight New Legal Frontiers as Tech, Fashion Overlap

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Dustin B. Weeks | Peter T. Wakiyama

Troutman Pepper Partners Dustin Weeks and Peter Wakiyama were quoted in the August 5, 2024 *The Fashion Law* article, "[Wearables Highlight New Legal Frontiers as Tech, Fashion Overlap](#)."

Dustin Weeks, a partner at Troutman Pepper who focuses on patent disputes in the wearable technology space, emphasized that a key difference between the traditional fashion intellectual property issues of the past and what is emerging in the wearable tech industry is partially a matter of focus on function over form. It is this distinction that drives a lot of the litigation while blurring the line between fashion and technology. "When you get into wearables, it is probably less about the design and more about the functionality," Weeks said. "You are often going to protect that functionality with [utility patents](#)," which focus on the functional aspects of a product, as opposed to the style.

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"You're still utilizing that same tech," Weeks stated. "So, when you get into battles of exclusivity of that function, it will cover multiple 'seasons' and cover multiple years; it won't be limited to whatever the value of what that design is."

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Data is another important aspect to consider in the wearable tech industry. Peter Wakiyama, a Troutman Pepper partner whose practice focuses on copyright and technology, asserted that an emerging legal front in the wearable tech world – and how it differs from IP issues in the "traditional fashion" world – is data collection.

"I would say one key difference is the value of the data at play," Wakiyama said. "The data that these tech devices are collecting is intellectual property. And the manufacturers and designers of what you might call 'traditional fashion' aren't able to gather and harvest data with those traditional products in the same way that a smart watch could, for example." The data that these devices collect has huge value for [training AI](#), cross marketing, and market analytics, for example – and "that's a big distinction" that gives wearable tech a "huge appeal to traditional brands, even if there's more up front costs, according to Wakiyama.

Creative presentation of the collected data – a company's collection of the data and how it presents that information is emerging as a contentious forefront in the wearable tech space and "if the data is organized in a creative compilation then [copyright](#) would apply," Wakiyama said. "Say data from my Fitbit watch, if I organize this

by day, type of workout, what I was wearing at the time, what I eat for breakfast this morning – any of that. There are many different ways to structure and arrange the data and this is all information you're not normally going to be able to fight over in traditional patent or trademark cases."

Even now, for instance, there are a number of copyright registrations that exist for FitBit in the form of visual arts. "It's smart for companies to take advantage of these copyrights" when it comes to tech, Wakiyama said, noting that it is "a low hanging fruit and it's relatively inexpensive."

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As the wearable technology space becomes increasingly crowded and new innovations continue to emerge, securing "extremely broad protections" for new devices is becoming more challenging. This underscores the shrinking space in the market "to fence off exclusionary rights," per Weeks. The surge in lawsuits, particularly within the health wearables sector, illustrates this growing difficulty. "There's a lot of innovation in the field that is saying, 'I can make relatively cheap sensors that can be worn by the user,'" Weeks noted. "Suddenly, I can provide an EKG or a cardiogram, and that's a valuable prospect."

The proliferation of new features and potential applications is driving the market forward, which in turn increases the value of intellectual property in the space. All the while, companies' focus is continuing to shift from merely protecting a brand or aesthetic to safeguarding the underlying technology itself, Weeks said. And as the collected data stacks up, licensing deals between companies and institutions become more important. "I see it as adding a new sort of silo of IP."

This technological evolution brings new complexities and higher stakes to the table. "There's going to be an interest in that data," Weeks explained. "To make that data available, you're going to license it." This shift means that companies now have control over the commercialization of this data, which will add another layer to the competitive landscape.

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