

Fed. Circ. Should Redefine Functionality In Design Patents

By **Ben Katzenellenbogen and Fatima Kouadio** (September 17, 2026)

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Design patent disputes often appear more accessible than utility patent cases because they concern the visual appearance, not the technical details, of a product. But interpreting and applying design patents can still pose difficult questions, particularly regarding how to distinguish ornamental from functional features.

The [U.S. Court of Appeals for the Federal Circuit](#)'s splintered decision **denying** rehearing in *Range of Motion Products LLC v. Armaid Company Inc.*[1] on Aug. 11 highlighted uncertainty regarding functionality in design patents.

The panel affirmed the district court's determination that portions of the claimed design were functional. U.S. Circuit Judge Kimberly Moore dissented from the denial of rehearing and expressed concern that the court had "messed up design patent infringement."

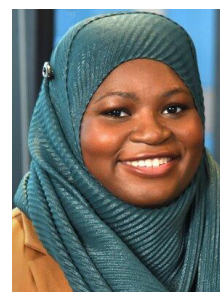
Judge Moore would have granted rehearing to address the Federal Circuit's standards regarding functionality and infringement. Her dissent argued that identifying functional aspects of a claimed design should be treated as a question of fact for the jury, rather than an issue of law resolved by a judge through claim construction.

If the Federal Circuit or the [U.S. Supreme Court](#) were to reassess or clarify the analytical framework for evaluating functionality, it should also address a predicate issue: how to identify the relevant article of manufacture to which the functionality analysis applies.

Resolving that question could reconcile existing decisions and give courts and litigants a more predictable framework. The answer to that question may influence how parties frame functionality arguments, litigate claim construction, and develop infringement and invalidity theories in design patent cases.



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Background on Design Patents

According to the U.S. Patent Act, a design patent may be granted for "any new, original and ornamental design for an article of manufacture." This statutory language requires a design that is both ornamental and applied to an article of manufacture. A design patent protects the appearance of the article, not its utilitarian features.

Ornamental designs have been described as appealing to the eye and to the aesthetic emotions.[2] In contrast, functional aspects of a design have been described as those dictated by the use or purpose of the article.[3]

A design patent protects an ornamental design as applied to an article of manufacture — not an abstract idea or disembodied design.[4] The article of manufacture must have utility or function.[5] Accordingly, the scope of a design patent is limited by both the design illustrated in the drawings and by the article of manufacture identified in the claim.[6]

Distinguishing Ornamental Features From Functional Features

Distinguishing ornamental from functional features can be complicated because many products contain a blend of ornamental and functional design choices. The presence of some functional elements does not render a design unprotectable.[7] Courts often seek to distinguish ornamental from functional features by asking whether "the choice of design is made for primarily aesthetic, non-functional purposes." [8]

Unfortunately, cases spend relatively little time or attention explaining how to define the relevant article of manufacture for which ornamentality and functionality are evaluated.

Guidance is particularly sparse regarding whether courts should evaluate functionality based on the article as identified in the text of the claim, which can broadly describe a category of products, such as a chair or electronic device, based on the article as illustrated in the drawings, which is frequently a specific example, such as a rocking chair or smoke detector, or a combination of the two.

Inconsistencies in Federal Circuit Precedent

The Federal Circuit has not expressly resolved how to define the article of manufacture when evaluating functionality, or whether the article of manufacture must be defined the same way for all purposes.

In 2023, the Federal Circuit held in *Columbia Sportswear North America Inc. v. Seirus Innovative Accessories Inc.* that the relevant universe of design patent prior art is limited to designs applied to the article of manufacture identified in the text of the claims.[9]

This decision followed from earlier holdings that an accused design can infringe only if applied to the same article of manufacture identified in the text of the claims. That reasoning suggests functionality should also be assessed based on the article as identified in the text of the claim.

However, the Federal Circuit has repeatedly evaluated functionality based on the specific article illustrated in the drawings instead of anchoring the analysis to the text of the claim. This lack of consistency risks disassociating the functionality analysis from other aspects of design patent analysis.

For example, in *Sport Dimension Inc. v. Coleman Co.* in 2016, the text of the claim recited a personal flotation device and the figures depicted a wearable flotation device incorporating attached arm floats and a torso float with tapering sides.[10]

The Federal Circuit assessed the functionality of the armbands and side torso float tapering by considering whether those features served functional purposes in the specific type of flotation device shown in the drawings. The court did not evaluate the functionality of those features if applied to other types of personal flotation devices, such as kickboards, pool noodles or circular life preservers.

In the Federal Circuit's 1993 decision in *LA Gear Inc. v. Thom McAn Shoe Co.*, the patent claimed a "shoe upper" and illustrated a particular type of athletic high-top shoe.[11] The Federal Circuit found a feature called the delta wing to be functional because it provided support for the wearer's foot.

This conclusion appeared to assume that the relevant article was a high-top shoe as shown in the figures — in which one function or purpose was to support the ankle. The opinion did not address whether a delta wing would be functional in all shoe uppers, including those that do not typically provide ankle support, such as sandals.

Another case decided by the Federal Circuit in 1997, *OddzOn Products Inc. v. Just Toys Inc.*, addressed a design patent claim directed to a tossing ball.[12]

The Federal Circuit analyzed functionality with respect to football-like balls having elongated bodies, tails and fins designed to enhance aerodynamic performance. The patent owner argued that such features were ornamental because they were not required for tossing balls generally, thereby urging the court to conduct the analysis at the level of the broader article of manufacture as identified in the text of the claim rather than the more specific article illustrated in the figures.

