

A hand in a dark suit jacket is shown from the wrist up, pointing upwards with the index finger. The years 2021, 2022, 2023, 2024, and 2025 are overlaid on the hand, with 2024 being the largest and most prominent. The background is a blurred outdoor scene with trees and a bright sky.

BUSINESS IN 2024

WEEKLY WEBINAR SERIES



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TODAY'S AGENDA

Gabe Oberfield – (12:00PM-12:05PM)

- Agenda

Marc Krawiec – (12:05PM-12:15PM)

- Artificial Intelligence in Regulated Industries

DJ Nugent – (12:15PM-12:25PM)

- Recent Developments in the World of Sports: Opportunity for a Refresher on Internal Revenue Code Sections 409A and 457(f)

Victoria Okraszewski – (12:25PM-12:35PM)

- Tackling Cyber Risks in the Manufacturing Industry

Brendan Goodwine – (12:35PM-12:45PM)

- Updates in Patent Infringement and Design Patent Law from the Federal Circuit

Artificial Intelligence in Regulated Industries



Marc J. Krawiec

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Overview

- Sources of AI Guidance and Principles
- Uses of AI in the Regulated Industries
- Laws, Regulations, and Regulatory Proposals
- Operational Considerations and Examples
- Conclusion

Sources of AI Guidance and Principles

- White House
- NIST/Department of Commerce
- FTC
- NAIC/State Regulators
- SEC/FINRA
- FDIC/OCC/Federal Reserve
- FDA

Uses of AI/ML In Regulated Industries

- Data Processing/Claims Administration
- Underwriting/Pricing
- Marketing
- Fraud Detection
- Customer Service/Call Center/Chat

Laws, Regulations, Proposals and Guidance

White House Blueprint for an AI Bill of Rights

October, 2022

- Safe and Effective Systems
- Algorithmic Discrimination Protections
- Data Privacy
- Notice and Explanation
- Human Alternatives, Consideration and Fallback

Executive Order on Safe, Secure and Trustworthy Artificial Intelligence

October, 2023

- White House AI Council
- Development of Standards for AI Safety and Security
- Protection of Privacy
- Advancing Equity and Civil Rights
- Consumer Protection
- Regulation of Government's Use of AI

National Association of Insurance Commissioners

- “Principles on Artificial Intelligence” (August, 2020)
 - “FACTS” Model
 - Fair and Ethical
 - Accountable
 - Compliant
 - Transparent
 - Safe and Secure
- Model Bulletin on Use of Artificial Intelligence Systems by Insurers (December 2023)
 - Legislative authority

New York Department of Financial Services

- Circular No. 1 (2019) – Use of External Consumer Data and Information Sources in Underwriting for Life Insurance
 - Accuracy and reliability of external data sources
 - Transparency concerning decisions
- Proposed Circular (2024) – Use of Artificial Intelligence Systems and External Consumer Data and Information Sources in Insurance Underwriting and Pricing

Louisiana Department of Insurance

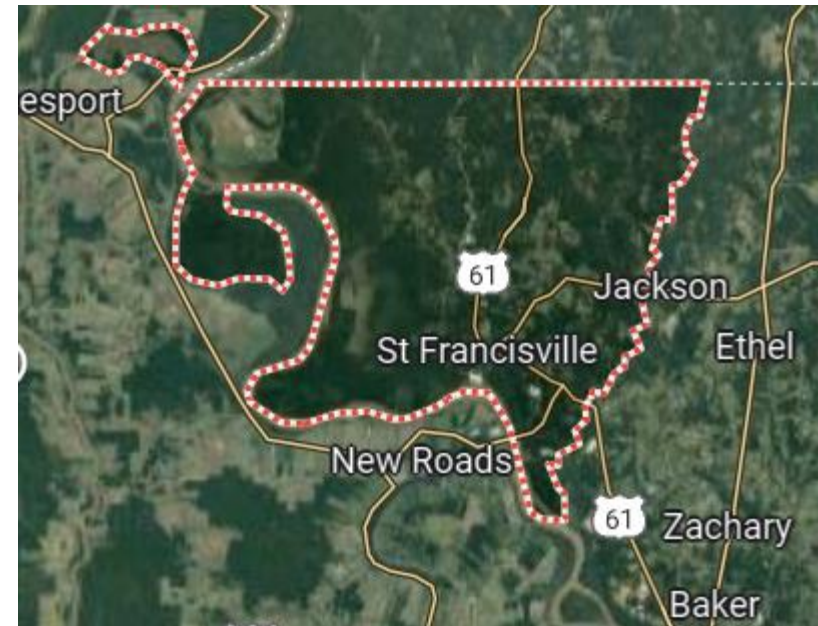
Bulletin 2023-10 (January 25, 2023)

