Sterne Kessler
STERNE KESSLER GOLDSTEIN & FOX

2025

Design Patents Year in Review

ANALYSIS & TRENDS | 5TH EDITION

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Introduction

In 2025, design patent law continued to evolve across institutions, jurisdictions, and borders. It was a busy year for design patent cases at the U.S. Court of Appeals for the Federal Circuit (CAFC), with three precedential opinions clarifying the scope of design patent protection and who can bring a patent enforcement campaign at the U.S. International Trade Commission (ITC). District courts were also kept busy, with recent decisions that further refined infringement, patentability, and obviousness—including the latest installment in the *LKQ Corporation et al. v. General Motors Company et al.* saga.

Meanwhile, despite a quiet year for design patent challenges at the U.S. Patent Trial and Appeal Board (PTAB), we saw several significant procedural changes applicable to inter partes review and post-grant review challenges that pose new hurdles for both petitioners and patent owners. And finally, the ITC remains a key forum for enforcing design patents, with recent decisions underscoring that investigations are more likely to result in remedial orders when at least one design patent is asserted.

On the international front, 2025 was another year of growth and change for industrial design systems around the world, with ongoing work to advance protection for modern designs in the digital, virtual, and graphical user interface spaces, which promises to make 2026 another eventful year. Notably, the world's leading intellectual property offices met for the 10th year of ID5 meetings, the Hague international design system turned 100, and the European Union began implementing its largest design reform in decades.

The information provided in this review is the result of a collaborative process. Thank you to coauthors — Ivy Estoesta, Daniel Gajewski, and Deirdre Wells, as well as Patrick Murray who contributed important data and statistics.

We appreciate your interest in this report, and we encourage you to read our other year in review reports covering the CAFC, ITC, and PTAB in detail as well as the intersection of artificial intelligence technology and intellectual property. Our content is available at sternekessler.com and by request. Please contact us if you have questions or wish to discuss the future of design protection.

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Federal Circuit Appeals: Clarifying Enforcement of Design Patents

BY: DEIRDRE M. WELLS

2025 was a busy year for design patent cases at the U.S. Court of Appeals for the Federal Circuit. The court issued eight opinions involving U.S. design patents, including three precedential opinions. Below we discuss each of the three precedential opinions: *Smartrend Manufacturing Group v. Opti-Luxx*; *Top Brand LLC v. Cozy Comfort Company*; and *Lashify v. ITC*. These decisions further clarify the scope of design patent protection and who can bring a patent enforcement campaign at the U.S. International Trade Commission (ITC).

Smartrend Manufacturing Group v. Opti-Luxx

The *Smartrend* appeal deals with construction of terms that appear in the description of a design patent when the design patent recites the design "as shown and described." The case involves school bus signs. Smartrend owns U.S. Design Patent No. D932,930 (the "D'930 patent") and alleged that Opti-Luxx's school bus sign infringed this patent (as well as one of its utility patents). The D'930 patent claims "[t]he ornamental design for an LED light panel, as shown and described." Importantly, the patent's description states that "oblique shading lines visible in the front and perspective views denote transparency." Over Opti-Luxx's objection, the district court construed the term "transparency" to mean both "transparent" and "translucent."

The accused Opti-Luxx product is a single-piece illuminated school bus sign with a black housing, an LED light board, a yellow lens, and black lettering. According to Opti-Luxx, the black lettering on the accused product is totally opaque and the yellow lens is translucent such that light can pass through, but the LED light board behind it is not clearly visible. Images of the accused Opti-Luxx product are shown in the left-hand images, and Figures 1 and 2 of the patent are shown in the right-hand images.

During the district court trial, the jury was instructed that "[t]he Court has found the word transparency to mean both transparent and translucent. You must use this interpretation of the oblique lines when you consider infringement of the D'930 design patent claim." Following the trial, the jury found that Opti-Luxx infringed the patent.

Opti-Luxx appealed the jury verdict. Among other things, Opti-Luxx argued that the district court erred in construing the term "transparency." The Federal Circuit agreed. The Federal Circuit stated that while oblique shading in design patent figures typically indicates "transparent, translucent and highly polished or reflective surfaces," here the patent's description expressly narrowed the meaning of the oblique shading by stating that "oblique shading lines visible in the front and perspective views denote transparency." Given this description, the Federal Circuit stated that the design claim is limited to surfaces that possess transparency and that transparency is not synonymous with translucency. The Federal Circuit concluded that in holding that "transparency" includes "translucent," the district

Federal Circuit Appeals: Clarifying Enforcement of Design Patents *continued*

court erred, requiring a new trial as to infringement. The Federal Circuit thus vacated the jury verdict and remanded for a new trial.

Despite the ruling, the court left open the door to an argument that "transparency" includes translucent—*if certain conditions are met*. The court noted that Smartrend's argument on remand may be that the term "transparency" has a special plain and ordinary meaning in the art of light-emitting devices. On remand, it will be appropriate for the district court to determine whether such an art-specific meaning of the term has been established such that the jury should be instructed as to such a meaning. But the court cautioned that merely conclusory testimony by experts that is unsupported by reliable extrinsic material is insufficient. If Smartrend wishes to make this argument (and make it stick on appeal), it would be well advised to point to special-purpose dictionaries or other objective evidence—separate and apart from expert testimony—to establish the meaning of "transparency" in the context of LEDs.

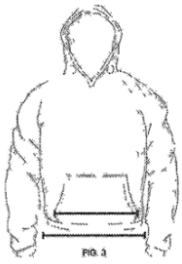
A key takeaway from this case for patentees is to be very careful in the language of the description and the claim—narrowing terms and descriptions will be held to limit the scope of claim coverage. All parties are also advised to look carefully for objective evidence if arguing that terms or descriptions have a special plain and ordinary meaning in the field of the patent.

