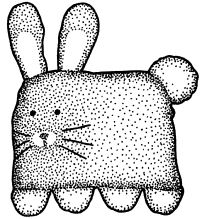
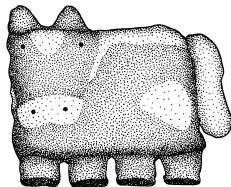
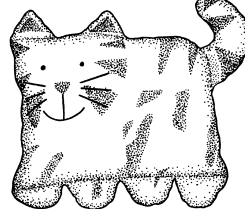


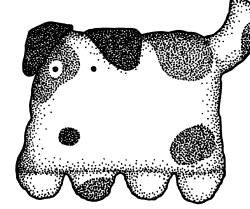
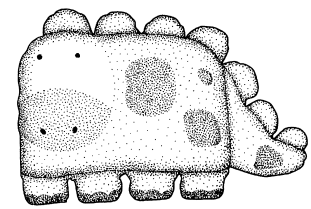
ONLINE MARKETPLACE LIABILITY

Milo & Gabby v. Amazon.com

United States Design Patent		Patent No.	US D512,296	
Keller		(dt) Date of Patent:	May 21, 2006	
(04) MARKETING/PROMOTION				
Inventory: Kramer, Karl Keller, 8722 Colburn		1008.935	1 + 2004, Pub. of	00.00.00
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[illegible][illegible]

(1)	United States Design Patent	(2) Patent No.:	US D28,798 S
	Keller		May 16, 1996
	(3) REGULATORY FILING CASE		
	Kantor & Sorensen, P.C.		
	1000 North 17th Street, Suite 2700		
	06107		
(7)	Int. Class.		
	Int. Class. No.		
	Int. Class. No.		
	Int. Class. No.		
	Int. Class. No.		
	Int. Class. No.		
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	Int. Class. No.		

[illegible]

ONLINE MARKETPLACE LIABILITY

Milo & Gabby v. Amazon.com

MSJ non-infringement of copyright and Lanham claims granted
MSJ non-infringement of design patents denied;
listing could be an offer for sale
13-cv-1932 (W.D. Wash.)

Fed. Cir. found that Milo & Gabby failed to preserve both patent theories (sale and offer to sell); no copyright sale - 3rd party retains title, Amazon merely provides marketplace and post-sale logistics; broad complaint allegations of confusion, mistake and deception under umbrella of a false designation or origin did not provide notice of passing off claim
16-1290 (Fed. Cir.)

Motion to Reissue Panel Decision as Precedental Denied (7/20/17)

Petition for Writ of Certiorari Denied
17-287 (10/10/17)

ONLINE MARKETPLACE LIABILITY

31 cases (since 2007) identified where Amazon.com is a defendant
in a district court case involving design patent infringement

18 cases where Amazon.com is 1st named defendant

13 (72%) were dismissed by patent owner, most early

3 pending

Jarrett v. Amazon.com, Inc., 2-17-cv-01216 (W.D. Wash.)

Latitude, LLC. v. Amazon.com, Inc., 2-17-cv-04586 (C.D. Cal.)

Daimler AG v. Amazon.com, Inc., 2-16-cv-00518 (W.D. Wash.)

