

## Spot the Differences: Narrowing Design Patent Scope

*Range of Motion Products, LLC v. Armaid Co. Inc., 2026 WL 261890 (Fed. Cir. Feb. 2, 2026)*

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On February 2, 2026, the Federal Circuit affirmed summary judgment of non-infringement in *Range of Motion Products, LLC v. Armaid Company Inc.*, holding that Armaid’s massage device did not infringe Range of Motion’s (RoM) design patent. The two devices use similar elements: curved arms, rollers, and a hinged base. But as the Federal Circuit reminds us, factoring out functional elements can drastically reduce the protected scope of a design patent.



RoM’s design patent covers the ornamental design of its “Rolflex” body massager. Armaid’s accused product, the “Armaid2,” shares the clamshell-style configuration and other visual features. The district court granted summary judgment to Armaid after concluding that many of the shared features, particularly the shape of the arms and hinge structure, were functional—not ornamental. Once those functional elements were factored out, the remaining ornamental differences were deemed significant enough that no reasonable jury could find substantial similarity. The Federal Circuit agreed.

The Federal Circuit reinforced two important principles. First, design patents protect only ornamental features, not functional ones. A claimed element is not automatically ornamental simply because it appears in the drawings. Instead, courts must separate the functional aspects from protectable design features during claim construction. Second, courts may resolve infringement on summary judgment where, after excluding functional features, the claimed and accused designs are “plainly dissimilar.” For design patent owners, the message is clear: the broader the functional constraints of a design, the narrower the effective protection. When key visual elements are dictated by how the product works, enforcement may become more difficult and may be decided without the benefit of a jury.

The most notable aspect of this case lies in Chief Judge Moore’s dissent. Judge Moore argued that the majority’s “plainly dissimilar” framing—rooted in *Egyptian Goddess* (Fed. Cir. 2008)—subtly shifts the analysis away from whether designs are “substantially similar” (the Supreme Court’s language in *Gorham v. White* (1871)), towards a focus on identifying differences. In her view, this reframing has led courts to engage in something resembling a “spot-the-differences” exercise, making it easier to grant summary judgment and removing juries from their traditional role in deciding design similarity. She went further, suggesting that this doctrinal shift has meaningfully changed design patent litigation outcomes and may warrant correction. This dissent appears to be an open invitation for future litigants to challenge the Federal Circuit’s approach en banc, or appeal to the Supreme Court.

For companies investing in product design, *Range of Motion* highlights the importance of building design portfolios that emphasize truly ornamental elements—features that are not easily characterized as functional. For defendants, the decision reinforces that functionality arguments raised early can position a case for summary judgment under a comparatively defense-friendly framework. At the same time, the dissent signals potential doctrinal instability. If the court revisits the “plainly dissimilar” framework, design patent law could be unsettled for the second time in just a few years.