Top Brand LLC v. Cozy Comfort Company

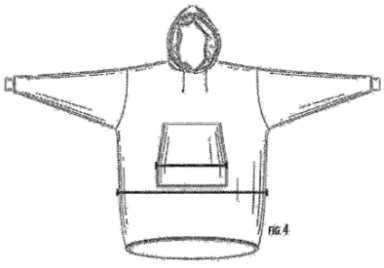
The *Top Brand* appeal discusses the impact of a design patent applicant's statements during patent prosecution on future infringement analyses. The case involves two competitors in the oversized hooded sweatshirt market: Top Brand and Cozy Comfort. Top Brand had filed for a declaratory judgment that its sweatshirts do not infringe Cozy Comfort's U.S. Design Patent No. D859,788 (the "D'788 patent") and that the patent is invalid. In response, Cozy Comfort counterclaimed for infringement of both its design patent and two of its trademarks.

The D'788 patent is titled "Enlarged Over-Garment with an Elevated Marsupial Pocket" and claims "[t]he ornamental design for an enlarged over-garment with an elevated marsupial pocket, as shown and described."

During prosecution, the examiner had initially rejected the design as anticipated by U.S. Patent No. D728,900 (White). To obtain allowance, Cozy Comfort agreed that its design differed from the White design. Cozy Comfort pointed to several ways in which it said its design differed from White with respect to the shape and placement of the marsupial pocket and the shape of the bottom hem line. For example, Cozy Comfort provided the examiner the below annotated comparisons of White's design versus its design and told the patent office that (1) White's pocket occupied roughly 90% of the torso's width whereas the pocket in the inventive design was approximately one-third of the width of the torso, (2) the pocket on White is more angular and trapezoidal than the claimed pocket's square-like shape, and (3) the bottom hem in White slopes upward from the front to the back whereas in the inventive design the bottom hem slopes downward.



White, Fig. 3



D'788 patent, Fig.4

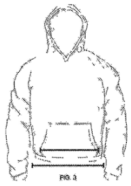
Federal Circuit Appeals: Clarifying Enforcement of Design Patents *continued*

Top Brand argued that Cozy Comfort's statements made during prosecution should limit the construction of the D'788 patent. The district court declined to adopt a limiting construction. The case proceeded to trial, after which a jury found infringement of both the patent and the trademarks. The jury awarded $15.4 million in disgorged profits for the D'788 patent infringement. Top Brand appealed the jury's infringement finding.

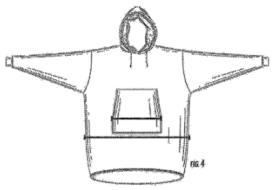
On appeal, the Federal Circuit held that the principles of prosecution history disclaimer apply to design patents. The Federal Circuit agreed with Top Brand that, in distinguishing White, Cozy Comfort clearly surrendered its ability to rely on the surrendered claim scope in arguing for infringement. And the Federal Circuit held that the district court erred in failing to assess and describe the effect of Cozy Comfort's statements during prosecution. The Federal Circuit stated that "to show infringement, Cozy Comfort cannot rely on features similar to those in White that were disclaimed during prosecution."

The Federal Circuit next compared the accused design with the patented design in view of this disclaimer and held that, as a matter of law, Top Brand does not infringe the asserted patent because Top Brand's design is within the scope of the subject matter that Cozy Comfort surrendered during patent prosecution. For example, it stated that the front pocket of the accused products covers the majority of the width of the torso, like in White (and unlike in the claimed design), that the shape of the accused products' pocket is similar to White's trapezoidal pocket, and that the bottom hem in the accused product does not slope downward like the claimed design. Images of the accused product, White, and the patented design are shown above right.

Accused product



White, Fig. 3



D'788 patent, Fig.4

The Federal Circuit concluded that multiple significant aspects of the accused product are the same ones Cozy Comfort disclaimed during prosecution and therefore reversed the jury's infringement finding.

A key takeaway from this case is for both patentees and challengers to carefully consider statements and arguments made during prosecution when determining the scope of a design patent. Patent applicants would also be well served by carefully considering future implications of statements and arguments during prosecution.

Lashify v. ITC

Lashify was an appeal of a decision from the ITC. While the appeal focused on the statutory requirements of an ITC investigation, it has great impact for design patents.

Lashify is an American company and conducts its research, design, and development work in the United States but manufactures its eyelash extension products abroad. Lashify filed a complaint at the ITC alleging that companies importing and selling eyelash extension products infringed several of its patents, including two design patents.

Unlike patent infringement disputes heard in district courts, patent infringement disputes heard by the ITC require the patentee to show that "an industry in the United States, relating to the articles protected by the patent … exists or is in the process of being established." 19 U.S.C. § 1337(a)(2).

Federal Circuit Appeals: Clarifying Enforcement of Design Patents *continued*

This is often referred to as the domestic industry requirement. The statute states that "an industry in the United States shall be considered to exist if there is in the United States, with respect to the articles protected by the patent ... concerned—(A) significant investment in plant and equipment; (B) significant employment of labor or capital; or (C) substantial investment in its exploitation, including engineering, research and development, or licensing." 19 U.S.C. § 1337(a).

Lashify had argued that it had invested in "significant employment of labor or capital." When evaluating this assertion, the ITC excluded expenses relating to sales, marketing, warehousing, quality control, and distribution. With these expenses excluded, the ITC found that Lashify had failed to meet the domestic industry requirement. Lashify appealed.

On appeal, Lashify argued that the ITC improperly excluded labor or capital that is used for selling, marketing, warehousing, quality control, and distribution. The Federal Circuit agreed with Lashify that the ITC had applied a legally incorrect understanding of the statutory test. The court found that the statute covers significant use of "labor" and "capital" without any limitation on the use within an enterprise to which those items are put. In particular, it held that there is no carveout of employment of labor or capital for sales, marketing, warehousing, quality control, or distribution. The Federal Circuit also stated that the statute's use of "or" to separate the three clauses means that satisfying any one of the clauses suffices for satisfying the domestic industry requirement. The Federal Circuit thus vacated the ITC's decision and remanded the case.

This decision opens the ITC as a potential venue for additional patent holders by making it easier for patent holders to prove the statutory domestic industry requirement. The ITC is a valuable tool for patent holders, particularly design patent holders. The remedy for patent infringement at the ITC is an order excluding infringing products from being imported into the United States. Exclusion orders can come in two forms: a *limited* exclusion order (which excludes only the products of the companies involved in the ITC investigation) or a *general* exclusion order (which excludes anyone's infringing products—regardless of whether they were involved in the ITC investigation). As we have previously reported, the data shows that investigations involving at least one design patent are more likely to result in a *general* exclusion order and therefore have broader exclusionary effect.