- Policy Holder Bill of Rights – policy holders have the right to be treated fairly, and free from unfair or deceptive acts or practices (R.S. 22:41)

When Things Go Wrong West Feliciana Parish, Louisiana



- Population: 15,000



Louisiana Department of Insurance

Bulletin 2023-10 (January 25, 2023)

- “Crimes committed at Angola State Penitentiary...within the walls of the prison...do not accurately reflect crime risks in St. Francisville and other areas of West Feliciana Parish outside of the prison.”
- “I urge and request all insurers writing property and casualty insurance coverage in Louisiana to properly evaluate and underwrite properties located in St. Francisville and West Feliciana Parish...and treat them fairly pursuant to La. R.S. 22:41.”

FTC Enforcement

- FTC v. RealPage
- Algorithmic Destruction
 - Cambridge Analytica
 - Everalbum

Conclusions

- Be Transparent when Using AI
- Explainable Outcomes
- Non-Discrimination
- Internal Controls
 - Documented Policies and Procedures
 - Documented Governance Processes
 - Reporting to Management and Regulators
- Relationships with Suppliers
- Relationships with Customers

Recent Developments in the World of Sports: Opportunity for a Refresher on Internal Revenue Code Sections 409A and 457(f)



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Recent Developments

Shohei Ohtani 2023 Contract with Los Angeles Dodgers

- 10-year, \$700 million
- \$2 million per year during the 10-year period he has agreed to play, deferring \$68 million per year
- \$680 million of deferred compensation payable between 2034 and 2043 without interest

High Profile College Football Coach Contract Buy-Outs

- Amounts will be negotiated by coaches
- Buy-outs recently reported
 - \$76 million
 - \$21.5 million
 - \$16.9 million

Internal Revenue Code Section 409A

- Mr. Ohtani example
- Applies to all forms of “deferred compensation” unless exempted
 - Potentially, any compensation earned in one year and paid in a later year
 - Both for-profit and tax-exempt entities
 - Cannot be “funded”
- Find an exemption or comply
- 409A violation → 20% excise tax on the employee plus interest penalty
- Exemptions
 - Certain kinds of severance pay
 - Stock options if certain requirements met
 - Qualified retirement plans & “eligible” deferred compensation plans
 - Short-term deferral exemption

Internal Revenue Code Section 409A ctd.

- If not exempt:
 - Must have 1 of 7 permitted “trigger events”
 - Payment can’t be accelerated
 - Once time & form of payment is elected, can’t be changed (with limited exceptions)
 - Employee cannot control the time of payment
 - If Code Section 409A is complied with, deferred compensation is not includible in income until the tax years in which the amounts are actually paid (however, exception for FICA)

Internal Revenue Code Section 457(f)

- College football coach buyout examples
- Applies to unfunded deferred compensation plans of state governments, local governments, their agencies, and nongovernmental tax-exempt organizations
- The present value of deferred compensation subject to Section 457(f) is included in the gross income of an employee when (1) the employee has a legally binding right to the compensation, or, if later, (2) when the compensation is no longer subject to a substantial risk of forfeiture
 - In contrast to Code Section 409A, payments subject to Code Section 457(f) are includible in income even if payment is not made until a later date
- Certain exclusions from Code Section 457(f), including:
 - Short-term deferrals
 - Bona fide severance pay plans

Internal Revenue Code Section 457(f) ctd.

