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Patently Enabled June 2026 – Design Patents in Focus

Design patents have become an increasingly important component of intellectual property strategy. Viewed as secondary to utility patents, they are now regularly used to protect key aspects of product differentiation, particularly in consumer-facing industries and user interface design. Recent U.S. Court of Appeals for the Federal Circuit decisions have reinforced both their value and the care required in obtaining and enforcing them—while also reshaping how courts approach validity challenges, including obviousness challenges.

What Design Patents Protect—and the Limits of That Protection

Design patents protect the "ornamental design for an article of manufacture." 35 U.S.C. § 171. That distinction—ornamental rather than functional—remains central to how courts define the scope of protection.

The Federal Circuit has repeatedly emphasized that design patents do not extend to features dictated solely by function. In *Sport Dimension, Inc. v. Coleman Co.*, the court explained that "a design patent must claim an ornamental design, and an ornamental design cannot be one 'dictated by' function." 820 F.3d 1316, 1320 (Fed. Cir. 2016).

At the same time, most products include both functional and ornamental aspects. The key question is not whether a design has a function but whether the claimed appearance is driven exclusively by that function. Where alternative designs are available, courts are more likely to find protectable ornamentation.

Unlike utility patents, where claims are written in words, the "claim" of a design patent is defined by its drawings. As a result, the visual details depicted in the drawings are particularly important in a design patent.

Infringement of a design patent is evaluated under the "ordinary observer" test, which asks whether an ordinary observer would consider the accused design substantially the same as the patented design.

Obviousness of Design Patents

For many years, design patent obviousness was governed by the framework derived from *In re Rosen*, 673 F.2d 388 (C.C.P.A. 1982), and *Durling v. Spectrum Furniture Co.*, 101 F.3d 100 (Fed. Cir. 1996). Under that approach, a challenger had to identify a "primary reference" that is "basically the same" as the claimed design before modifying it with secondary references.

As *Durling* explained, the primary reference must have "basically the same" visual appearance as the claimed design, and secondary references could only be used if they were "so related" that their features would suggest application to the primary reference. 101 F.3d at 103.

This framework imposed a relatively high bar for obviousness challenges.

More recent Federal Circuit decisions—most notably *LKQ Corp. v. GM Global Technology Operations LLC*, **102 F.4th 1280 (Fed. Cir. 2024)** (en banc)—have reexamined this framework in light of *KSR v. Teleflex*, 550 U.S. 398 (2007), emphasizing

that rigid rules are disfavored in obviousness analysis. Courts are moving toward a more flexible, fact-intensive approach that aligns more closely with utility patent obviousness principles.

Design patent obviousness is assessed from the perspective of an "ordinary designer" rather than a lay observer.

Courts continue to assess whether prior art designs, individually or in combination, create a visual appearance that renders the claimed design obvious. Minor differences may not be enough if the overall impression is substantially similar.

As the Federal Circuit has noted, the analysis asks whether the claimed design would have been obvious "to a designer of ordinary skill who designs articles of the type involved." Durling, 101 F.3d at 103. Recent cases emphasize that this inquiry should be grounded in evidence, not conclusory assertions. Expert testimony and prior art context are therefore becoming increasingly important in design patent validity challenges.

Conclusion

Federal Circuit decisions in recent years have reshaped design patent law, especially with regard to obviousness analysis. However, core principles—such as the importance of the drawings and the ordinary observer test—remain intact. The evolving obviousness standard, as interpreted by patent examiners and the courts, introduces greater uncertainty in design patent prosecution and greater risk in design patent enforcement. Nonetheless, design patent protection remains a potent tool for protecting ornamental designs that should not be overlooked.

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