



Industry & Innovation

# Design Patent

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## Design patent basics

- Term:
  - 14 years from issuance (pre May 13, 2015 applications)
  - 15 years from issuance (post May 12, 2015 applications)
- Design can include configuration/shape of article, surface ornamentation, or a combination of shape and surface ornamentation.

- Claimed with a single claim that references the drawings: “The ornamental design for [the article] as shown.”
- Design patent numbers have a “D” prefix.





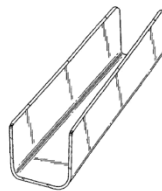


Fig. 1



Fig. 2



Fig. 3

## Design patents compared to utility patents

- Design patent is for an “ornamental design”
- Utility patent is for a “useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof”
- Design patents are much, much easier to get.

### **Design patents: Source of law**

- Like utility patents, design patent are exclusively a creature of federal law.
- 35 U.S.C. §§ 171-173, with §§ 102, 103, 112, and other sections being applicable as well

### **Design patents enabling provision at §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.”

## Design patents requirements

- novelty ← same as for utility patents
- originality
- nonobviousness ← not much of a limit
- ornamental (not dictated by function)
- on a functional article
- enabling disclosure

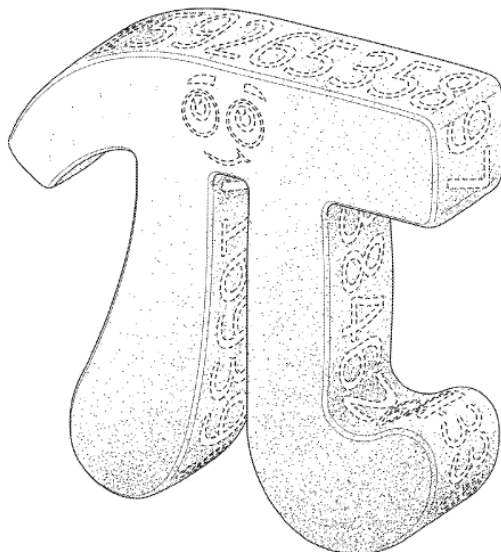
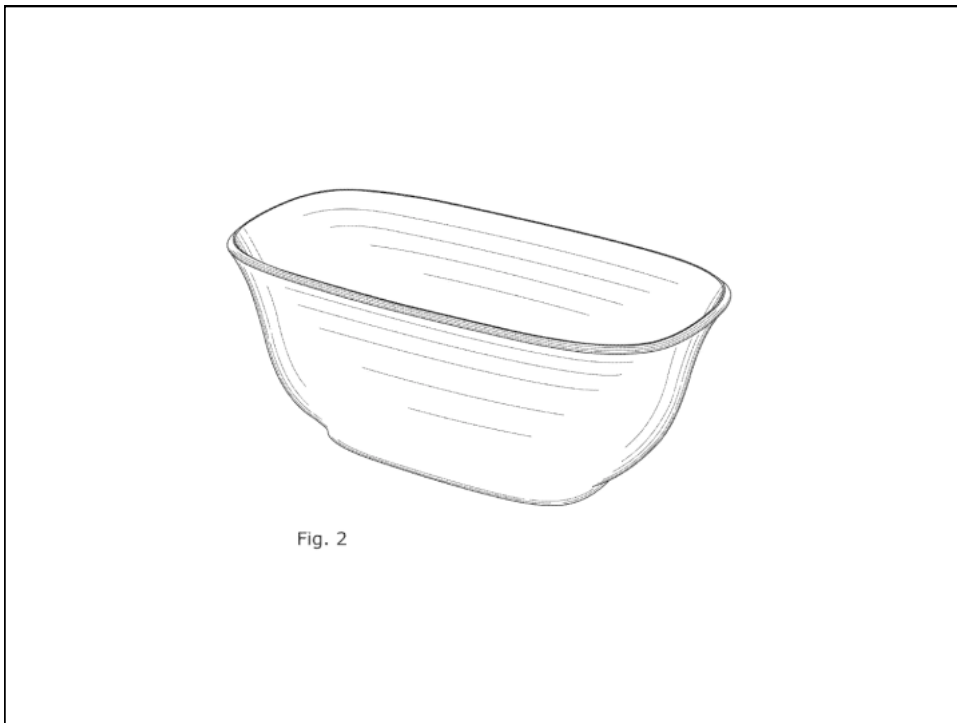
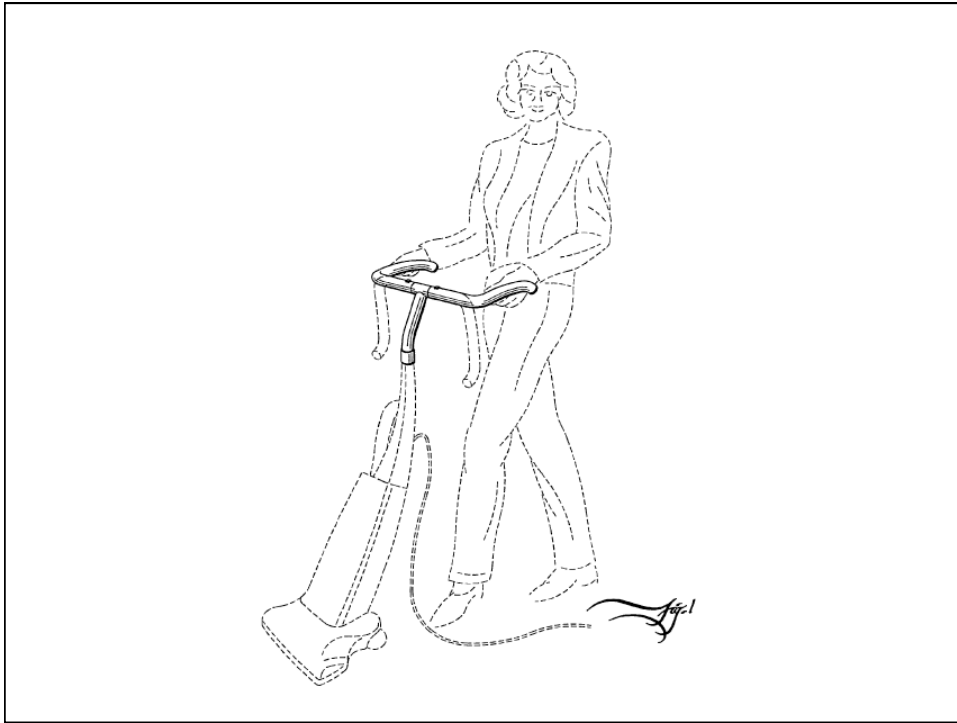