Bona Fide Severance Pay Plan Exception:

- involuntary termination of employment (or a good reason resignation by the employee if certain requirements are met)
- payments cannot exceed two times the employee's annualized compensation (Code Section 409A provides an additional requirement that the payments cannot exceed twice the Code Section 401(a)(17) limit)
- payments must be made no later than the end of the second year following the year of termination of employment
- If no other exceptions can be met, it is crucial to satisfy the short-term deferral exception to avoid adverse tax consequences under Code Section 457(f)

Tackling Cyber Risks in the Manufacturing Industry



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Cyberattacks in the Manufacturing Industry

- Manufacturers have a heavy reliance on advanced technology.
- Manufacturers are implementing Artificial Intelligence to aid with production and avoid supply chain disruptions.
- Manufacturing operations of all sizes are a desirable target for threat actors and thieves hoping to gain access to vast repositories of sensitive information, intellectual property and customer financial records.
- IBM X-Force Threat Intelligence Index 2024 – 45% of attacks were due to malware.

Cybersecurity and Data Privacy Concerns

- Ransomware
- Phishing
- Supply Chain Attacks
 - Software Supply Chain Attacks
 - Firmware Supply Chain Attacks
 - Hardware Supply Chain Attacks

What Manufacturers Can Do To Protect Themselves

- Implement a comprehensive data protection and security program.
- The National Institute of Standards and Technology (“NIST”) provided guidance on identifying, assessing and responding to cybersecurity risks.
- Comply with the Department of Defense’s Cybersecurity Maturity Model Certification 2.0 program.

Updates in Patent Infringement and Design Patent Law from the Federal Circuit



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What is Amazon's APEX Program?

SUCCESS STORIES

What brands are saying

◀ 01/06 ▶

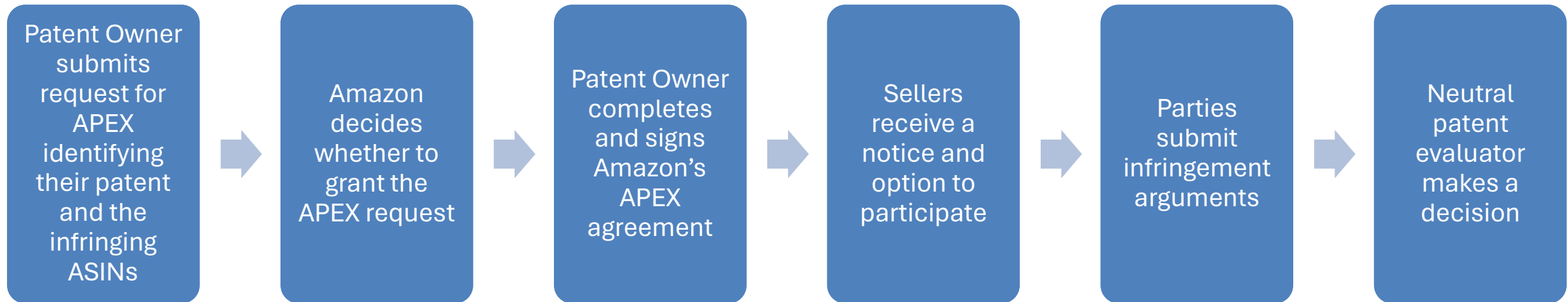
“

Things are different with the Amazon Patent Evaluation Express. It is a simple and affordable process with a clear end point that has been effective in enforcing our patent. APEX is a game changer for small businesses.

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<https://brandservices.amazon.com/progressreport>

What is Amazon's APEX Program?