The court did not squarely engage this argument because the patent owner conceded that the relevant product was specifically intended to be thrown like a football and to travel farther than a traditional foam football. The court applied that description of the article and concluded the disputed features were functional without expressly addressing how to evaluate functionality where the parties genuinely dispute how to define the relevant article.

In all three decisions, the Federal Circuit appears to have evaluated the functionality of the disputed features in the specific article illustrated in the figures rather than the potentially broader category of articles recited in the text.

In one of the cases, this appears to have resulted from agreement between the parties. However, the other two cases did not articulate a basis for the narrowed analysis. And none of the cases addressed the potential tension with the Federal Circuit's focus on the text of the claim as defining the relevant article of manufacture when evaluating infringement or the availability of prior art.

The Federal Circuit could help district courts more consistently resolve an already difficult issue of law by explaining how to define the claimed article of manufacture when evaluating ornamentality and functionality. It would be particularly helpful for the Federal Circuit to clarify whether functionality is analyzed for all articles of manufacture falling within the scope of the claim language or the particular article depicted in the figures.

Precedent for the Proposed Approach

The Federal Circuit could improve its functionality jurisprudence and help resolve this issue by drawing on the well-established treatment of genus and species claims in other areas of patent law.

Utility patent claims often recite a genus encompassing multiple species. Such genus claims are invalid if any species within the scope of the claim is anticipated by the prior

art.[13] Indeed, the Federal Circuit has held, in *In re: Kubin* in 2009, that a defect affecting even a single species within a claimed genus can render the entire genus claim unpatentable.[14]

A similar genus-species framework could clarify design patent functionality analysis. For example, an element of a claimed design could be deemed functional if the element would be functional for any species of article falling within the genus of articles recited in the text of the claim.

Such an approach could offer a number of benefits: It would tie the functionality inquiry to the article recited in the claim language, as suggested by the prior art analysis in *Columbia Sportswear*, while accounting for specific articles of manufacture depicted in the drawings, as the Federal Circuit appears to have done in *Sport Dimension*, *LA Gear* and *OddzOn*.

This may be particularly beneficial when addressing claims that recite a broad category of articles encompassing many species with different functional characteristics and requirements. It would also align utility and design patent law.[15] Lastly, it would provide litigants with a clearer framework for presenting functionality arguments and evidence.

This proposal would not require a wholesale reworking of design patent doctrine or suggest that existing cases were wrongly decided. Rather, it asks the Federal Circuit to more explicitly reconcile its decisions.

Bringing these principles into alignment by centering the functionality analysis on the article of manufacture recited in the text of the claim, while allowing consideration of the specific article depicted in the figures, would enhance doctrinal clarity, promote greater consistency in adjudication and better reflect the statutory foundations of design patent law.

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[1] [Range of Motion Products, LLC v. Armaid Company Inc.](#), 2026 WL 2318398 (Fed. Cir. Aug. 11, 2026).

[2] See [Gorham Mfg. Co. v. White](#), 81 U.S. 511, (1871); [Rowe v. Blodgett & Clapp Co.](#), 112 F. 61 (2d Cir. 1901); [Forestek Plating & Mfg. Co. v. Knapp-Monarch Co.](#), 106 F.2d 554, 560 (6th Cir. 1939).

[3] [L.A. Gear, Inc. v. Thom McAn Shoe Co.](#), 988 F.2d 1117 (1993).

[4] [In re SurgiSil, L.L.P.](#), 14 F.4th 1380, 1382 (Fed. Cir. 2021).

[5] [Columbia Sportswear N. Am., Inc. v. Seirus Innovative Accessories, Inc.](#), 80 F.4th 1363, 1380 (Fed. Cir. 2023).

[6] *Id.*

[7] [Best Lock Corp. v. Ilco Unican Corp.](#), 94 F.3d 1563, 1567 (Fed. Cir. 1996); see [Ethicon Endo-Surgery, Inc. v. Covidien, Inc.](#), 796 F.3d 1312 (Fed. Cir. 2015).

[8] *Id.* at 1332.

[9] [Columbia Sportswear](#), 80 F.4th 1363, 1378 (Fed. Cir. 2023).

[10] [Sport Dimension, Inc. v. Coleman Co.](#), 820 F.3d 1316, 1318 (Fed. Cir. 2016).

[11] See [L.A. Gear, Inc. v. Thom McAn Shoe Co.](#), 988 F.2d 1117, 1122 (Fed. Cir. 1993).

[12] [OddzOn Products, Inc. v. Just Toys, Inc.](#), 122 F.3d 1396, 1399 (Fed. Cir. 1997).

[13] [Brown v. 3M](#), 265 F.3d 1349, 1351 (Fed. Cir. 2001).

[14] *Ex parte Kubin*, 83 U.S.P.Q.2d 1410, 1414 (B.P.A.I. 2007), *aff'd*, [In re Kubin](#), 561 F.3d 1351 (Fed. Cir. 2009).

[15] See [LKQ Corp. v. GM Glob. Tech. Operations LLC](#), 102 F.4th 1280 (Fed. Cir. 2024).