District Court Decisions: Design Patent Highlights

BY: DEIRDRE M. WELLS

2025 was a busy year for district courts, with multiple design patent trials and case-dispositive decisions. The year also brought the latest installment of the *LKQ Corporation et al. v. General Motors Company et al.* saga. We summarize three exemplary decisions discussing infringement, patentability, and obviousness. First, *E. Mishan & Sons, Inc. d/b/a Emson v. Caraway Home, Inc.* is a case out of the U.S. District Court for the Southern District of New York discussing the design patent infringement analysis. Second, this year's *LKQ* is a decision out of the U.S. District Court for the Northern District of Illinois discussing design patent patentability. Third, *Diode Dynamics, LLC v. 5DLight, Inc.* is a case out of the U.S. District Court for the Central District of California that is one of the first cases to consider design patent obviousness under the *Graham* factors.

E. Mishan & Sons, Inc. d/b/a Emson v. Caraway Home, Inc.

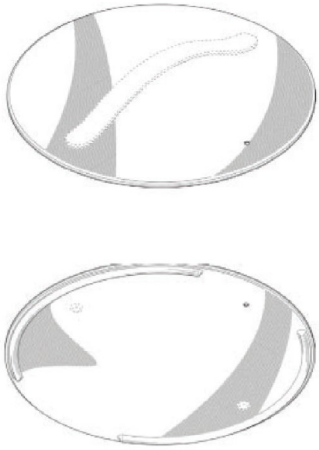
Both E. Mishan & Sons, Inc. d/b/a Emson ("Mishan") and Caraway sell cookware on Amazon. Caraway owns U.S. Design Patent No. D921,421 ("D'421 patent"), which claims "the ornamental design for a cookware lid." Caraway filed a takedown notice with Amazon for Mishan's listing, alleging that the lids on Mishan's cookware infringe the D'421 patent. Mishan requested that Caraway withdraw its Amazon complaint, but Caraway did not do so.

Mishan then filed its own complaint in the Southern District of New York seeking a declaratory judgment that its lids do not infringe Caraway's D'421 patent. After Caraway filed its answer, Mishan then moved for judgment on the pleadings under Federal Rule of Civil Procedure 12(c). Mishan argued that Caraway has no plausible claim that Mishan's lids infringe Caraway's patent.

The court stated that there are two levels to a design patent infringement analysis. Step one is a threshold analysis to determine if the accused design and the patented design are "substantially the same." If the two are "plainly dissimilar" such that no ordinary observer would be deceived into believing the accused product is the same as the patented design, there can be no infringement and the analysis stops there. If the two designs are not plainly dissimilar, the analysis continues to step two, which considers the prior art and whether the similarities in the accused design and patented design are present in the prior art. If the accused design has features similar to the patented design and those features are absent in the prior art, the accused design is more likely to be regarded as deceptively similar to the claimed design and thus infringing.

Mishan argued that its lid is so plainly dissimilar from the patented design that, without even considering any prior art, no reasonable fact finder could conclude that the two appear "substantially the same." Images of Mishan's lids are shown below on the left and images of the patented design are shown on the right.

Mishan's lid



D'421 patent, FIG. 1 (top view) and FIG. 2 (bottom view)

District Court Decisions: Design Patent Highlights *continued*

The court agreed with Mishan that this is a rare case in which the designs are "plainly dissimilar" such that no ordinary observer would be deceived into thinking that Mishan's lid is the same as the patented lid—even without using the prior art as a frame of reference. In particular, the court found two key differences: (1) the patented lid has a totally flat top surface, whereas Mishan's lid has a top surface that slopes near the circumferential perimeter and a convex center; and (2) the patented lid's bottom includes two separate semicircular flanges, whereas the bottom of Mishan's lid has a single flange that comprises a continuous circular wall. The court concluded that it cannot be said by any measure that the resemblance between the two lids is such as to deceive an ordinary observer, inducing him to purchase one supposing it to be the other. Thus, the court decided it did not need to proceed to step two, which was good for Mishan because the court held that Mishan could not rely on prior art in its Rule 12(c) motion when that prior art was attached to Mishan's (the movant's) filing.

With the rise of nontraditional venues (such as Amazon's takedown process), this case provides a useful avenue for companies on the receiving end of takedown notices. However, it also highlights the importance of what to include (or not include) in the pleadings and how the available arguments can be limited by the pleadings.

LKQ Corporation et al. v. General Motors Company et al.

For anyone who has not been following design patent litigation for the past few years, in 2024 the *LKQ v. GM* saga brought the first *en banc* Federal Circuit patent decision in over five years. The decision addressed—and revoked—the long-standing *Rosen-Durling* obviousness analysis that had been applied to design patents for decades. In its place, the court said the four *Graham* factors—a test historically applied to assess the obviousness of utility patents—should apply to design patents, although the court left the challenge of determining precisely how the utility patent test would apply to design patents to later cases. 2025 has yet another installment in the *LKQ v. GM* saga—this time pertaining to patentability.

The case originally started when LKQ initiated a declaratory judgment action against GM regarding two of GM's design patents: U.S. Design Patent Nos. D818,406 (the "D'406 patent") and D828,256 (the "D'256 patent"). LKQ was once a licensed repair part vendor for GM. But after renewal negotiations fell through in early 2022, GM informed LKQ that the parts LKQ was selling were no longer licensed and therefore infringed GM's design patents. In response, LKQ sought a declaratory judgment that it did not infringe and that the patents are invalid.

Of relevance to this year's decision, LKQ argued that the patents are directed to unpatentable subject matter (and therefore invalid) because they cover only a portion of a final product. Both of the patents at issue claim the ornamental design for a front vehicle fender, which is undisputably part of a larger vehicle. 35 USC § 171 provides that "[w]hoever invents any new, original and ornamental design for an article of manufacture may obtain a patent therefor, subject to the conditions and requirements of this title." Based on the fact that the two patents are directed to only the fender (rather than the complete vehicle), LKQ

District Court Decisions: Design Patent Highlights *continued*

argued that (1) the designs are not applied to an "article of manufacture" as the fender is not complete in itself, and (2) GM invented a full car, so the patents referencing only the fender of the car do not disclose all material aspects of GM's invented design but only a "fragment of a design." GM moved for summary judgment as to both of these patentability challenges.