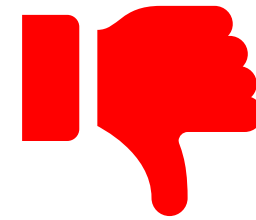


Pros and Cons of Amazon's APEX Program



Pros:

- Relatively inexpensive
- Quick resolution



Cons:

- Patent owner must be registered in Amazon's Brand Registry
- Only U.S. utility patents
- No damages / attorneys fees

Lighting Def. Grp. owns US Pat. No. 8,668,347

SnapRays, LLC v. Lighting Def. Grp. LLC, No. 2023-1184 (Fed. Cir. May 2, 2024)



(12) **United States Patent**
Ebeling

(10) **Patent No.:** **US 8,668,347 B2**
(45) **Date of Patent:** **Mar. 11, 2014**

(54) **RECEPTACLE COVER**

OTHER PUBLICATIONS

(76) **Inventor:** **Cordell Eldred Ebeling**, Isanti, MN (US)
(*) **Notice:** Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 215 days.

Lowered Recessed Night Light with 10 Watts Dimmable [online]. American Lighting LLC. Retrieved on May 17, 2012, from the Internet: <URL: <http://www.customers.com/American-Lighting-LLC-RNLS-1-all1923.html>>.
Lowered Recessed Night Light with 2x25 Watt LED Dimmable [online]. American Lighting, LLC. Retrieved on May 17, 2012, from the Internet: <URL: <http://www.customers.com/American-Lighting-LLC-RNLS-3-all1927.html>>.
Decoator Combination Tamper-Resistant Nightlight/GFCI, White 1595NTL54WCC4, Datasheet [online]. Legrand. Retrieved on May 17, 2012, from the Internet: <URL: <http://www.legrand.us/ProductsAndSolutions/GFCI/GFCI-Receptacles/Tamper-Resistant-Combination-Nightlight-GFCI-Receptacle/1595NTL54WCC4.aspx>>.
LED Night Light. Datasheet [online]. Feit Electric. Retrieved on May 17, 2012, from the Internet: <URL: <http://www.kingsgreen.biz/pages/nightlights.html>>.
Leviton Glow Guide Night Light. Datasheet [online]. Leviton. Retrieved on May 17, 2012, from the Internet: <URL: http://www.amazon.com/Leviton-Glow-Guide-Night-Light/dp/B000GYP8KY/ref=sr_1_121?ie=home-garden&ie=UTF8&qid=129908596&sr=1-21>.

(21) **Appl. No.:** **13/233,252**

(22) **Filed:** **Sep. 15, 2011**

(65) **Prior Publication Data**
US 2012/0068612 A1 Mar. 22, 2012

Related U.S. Application Data
(60) Provisional application No. 61/383,457, filed on Sep. 16, 2010.

(51) **Int. Cl.**
F21F 33/00 (2006.01)

(52) **U.S. Cl.**
USPC 362/95; 362/641; 362/642; 174/66; 174/67; 220/241

(58) **Field of Classification Search**
USPC 362/95, 85, 276, 640, 641, 642; 43/113; 174/66, 67, 220/241, 242
See application file for complete search history.

(56) **References Cited**
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(Continued)

Primary Examiner — Ali Almi
(74) **Attorney, Agent, or Firm** — Bridget M. Hayden; Dorsey & Whitney LLP

(57) **ABSTRACT**
A cover for an electrical receptacle including a faceplate. The cover also includes a first transmission tab configured to be electrically connected to a first power line of the electrical receptacle and a second transmission tab configured to be electrically connected to a second power line of the electrical receptacle. Additionally, the cover includes a device (such as a light source, circuit, port, or sensor) in communication with the first transmission tab and the second transmission tab.