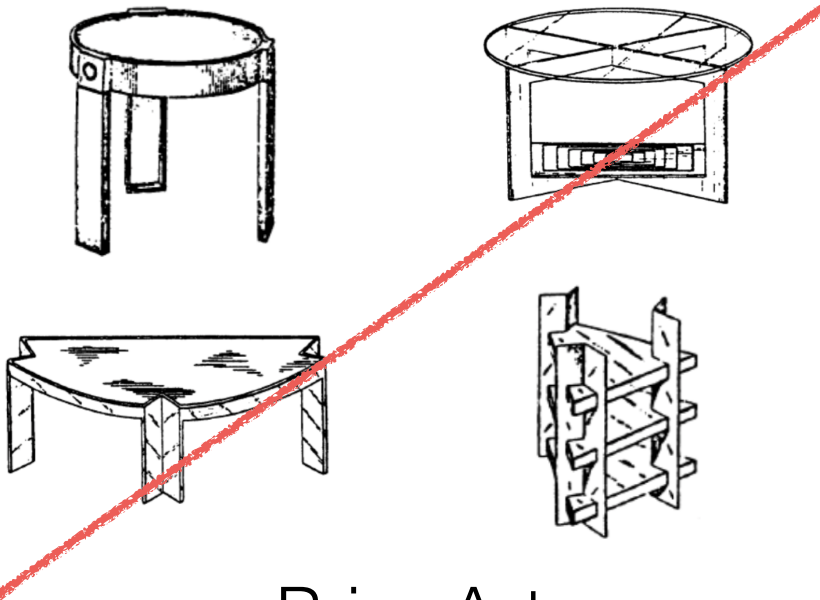
1 MSJ non-infringement granted

Voltstar Tech., Inc. v. Amazon.com, Inc., 1-13-cv-05570 (N.D. Ill.)

