DesignLaw Perspectives

HIGH POINT FOR DESIGN PATENTS!

by Perry J. Saidman

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Attached is a very significant decision on design patent law handed down this week by the Court of Appeals for the Federal Circuit. In *High Point Design v. Buyers Direct* (Fed. Cir. 2012-1455, 9/11/13), the Court addressed two major points of law regarding design patent validity about which most lower courts have been hopelessly confused: the ordinary observer vs. ordinary designer test for obviousness, and how to analyze the issue of functionality.

First, the Court did away with its earlier (and misguided) *International Seaway* discussion to the effect that obviousness in design patent law is to be judged through the eye of an ordinary observer, rather than on the shoulders of an ordinary designer where it had rested for decades. Relying on the seminal case of *In re Nalbandian* and numerous other precedents, they relegated the *Seaway* case to the dustbin (where it belongs), essentially saying the Court had made a mistake in the *Seaway* case (see footnote 2). We criticized the *Seaway* case for the same reasons in our 2011 article: *"Design Patents Sunk in International Seaway"* (83 PTCJ 278).

Second, the Court finally made crystal clear that functionality analysis does not involve an analysis of whether particular elements of a design perform a function - they all do. Otherwise, as stated in the seminal 1988 case of *Avia v. LA Gear*, it would not be possible to obtain a design patent on a utilitarian article of manufacture.

Design patent owners can all rest easier tonight.

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