20 Claims, 31 Drawing Sheets

Impact on Declaratory Judgment Actions

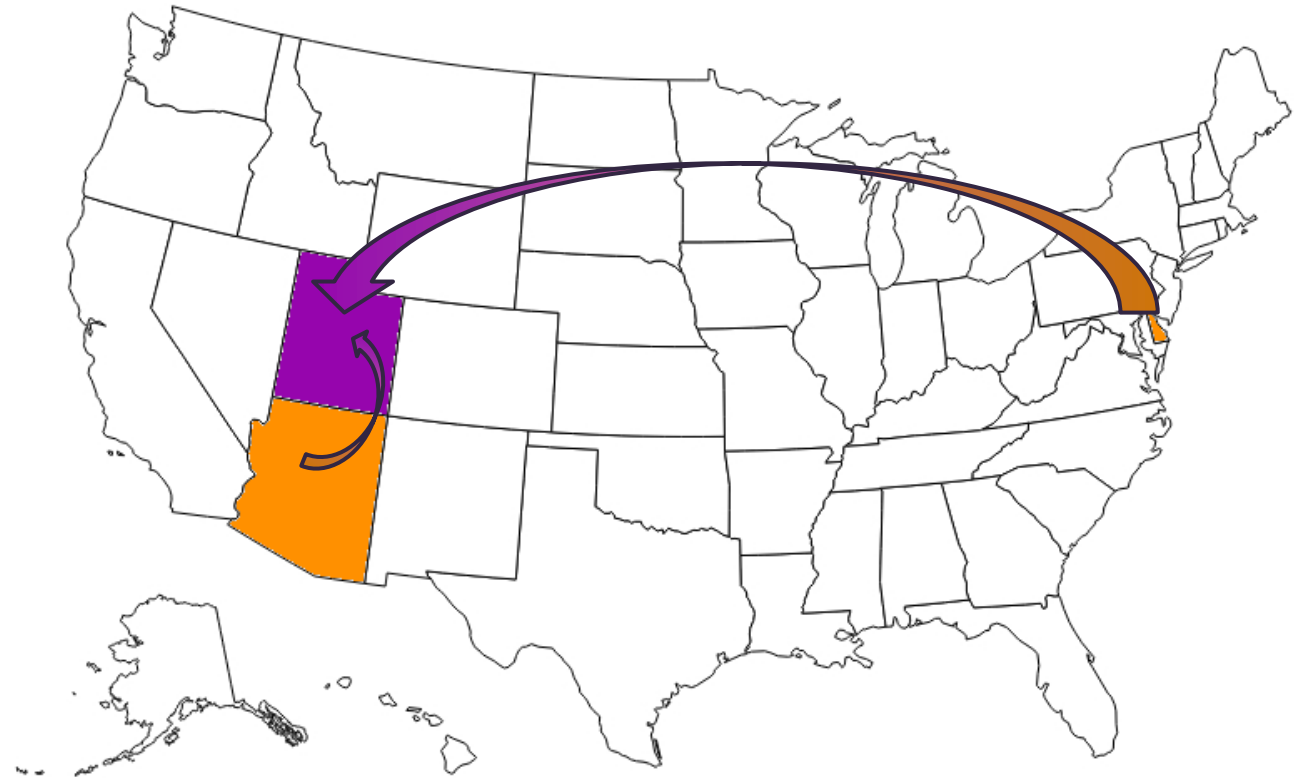
Lighting Def. Grp. LLC

- Initiated APEX proceeding against SnapRays, LLC

SnapRays, LLC

- In response, sued Lighting Def. Grp. in Utah

Federal Circuit: “LDG purposefully directed extra-judicial patent enforcement activities at SnapPower in Utah”



Why is this Important?