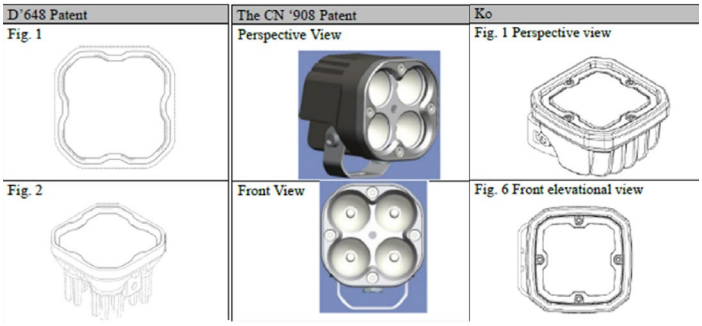
The court found that both of LKQ's arguments make the same critical and flawed assumption: that a design patent is invalid as to a component part. The court held that these arguments were foreclosed by binding law. First, with regard to LKQ's article of manufacture argument, the court said the Supreme Court has held that the fact that a component is later "integrated into a larger product" does not mean that it is not an article of manufacture. Second, with regard to LKQ's fragment of a design argument, the court said the Federal Circuit has explained that design patents can claim the complete product or only a portion of a product. Thus, the court granted GM's motion for summary judgment that the claims are not directed to unpatentable subject matter under 35 USC § 171.

This decision confirms the long-standing precedent that design patents are not improper if they claim a part or component of a larger article.

Diode Dynamics, LLC v. 5DLight, Inc.

This is one of the first cases to assess design patent obviousness under the four *Graham* factors. The case originally began when Diode Dynamics filed a complaint against 5DLight alleging that 5DLight's aftermarket automotive lighting product infringes its U.S. Design Patent No. D974,648 (the "D'648 patent"). 5DLight responded that it does not infringe and that the patent is invalid. The D'648 patent is entitled "LED Lamp Bezel" and claims "the ornamental design for a LED lamp bezel, as shown and described."

Diode Dynamics moved for summary judgment that 5DLight's assertion of obviousness under Section 103 fails as a matter of law. 5DLight's Section 103 argument was that the D'648 patent would have been obvious in view of Chinese Design Patent No. CN304206980 ("CN '980") and U.S. Design Patent No. D735,909 ("Ko"). 5DLight's argument was that a designer of ordinary skill would have combined Ko's edge detailing with the overall shape disclosed in CN '980 to produce a design substantially similar to the D'648 patent. Images of the two prior art references and the patented design are shown below.



Looking first to the two prior art references, the court found that CN '980 discloses a generally four-sided LED bezel design, while Ko discloses a vehicle lamp with flared, beveled edges and inset straight-edged center segments. The court found that while both CN '980 and Ko qualify as analogous art, they differ substantially in both geometry and visual impression. For example, the court stated that Ko's flared corners and stepped facets interrupt the proportional symmetry of CN '980's bezel. The court also found that nothing in the record suggests that these styles were commonly combined or visually compatible.

District Court Decisions: Design Patent Highlights *continued*

Turning to the asserted patent, the court found that the patented design diverges from both prior art references. For example, it lacks the aggressive fins and angular embellishments of Ko and the smooth contours of CN '980. Instead, it features flat outer edges, distinctive beveled corners, and recessed center portions on each side—elements that neither of the prior references alone disclose. The court also found that 5DLight offered no record-supported reason why a designer would have been motivated to merge aspects of Ko and CN '980 to arrive at the patented design. Because of the differences between the patented design and the prior art and the lack of a motivation to modify the prior art, the court found that no reasonable fact finder could find the claim obvious. The court thus granted Diode Dynamics' summary judgment motion that the patent was not obvious.

As one of the first cases to apply the four *Graham* factors—which have historically been applied to utility patents—to a design patent, this case is certainly one to read and understand. Although the majority of the legal section cites to utility patent cases, the decision sets forth a framework that other courts may follow for applying the *Graham* factors to design patent claims.

ITC Enforcement and Design Patent Trends Through 2025

BY: IVY CLARICE ESTOESTA

In 2025, design patent enforcement activity at the U.S. International Trade Commission (ITC) remained low but notable. Only two Section 337 disputes involving at least one design patent reached at least an Initial Determination: *Certain Exercise Equipment and Subassemblies Thereof* (Inv. No. 337-TA-1419) and *Certain Women's Flats with Colored Outsoles Thereof* (Inv. No. 337-TA-1428). Inv. No. 337-TA-1428 was the sole dispute involving at least one design patent that reached a Final Determination. The decisions underscore that investigations are more likely to result in remedial orders when at least one design patent is asserted.

Design Patent Enforcement Trends

An analysis of cases reaching a Final Determination between 2015 and 2025 reveals that cases involving a design patent continue to obtain a remedial order at a significantly higher success rate than do utility patents.

From 2015 to 2025, the ITC terminated 429 Section 337 investigations, with 226 cases reaching a Final Determination of violation or no violation. The Commission found a violation and issued remedial orders in 132 of those cases.

ITC Enforcement and Design Patent Trends Through 2025 *continued*

Of the investigations that went to Final Determination:

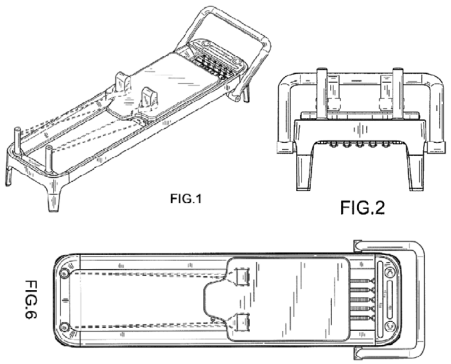
- General Exclusion Orders (GEOs) were issued in 61% of the investigations asserting at least one design patent, compared to 12% for Section 337 investigations asserting utility patents only.
- Limited Exclusion Orders (LEOs) were issued in 39% of investigations asserting at least one design patent, compared to 44% for Section 337 investigations asserting only utility patents.
- Cease and Desist Orders (CDOs) were issued in 57% of the investigations asserting at least one design patent, compared to 41% for Section 337 investigations asserting only utility patents.