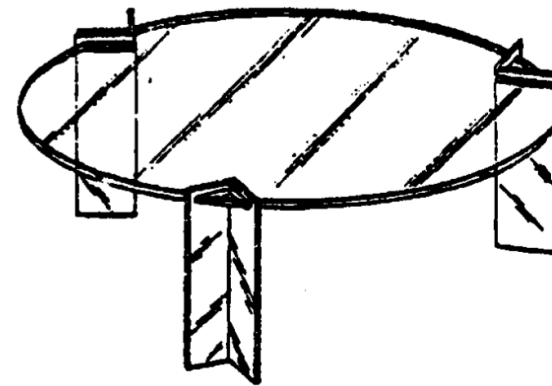
DESIGN PATENT OBVIOUSNESS

In re Rosen

673 F.2d 338 (C.C.P.A. 1982)



Prior Art

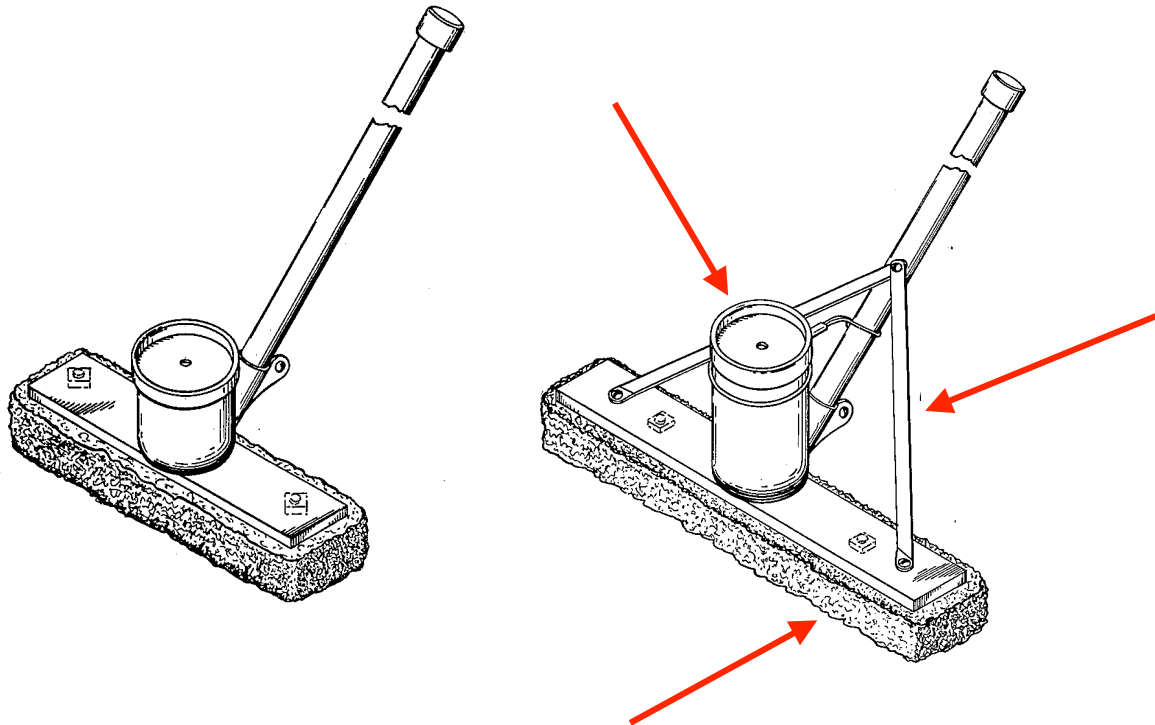


Claimed Design

There must be a reference...in existence, the design characteristics of which are **basically the same** as the claimed design in order to support a holding of obviousness.

DESIGN PATENT RESTRICTION, SURRENDER AND ENFORCEMENT

In re Rubinfeld
270 F.2d 391 (CCPA 1959)

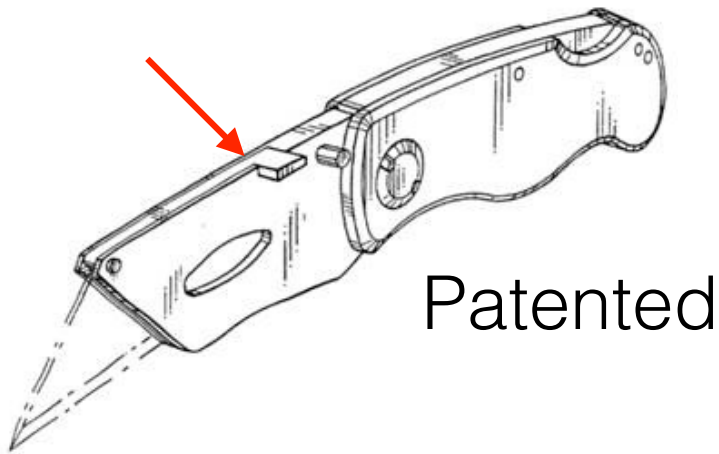


IF BASICALLY THE SAME, ARE DIFFERENCES EITHER MINOR OR OBVIOUS?

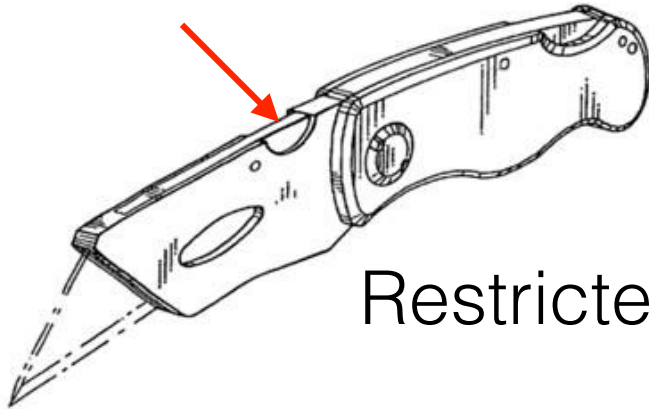
DESIGN PATENT RESTRICTION, SURRENDER AND ENFORCEMENT

Great Neck Saw Mfg., Inc. v. Star Asia, USA, LLC
(W.D.Wash, July 23, 2010)