Instead of **Lighting Def. Grp. LLC** suing **SnapRays, LLC** on their “home turf” in **Arizona** or **Delaware**, **Lighting Def. Grp. LLC** must now ***defend*** a lawsuit in **SnapRays, LLC** “home turf” in **Utah**



Federal Circuit Overrules Old Test for Design Patents

- 35 U.S.C. 171:

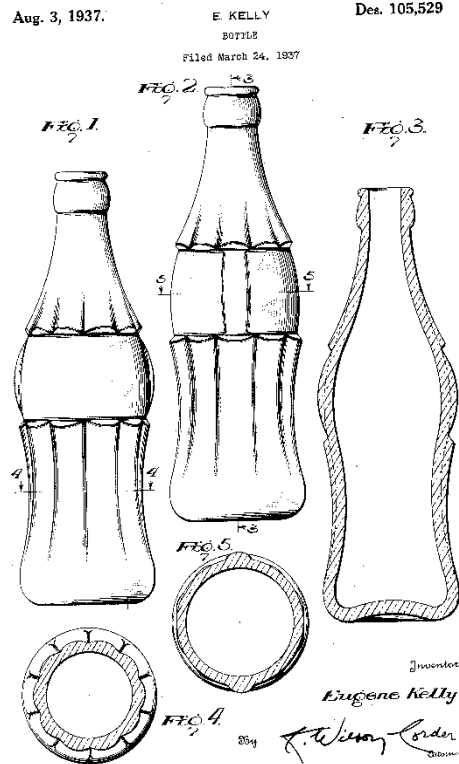
Whoever invents any new, original and ornamental design for an article of manufacture may obtain a patent therefor, subject to the conditions and requirements of this title. The provisions of this title relating to patents for inventions shall apply to patents for designs, except as otherwise provided.

- MPEP 1502:

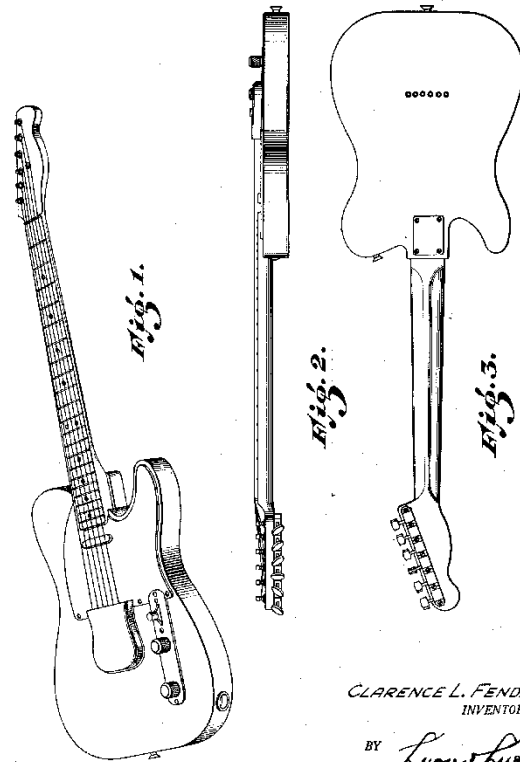
In a design patent application, the subject matter which is claimed is the design embodied in or applied to an article of manufacture (or portion thereof) and not the article itself...The design for an article consists of the visual characteristics embodied in or applied to an article...[and] may relate to the configuration or shape of an article, to the surface ornamentation...or to the combination of configuration and surface ornamentation”

Federal Circuit Overrules Old Test for Design Patents

- Examples:

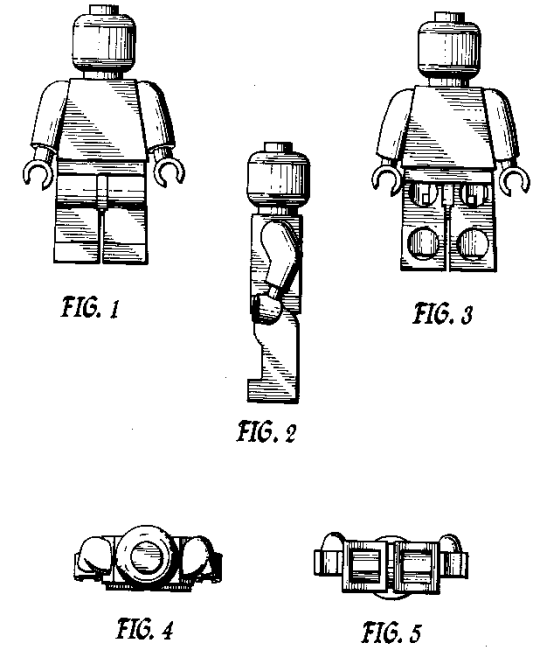


Aug. 14, 1951 C. L. FENDER GUITAR Filed April 23, 1951 Des. 164,227



CLARENCE L. FENDER, INVENTOR.
BY Lyons Lyons ATTORNEYS.

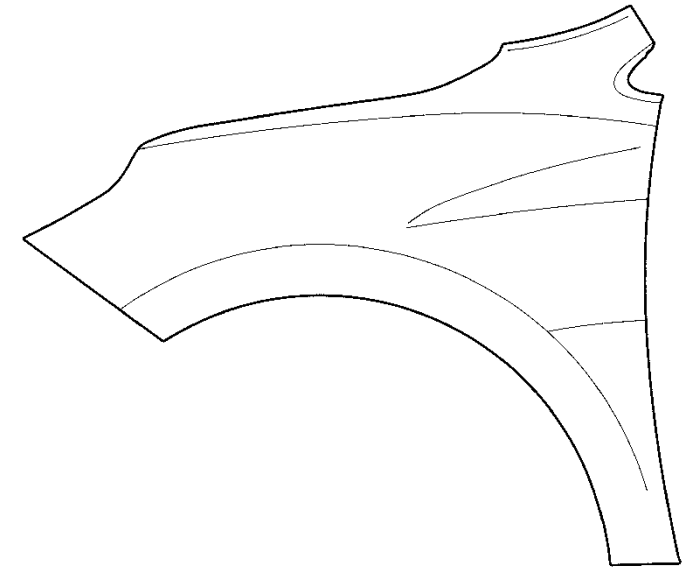
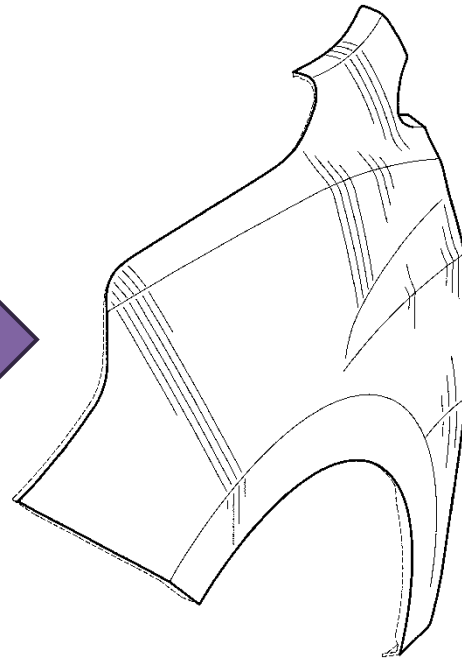
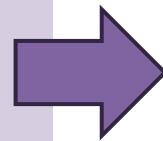
U.S. Patent Dec. 18, 1979 Sheet 1 of 2 Des. 253,711



Federal Circuit Overrules Old Test for Design Patents

- *LKQ Corp. v. GM Global Tech. Operations LLC*, No. 21-2348, slip op. at 15 (Fed. Cir. May 21, 2024) (en banc)

GM owns U.S. Design Patent No. D797,625, which claims a design for a vehicle front fender used in the 2018-2020 Chevrolet Equinox



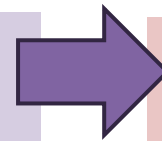
Federal Circuit Overrules Old Test for Design Patents

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Old Rule

Rosen-Durling test

1. Prior art must create “basically the same” visual impression as the claimed design
2. If so, then “other references may be used to modify it to create a design that has the same overall visual appearance”, but only where the other references are “so related” to the primary reference that features in one would suggestion application of those features to the other



Federal Circuit found...