Overall, from 2015 through 2025, the Commission found a Section 337 violation in 83% of investigations reaching Final Determination and asserting a design patent, compared to only 56% of investigations asserting either just utility patents or unfair acts.

Broken Lines Can Present Big Breaks at the ITC

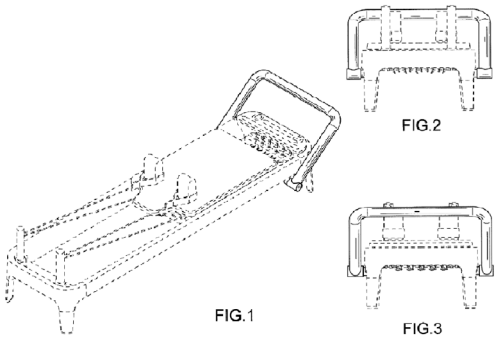
The Commission issued a remedial order in the sole design patent case that terminated in 2025: *Certain Exercise Equipment and Subassemblies Thereof* (Inv. No. 337-TA-1419). Complainant Balanced Body asserted one utility patent and two design patents: U.S. Design Patent No. D659,205 ("D'205 patent") for a "Reformer Exercise Apparatus" and U.S. Design Patent No. D659,208 ("D'208 patent") for a "Reformer Exercise Apparatus Footbar." The asserted design patents covered the same product, Balanced Body's Allegro 2 Reformer, but each one used a different combination of solid lines and broken lines to cover different embodiments of the Reformer design.

The Commission issued an LEO as to the claim of the D'205 patent. In that patent, nearly the entire design for a Reformer Exercise Apparatus is presented in solid lines; only the rope and double loop elements are presented in broken lines and therefore form no part of the claimed design.



Asserted Design Patent – D659,205

The Commission, in contrast, issued a GEO as to the claim of the D'208 patent, noting that all named respondents were found in default and a violation by at least one respondent had been shown. In that patent, almost the entire design is presented in broken lines—only the footbar element is presented in solid lines and is therefore the only element that forms part of the claimed design.



Asserted Design Patent – D659,208

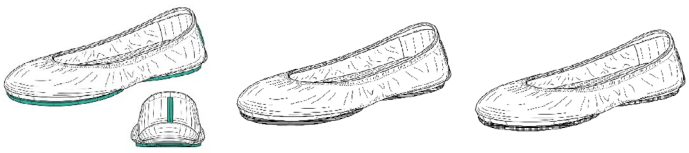
ITC Enforcement and Design Patent Trends Through 2025 *continued*

The Initial Determination in *Certain Women's Flats with Colored Outsoles Thereof* similarly illustrates the potentially favorable impact that broken lines can have in a Section 337 investigation. There, complainant Gavrieli Brands initially asserted a family of seven design patents, each covering different ornamental aspects of Gavrieli's Tieks shoe.

Gavrieli then withdrew two patents, narrowing the family of asserted design patents to just five: U.S. Design Patent Nos. D688,853 ("D'853 patent"), D844,951 ("D'951 patent"), D681,927 ("D'927 patent"), D681,928 ("D'928 patent"), and D686,812 ("D'812 patent").

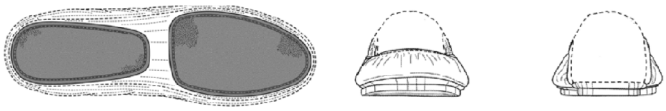
The D'853 patent, unlike the other asserted patents, presents three embodiments of the entire shoe in solid lines. The D'853 patent describes the stripes in Embodiment 2 as a blue color, such as Pantone PMS 3242-3278, PMS 2905-2995, and 7453C-7472C, and the checkered pattern in Embodiment 3 as the blue color Pantone 7466C.

Asserted Patent – D688,853



Embodiment 1 | Embodiment 2 | Embodiment 3

D'928 | D'927



D'812 | D'951

The administrative law judge (ALJ) determined that Respondents Piergitar, Bingxin Qingfeng, and tb249835650 "infringe the D'853 patent, and by extension, the D'951, D'927, D'928, and D'812 patents as well." According to the ALJ, demonstrating infringement of the D'853 patent, which shows a complete shoe with no broken lines, "also demonstrates infringement of the D'927, D'928, and D'812 patents," which show the same shoe but with varying portions shown in broken lines. The ALJ also reasoned that the D'951 patent would be infringed because its only difference from the D'927 and D'928 patents—a slightly altered opening rim—would make no difference to an ordinary observer.

Noting that Gavrieli successfully served all Respondents with the complaint and notice of investigation, but all failed to make any appearance or participate in any way and were therefore unlikely to follow an LEO, the ALJ recommended that the Commission issue a GEO.

A Quiet Year for Design Patent Challenges at the PTAB

BY: IVY CLARICE ESTOESTA

As in 2024, inter partes activity involving design patents at the U.S. Patent Trial and Appeal Board (PTAB) was low in 2025. The PTAB rendered only two inter partes decisions involving design patents. Neither was subject to the bifurcated process introduced by the U.S. Patent and Trademark Office (USPTO) on March 26, 2025. And suggesting that 2026 will also be a quiet year at the PTAB for inter partes review, the PTAB also received only one petition challenging the validity of a design patent, which was filed in September 2025 and remains pending as of December 6, 2025.

An analysis of inter partes PTAB decisions between 2013 and November 2025 reveals that, relative to 2024, the design patent institution rate dropped slightly and the design patent invalidation rate at the final written decision stage remained steady. The current institution rate for design patents is 37%, which is significantly lower than the roughly 64% utility patent institution rate. The design patent claim invalidation rate at final written decisions in 2025 remains at the previous year's 65% rate, with similar cancellation rates for both inter partes reviews (IPRs) and post-grant reviews (PGRs). By comparison, the utility patent claim cancellation rate at the final written decision is approximately 75%.

PTAB Continues Rigorous Approach to Assessing Design Obviousness post-LKQ

The two PTAB inter partes decisions issued in 2025 declined to institute inter partes review of the challenged design patents. These decisions indicate that proving obviousness of a design, at least before the PTAB, remains difficult post-*LKQ*, despite the Federal Circuit's adoption of the more flexible *Graham*-factors framework in place of the former *Rosen-Durling* test to assess design patent obviousness.