FIG. 1



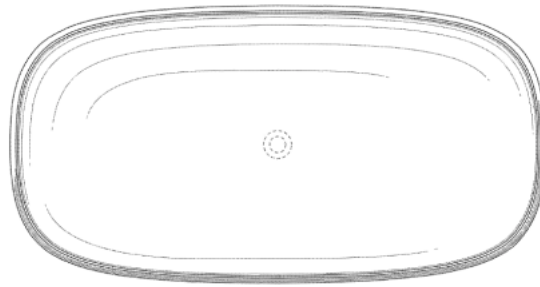


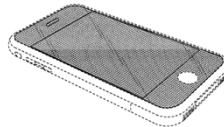
Fig. 6

### **Design patents - claims and infringement**

- Design patent claims are essentially the drawings.
- Infringement involves comparing the accused article to the drawings.



# Then ...



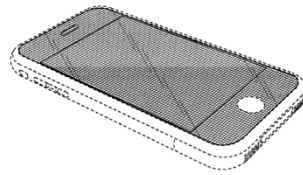


FIG. 1

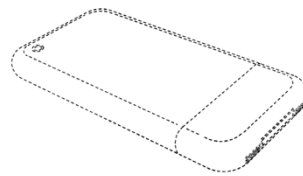


FIG. 2

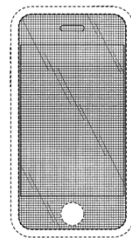


FIG. 3

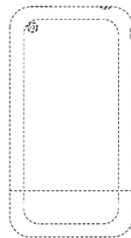


FIG. 4



FIG. 7



FIG. 8



FIG. 5

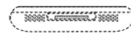


FIG. 6

**some practice ...**

Oren, an industrial designer, has created a new desk lamp. It does not work differently than other desk lamps, but it's very exotic and cool looking. What can Oren likely obtain?

- (a) a utility patent, but not a design patent
- ⇒ (b) a design patent, but not a utility patent
- (c) both a design patent and a utility patent
- (d) neither a design patent nor a utility patent