“[This] test for design patent obviousness, in its present form, does not adequately align with *KSR*, *Whitman Saddle*, and other precedent, both in terms of its framework and threshold rigidity. *Rosen-Durling* is out of keeping with the Supreme Court’s general articulation of the principles underlying obviousness, as well as its specific treatment of validity of design patents.”

Federal Circuit Overrules Old Test for Design Patents

- *LKQ Corp. v. GM Global Tech. Operations LLC*, No. 21-2348, slip op. at 15 (Fed. Cir. May 21, 2024) (en banc)

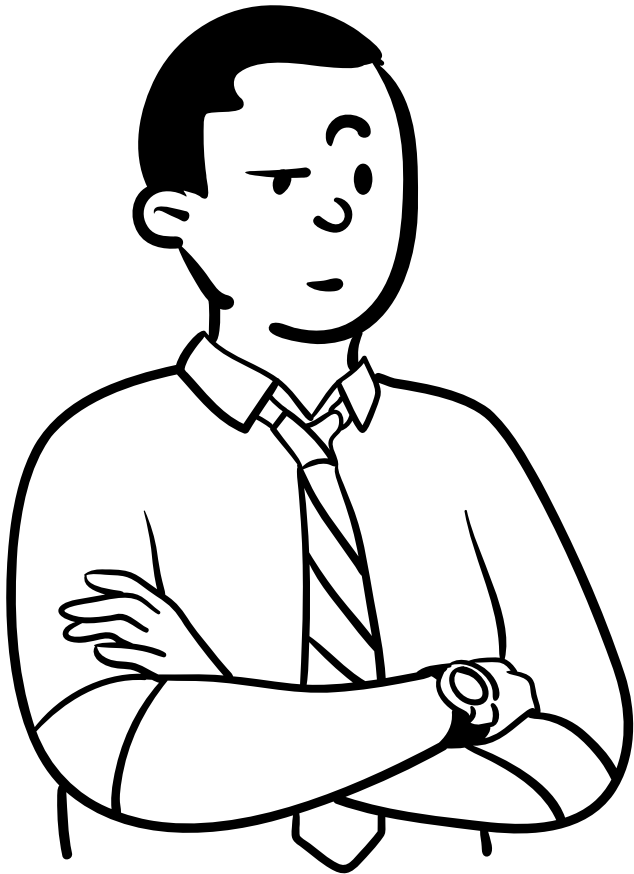
New Rule

1. Determine the “scope and content of the prior art” within the knowledge of an ordinary designer in the field of the design
 - An “analogous art” requirement applies to each reference
2. Determine the differences between the prior art designs and the design claim at issue
3. Resolve the level of ordinary skill in the pertinent art
4. Determine whether the visual impression of the claimed design as a whole is obvious

Federal Circuit found...

- There is no threshold similarity or “basically the same” requirement to qualify as prior art
- “In this opinion, we do not delineate the full and precise contours of the analogous art test for design patents.”
- The secondary references “need not be ‘so related’ such that features in one would suggest application of those features in the other”

Why is this Important?



- Overrules a test that has governed obviousness of design patents for nearly 30 years
- Takes effect immediately and applies to both pending applications and design patents already issued
- Likely to make it more difficult to obtain design patents
- Concerns of hindsight bias
 - With utility patents → cannot combine together different teachings together without some effort
 - With design patents → often easier to combine portions of two different designs

Your Questions



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WORKPLACE 2024

Artificial Intelligence in Regulated Industries

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Recent Developments in the World of Sports: Opportunity for a Refresher on Internal Revenue Code Sections 409A and 457(f)

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Updates in Patent Infringement and Design Patent Law from the Federal Circuit

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New York Employment Law: The Essential Guide

NYS Bar Association Members can buy the book from the bar [here](#).

Non-NYS Bar Association Members can purchase through Amazon [here](#).

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