A&A Global Imports, Inc. v. Lerman Container Corporation, IPR2024-01138, Paper 7 (PTAB Jan. 22, 2025)

Petitioner A&A Global Imports requested inter partes review of Lerman Container's U.S. Design Patent No. D781,151 S for a jar design. Relying on prior commercial products and three design patents, Petitioner advanced four grounds of obviousness against the patented design.

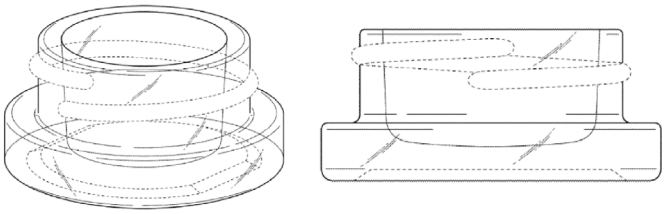
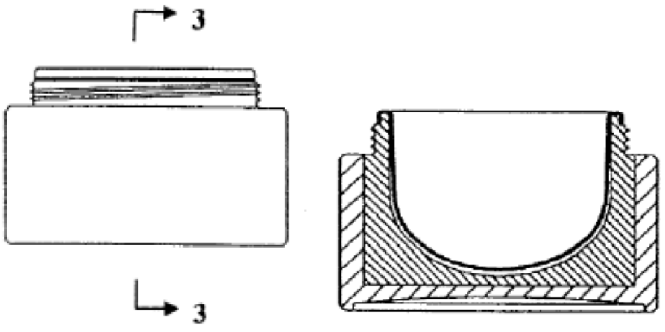


FIG. 1 FIG. 2

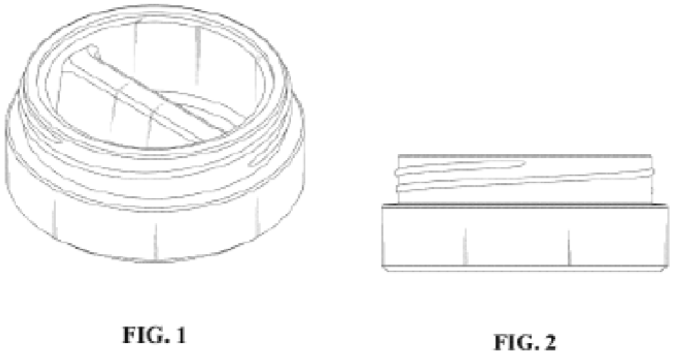
Challenged Patent – D781,151

Asserted Prior Art – Neutrogena Hydro Boost Jar

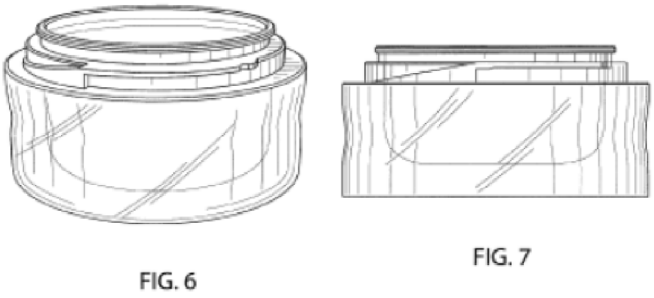


Asserted Prior Art – D578,891

A Quiet Year for Design Patent Challenges at the PTAB *continued*



Asserted Prior Art – D795,705



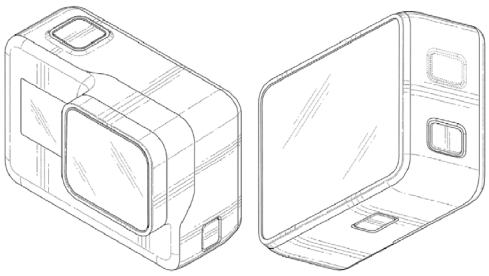
Asserted Prior Art – D634,202

Asserted Prior Art – McKernan Jar

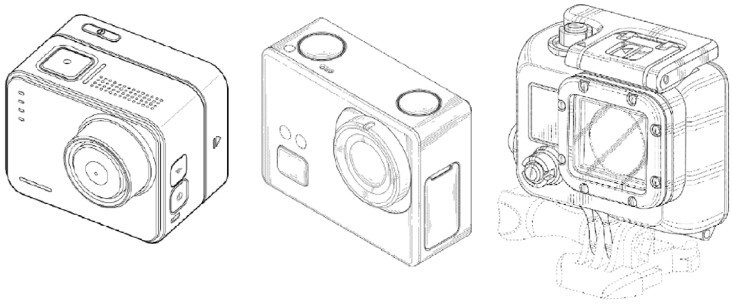
The PTAB denied institution, finding that Petitioner's proposed combinations failed to address several key differences between the claimed design and the cited references: the base-to-neck height proportions and the shape and depth of the interior compartment. The PTAB emphasized that Petitioner did not explain why a designer of ordinary skill in the art would have overlooked these differences or found them so minor as not to affect the overall impression of the jar design resulting from the proposed combinations. According to the PTAB, in the crowded field of jar designs, each of these differences was more than *de minimis* and contributed significantly to the claimed design's overall visual impression.

***Arashi Vision (U.S.) LLC (D/B/A Insta360) v. GoPro, Inc.,* IPR2024-01434, Paper 9 (PTAB Mar. 31, 2025)**

Petitioner Insta360 requested inter partes review of GoPro's U.S. Design Patent No. D789,435 S for a camera design. Petitioner purported to assert six grounds of obviousness (each based on a different primary reference), but the PTAB determined that Petitioner effectively presented at least 24 distinct grounds.



Challenged Patent – D798,435



Asserted Patent – KR Pub. No. 300792432

Asserted Patent – D750,686

Asserted Patent – D702,747

A Quiet Year for Design Patent Challenges at the PTAB *continued*

The PTAB declined to institute inter partes review. For the first purported ground, which relied on various web pages that Petitioner treated collectively as a single primary reference, the PTAB found that Petitioner failed to demonstrate that the web pages were publicly available prior to the critical date. One web page lacked a corresponding Wayback Machine affidavit, and the web pages that did include affidavits appeared to have different content than the document attached to the corresponding Wayback Machine affidavit. The PTAB also criticized Petitioner's treatment of the various websites as a single prior art reference as contrary to the requirement that "a primary reference needs to be something in existence—not … something that might be brought into existence by selecting individual features from prior art and combining them."