Restriction potentially limits scope



Patented



Restricted

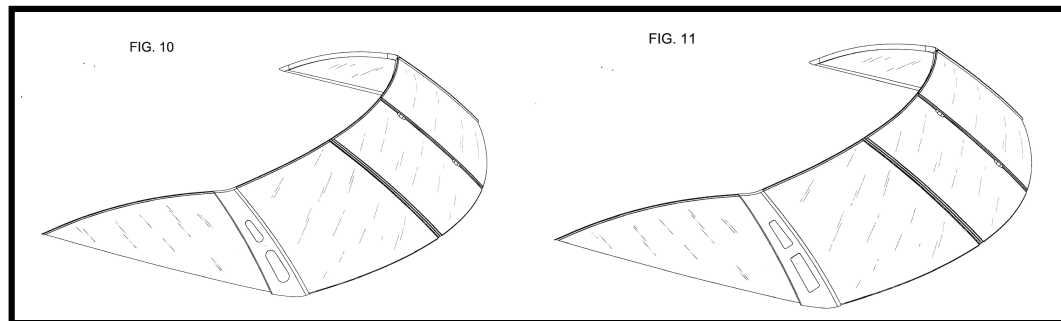
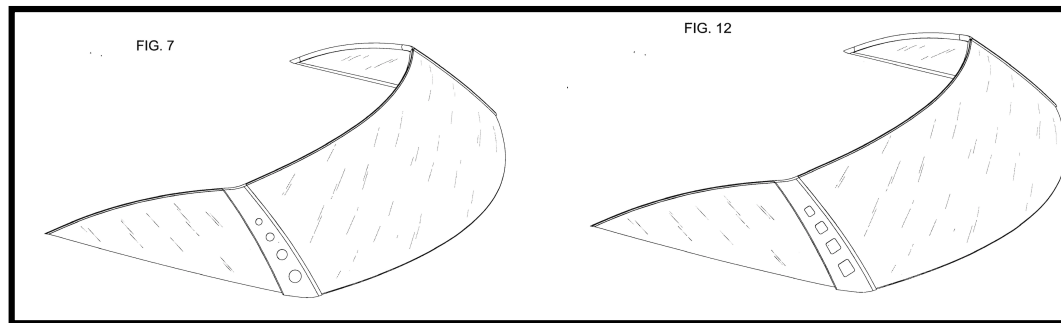
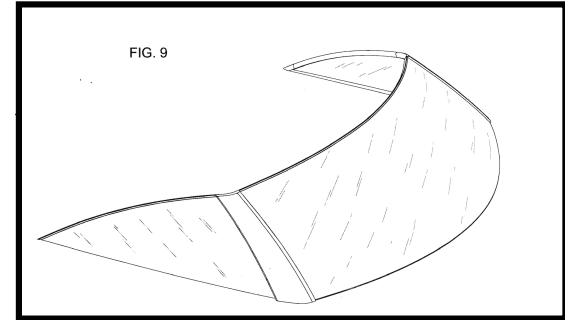
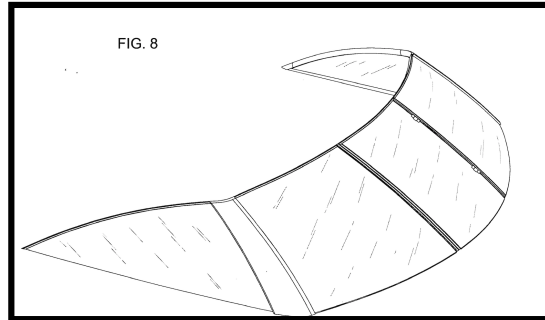
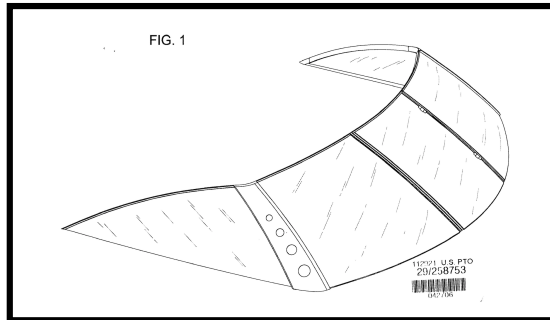


Accused

DESIGN PATENT RESTRICTION, SURRENDER AND ENFORCEMENT

Pacific Coast Marine Windshields, Inc. v. Malibu Boats, Inc.

