

Design Patents

Practices and Industries

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Design patents are more valuable than ever. In *Egyptian Goddess v. Swisa*, the Federal Circuit overhauled the test for determining design patent infringement, making it easier for design patent owners to establish infringement, signaling the start of a pro-design patent era. This increased protection, coupled with high-profile litigation, has led to heightened awareness of the value of design patents.

Haynes and Boone helps clients tackle the realities of that value. We do this by protecting and enforcing our clients' design rights, developing and managing our clients' design patent portfolios, avoiding design rights held by third parties, and canceling design patents owned by third parties. Here are examples of Haynes and Boone's design patent experience:

- Drafting design patent applications and obtaining design patents based on previously-filed utility patent applications.
- Successfully appealing rejections of design patent applications before the Patent Trial and Appeal Board (PTAB) and the Court of Appeals for the Federal Circuit.
- Conducting freedom-to-operate and infringement investigations with respect to client-proposed designs, including providing recommendations for designing around design patents owned by third parties.
- Preparing noninfringement opinions establishing that clients' designs do not infringe the design patents of others.
- Helping clients enforce their design patents, including via infringement complaints with online marketplaces.
- Responding to allegations of design patent infringement.
- Instituting post-issuance proceedings before the U.S. Patent Office, establishing that third parties' U.S. design patents are invalid or should otherwise be cancelled.
- Conducting patentability investigations with respect to client-proposed designs.
- Obtaining design patents and registrations worldwide, including via The Hague System for the International Registration of Industrial Designs.
- Developing global design patent and registration portfolios covering a wide variety of consumer products, industrial components, and computer-implemented designs, in the fields of, as examples, audio speakers, exercise equipment, bottles and other product packaging, ceiling fans, lamps and lanterns, oil and gas cementing components, oil and gas pressure

control components, carpet, reciprocating pump components and other components used in hydraulic fracturing operations, office supplies, laboratory instrumentation, mining equipment, medical devices, computer icons, and computer display screens.

Design patents should always be considered in concert with other types of intellectual property, including trade dress, copyrights, trademarks, and utility patents. Haynes and Boone lawyers are well versed in all these types, and can develop comprehensive, yet practical, intellectual property strategies.