For the remaining grounds, the PTAB determined that Petitioner had not sufficiently addressed each asserted primary reference's overall visual similarity to the claimed design. Instead, Petitioner focused on certain design features, which the PTAB found indicative of hindsight reconstruction of the claimed design rather than the objective teachings of the cited references. Petitioner failed to address all differences between the claimed design and each asserted primary reference and did not adequately explain why a designer of ordinary skill would modify each asserted primary reference with any of the cited secondary references.

New PTAB Institution Procedures Pose New Hurdles to Design Patent Challenges

Beyond the substantive developments reflected in the pair of PTAB decisions, 2025 also marked notable procedural changes to the PTAB institution phase for challenging U.S. patents, including design patents. In March 2025, the USPTO's acting director issued a memorandum implementing interim procedural changes applicable to IPR and PGR challenges where the deadline for a patent owner's preliminary response falls after March 26, 2025.

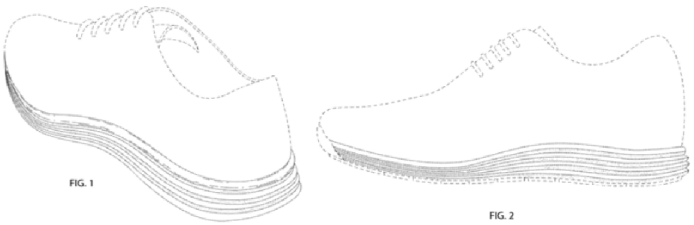
Under the interim procedures, the patent owner may file a discretionary denial brief addressing factors such as the party's settled expectations, including the length of time the patent has been in force. A petitioner may file an opposition brief, which is due on the same date as the patent owner's preliminary response. The USPTO Director, in consultation with at least three PTAB judges, then evaluates whether discretionary denial is warranted. If the discretionary factors weigh against denial, the USPTO Director would refer the petition to a three-member panel of PTAB judges for consideration of the merits and other nondiscretionary factors, followed by a reasoned decision on institution.

In October 2025, the new USPTO Director issued a memorandum refining the interim procedural changes. The updated approach limits institution decisions to summary notices and refers petitions to at least one PTAB judge for detailed treatment only when the Director deems it appropriate. In all other cases, the Director, in consultation with at least three PTAB judges, determines whether to institute proceedings based on discretionary considerations, the merits, and nondiscretionary considerations.

The sole design patent challenge filed in 2025, which involves Cole Haan's U.S. Design Patent No. D768,969 for a shoe midsole, is the first design patent challenge subject to the October 2025 procedures. Cole Haan

A Quiet Year for Design Patent Challenges at the PTAB *continued*

timely filed its discretionary denial brief and has not yet filed its preliminary response. As of December 6, 2025, Petitioner Top Glory Trading Group has not yet filed its opposition brief.



Challenged Patent – D768,969

Taken together, the PTAB's recent institution denials and the USPTO's 2025 procedural changes reflect an increasingly demanding environment for design patent challengers, where both the substantive merits and the procedural posture of a petition carry heightened significance.

2025 Design Year in Review—Global Law and Policy

BY: DANIEL A. GAJEWSKI

Intergovernmental cooperation and focus helped advance design practice around the world in 2025. Some of the world's leading intellectual property (IP) offices came together for the 10th year of ID5 meetings, the Hague international design system turned 100, and the European Union started implementing its largest design reform in decades. Jurisdictions continued to focus on improving design protection for modern graphical user interface (GUI) designs and began to experiment with artificial intelligence (AI). Here's our annual rundown of some of the more significant updates to affect design law and practice in 2025.

The ID5

The ID5 is a cooperative framework among five of the world's major IP offices, focusing on industrial design protection. It aims to "promote and further the development of user-friendly, highly-efficient and interoperable industrial design protection systems." Its members include the offices responsible for administering industrial design protection in China, the European Union, Japan, South Korea, and the United States.

In 2025, the ID5 initiated a new project to develop a user guide for digital design applications. This follows progress in several countries (e.g., Japan, Korea) in recent

2025 Design Year in Review—Global Law and Policy *continued*

years to update or clarify their systems to better protect GUI designs. With the notable exception (so far) of the United States, the design protection systems in many significant markets have modernized to protect digital designs like GUIs in their own right, not as a subordinate portion of another product. The ID5's effort here will be twofold: to collect the relevant regulations from its partner offices and to produce a guide for users to show how to effectively seek GUI design protection in compliance with the various requirements. China and the EU are co-leading this effort, and it may have been part of the impetus for China's release on December 5 of its own updated guidelines for GUI applications, discussed in more detail in this article.

In 2025, the ID5 also initiated a study on the challenges for design systems posed by new technologies like AI and the metaverse. Its goal is to provide information and support that can help guide each ID5 office in accommodating and adapting to these challenges. This initiative was on full display at the ID5's annual meeting this past October at the United States Patent and Trademark Office (USPTO) in Alexandria, Virginia (in which your correspondent participated on behalf of the Intellectual Property Owner's Association (IPO)). Hot topics relating to AI in the design world mirror those in the utility world but are likely to have different impacts. Two aspects that seem to be at the forefront of this ID5 initiative—which is being led by Japan—are the specter of AI inventorship in designs and the impact of AI-generated prior art on the novelty of designs.

Given that its membership includes the top IP offices in the world, the priorities of the ID5 can be a bellwether for global design development, and it is worth watching as these and other initiatives progress into 2026.

The Hague International Design System

The Hague International Design System turned 100 years old in 2025. The World Intellectual Property Organization (WIPO) held a symposium to celebrate, at which Sterne Kessler's own Tracy Durkin spoke about the development and future of the system. The Hague system's growth from 11 founding signatories to its current 82 members covering 99 countries mirrors the growth of industrial design's importance to the global economy. The Hague system helps protect the investment and innovation that drives this growth by providing uniform processes and a centralized way to obtain protection in multiple jurisdictions at once. What was once a small European-centric system now finds that filers from China, the United States, and South Korea are the heaviest users. Though Europe is still the most common jurisdiction that filers designate for protection, it is closely followed by the United States, China, and Japan.