739 F.3d 694 (Fed. Cir. 2014)



Examiner's Grouping:

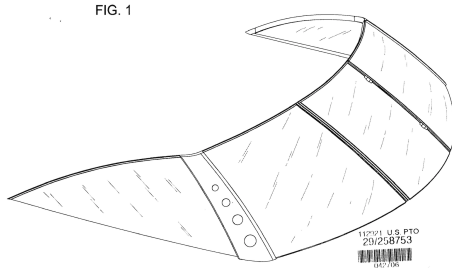
opening count matters
hatch matters
shape does not matter

no drawings with
3 side openings

DESIGN PATENT RESTRICTION, SURRENDER AND ENFORCEMENT

Pacific Coast Marine Windshields, Inc. v. Malibu Boats, Inc.

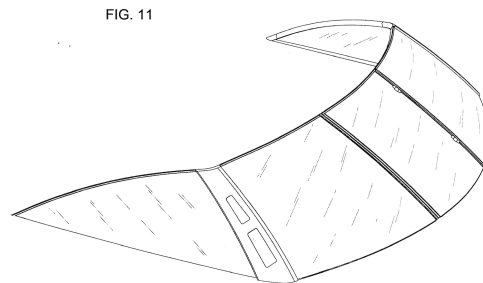
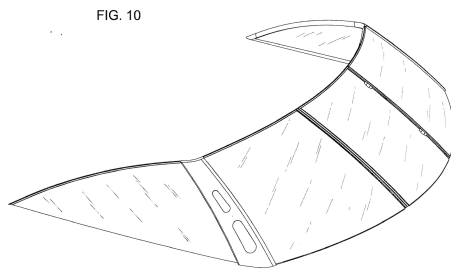
739 F.3d 694 (Fed. Cir. 2014)



Patented
(D555,070)



Accused



(NO DIVISIONAL FILED)

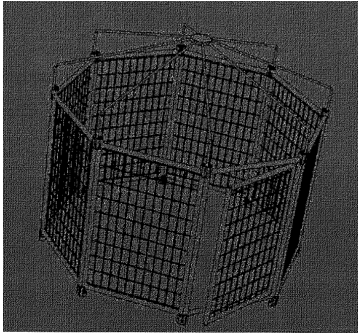
**SURRENDER? FOR PATENTABILITY? YES, WHEN RESTRICTED.
ACCUSED DESIGN WITHIN SCOPE OF SURRENDER?**

DESIGN PATENT RESTRICTION, SURRENDER AND ENFORCEMENT

Advantek Marketing v. Shanghai Walk-Long Tools

16-cv-3061 (C.D. Cal.)

17-1314 (Fed. Cir.)



restriction



(NO DIVISIONAL FILED)

(8 SIDES)

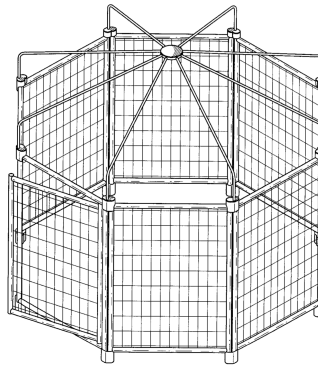


FIG. 1

D715,006

(6 SIDES)

(REMOVABLE COVER)



Accused

PENDING FEDERAL CIRCUIT CASES INVOLVING DESIGN PATENTS

MMI v. Rich Godfrey Assoc. (Coleman PowerSports)

18-1127

notice of appeal filed, opening brief due 1/2/18

In Re Maatita

17-2037

(appeal of final 112 rejection; single view)

Johns Manville v. Knauf Insulation

17-1807

(appeal of IPR decision; not unpatentable under 103)