In 2025, the Hague system gained two new members: Saudi Arabia and Uzbekistan. Looking ahead, jurisdictions such as Zimbabwe, Kazakhstan, the Philippines, Thailand, Peru, the Eurasian Patent Organization (EAPO), and South Africa are expected to join in the coming years.

For further reading about the Hague system's development and impact on global design law harmonization, follow this link: Growth, Harmonization in Focus as Hague System Turns 100.

2025 Design Year in Review—Global Law and Policy *continued*

European Union

In 2025, the European Union Intellectual Property Office (EUIPO) was busy implementing design reform legislation that was adopted in late 2024. The first phase began in May. Among other changes, it enacted significant provisions that bolstered the standing of GUI designs by confirming that they can be protected as a "product" under the law and by explicitly encompassing *animation* as an aspect of a protectable design. This continues a global trend toward treating GUI designs as protectable in their own right, not necessarily tied to a display screen or other device.

On the other hand, the new changes diminished the protection available for certain categories of products, under the so-called repair clause. Going forward, design protection will no longer apply to component parts of a complex product that are used to restore its original appearance for repair purposes. This does not necessarily outright preclude design protection for component parts—for example, a registration may still apply against infringers that are not using the product for repair purposes—but it creates a significant gap in the value of design protection for such components.

The design reforms eliminated the requirement that all designs in a multi-design application be categorized in the same Locarno class, providing greater flexibility and value to applicants. It even updated the terminology of EU designs. No longer is design registration known as a Registered Community Design (RCD)—it has been rebranded as a *European Union* Design (EUD).

Phase two of the reform legislation implementation will take place in 2026, with secondary legislation expected by July to remove the current seven-view limit on drawing representations. This is a welcome change that will improve the usefulness of the EU's already well-regarded design protection system.

United States

In last year's review, we noted that the United States continued to lag behind other significant jurisdictions in how it protects GUI designs and asked if 2025 would be the year that the USPTO began to catch up. Unfortunately, it was not. The USPTO had received comments from the public in 2024 encouraging it to modernize examination guidelines to acknowledge digital designs as eligible for design patent protection regardless of a display screen, like in the EU. But the USPTO took no action and sent no signal to the public about whether this issue remains a priority to the USPTO, as it does to its stakeholders.

The USPTO did, however, take steps toward modernizing its design examination process. It launched DesignVision, an AI-powered image search tool for examiners. This tool is incorporated into design examiners' workflows and can use images of the claimed design as input to search industrial design collections of the United States and other countries. The tool was launched in late 2025, so its full effects have yet to be felt by applicants. It is possible that it will help examiners find better prior art and make stronger novelty and obviousness rejections. Though this may increase the cost and complexity of design prosecution, it has the potential to lead to more robust design patents if the tool truly helps examiners identify the best prior art for evaluating the merits of a claimed design.

2025 Design Year in Review—Global Law and Policy *continued*

China

As mentioned earlier, in December 2025, China released updated guidelines for GUI design applications. The guidelines explain what makes a GUI design protectable: It must be displayed on or linked to a product and relate to human-computer interaction. Game interfaces are specifically excluded from protection. The guidelines provide examples of designs that are and are not protectable. For example, background wallpaper, boot screens, or certain screen layouts are not protectable because they are considered unrelated to user interaction. A stand-alone icon may be unprotectable if it does not have any evident context or connection to a product.

These new guidelines suggest that China's GUI protection will develop somewhat differently from the EU's, which appears more expansive and flexible, and in which the GUI itself can be considered a product. But the guidelines are new, and it remains to be seen how they will be applied both by applicants and by examiners as 2026 progresses. In any event, it can be taken as a positive sign that China is expending the time and effort to develop clear standards that try to address the needs of its stakeholders in the GUI area.

Canada, Qatar, the United Kingdom, and Australia

In 2025, Canada began accepting applications for designs directed toward buildings and structures, much like Japan did in 2020. And Qatar launched its new design registration system, featuring a 12-month grace period and plans for fairly rapid examination and registration.

Looking ahead, the United Kingdom appears set to modernize its design framework. In late 2025, it completed a consultation seeking public input on a variety of design topics, including clarifying deferment of publication provisions and improving protection for GUI designs and animated designs, among other things. Australia also continues work on its design reforms, which include a focus on improving protection for GUI and virtual designs.

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All told, 2025 was another year of growth and change for industrial design systems around the world. Ongoing work to advance protection for modern designs in the digital, virtual, and GUI space continued and promises to make 2026 another eventful year. The world of design continued to grow closer, with the ID5's leadership and the growth of the Hague system. As 2024's Design Law Treaty moves toward ratification, this harmonization is expected to continue in 2026. There will also be challenges. A hot topic on many people's minds at design gatherings and meetings throughout 2025 was how AI will affect design protection. Can creation of a protectable design be assisted by AI? Or entirely created by AI? Should AI-generated designs be protectable or considered valid as prior art? These and more questions will at least be pondered, if not answered, in 2026.

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About Sterne, Kessler, Goldstein & Fox

Based in Washington, D.C., Sterne Kessler is one of the world's leading intellectual property law firms, specializing in the full range of IP services globally. We are passionate about IP law, with a unique combination of legal acumen and technical experience across both prosecution and litigation. With more than 200 attorneys, patent agents, and technical specialists across the firm, we are committed to delivering practical, business-driven solutions that support our clients' innovation and long-term objectives. For over 45 years, we have been a trusted partner to the world's most innovative companies and inventors, helping them protect, enforce, and maximize the value of their IP around the globe.

Our highly integrated IP practice focuses on patent prosecution and strategic counseling, post-grant proceedings, litigation in federal district and appellate courts and before the International Trade Commission, and trademark prosecution and enforcement. Our clients include Fortune 500 companies, entrepreneurs, start-ups, inventors, venture capital firms, and universities that are making discoveries, building brands, and creating inventions that impact our daily lives.

For more information about the firm and our services, visit sternekessler.com or follow us on LinkedIn to get the latest news and updates in IP.

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