

Publications

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Design Patents Expand for Digital Products While Courts Signal New Limits on Enforcement

Key Takeaways:

- The USPTO has expanded design patent protection for digital and emerging technologies. Its March 2026 guidance confirms that graphical user interfaces (GUIs), icons, and designs in AR/VR, holograms and projected environments are eligible for design patent protection, even when not tied to a physical display.
- Recent Federal Circuit briefing activity highlights a growing concern among industry groups and practitioners on how courts are applying design patent infringement standards, while multiple amicus filings urge the court to revisit doctrines that may narrow enforcement of design patent rights.
- Companies should align filing and litigation strategies. The combination of broader protection and evolving infringement standards requires a more integrated approach to design patent strategy, particularly for innovations designed to promote consumer engagement or attract visual attention.

The rules around design patents are shifting in ways that matter for companies investing in consumer appeal and user experience. New USPTO guidance expands what can be protected, particularly for digital and interface-driven technologies, while activity at the Federal Circuit signals potential changes in how infringement is evaluated. In this alert, we examine these developments and outline practical considerations for aligning design patent filing and enforcement strategies.

Background: USPTO Guidance Expands Protection for Digital and Interface Designs

On March 13, 2026, the USPTO issued supplemental guidance modernizing design patent eligibility for computer-generated designs. The guidance confirms that digital designs, including GUIs, icons, and designs displayed in augmented reality, virtual reality or projected environments, qualify for protection under 35 U.S.C. § 171.

A key change is the removal of the requirement that such designs be depicted on a physical display screen. Applicants may now claim digital designs independently, provided the application identifies an appropriate article of manufacture in the title and claim.

Related People

- Erica Navar
- Taryn A. Elliott

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This shift reflects the increasing importance of visual and interactive elements in modern products. For software, consumer technology, vehicle interfaces, mobile applications and spatial computing platforms, design patents are becoming a more central tool for protecting product differentiation, particularly for features where utility patent protection may be limited or weak.

Federal Circuit Activity Signals Potential Shift in Infringement Analysis

At the same time, ongoing Federal Circuit proceedings suggest a possible tightening of design patent enforcement standards.

In *Range of Motion Products, LLC v. Armaid Company Inc.*, multiple amicus briefs argue that lower courts are:

- Emphasizing differences between designs rather than overall visual similarity;
- Expanding use of a “plainly dissimilar” threshold to resolve cases at early stages; and
- Narrowing design patent claims by excluding features deemed “functional,” rather than evaluating the design as a whole.

Amici contend that these approaches may deviate from longstanding Supreme Court precedent requiring a holistic “ordinary observer” analysis and may increase the likelihood of early dismissal of infringement claims, including at the summary judgment stage.

While the Federal Circuit has not yet resolved these issues, the volume of amicus participation underscores the potential significance of the case for design patent litigation.

Practical Considerations for Companies

These developments highlight a growing tension in design patent law: broader protection at the USPTO paired with increasing scrutiny in litigation.

Companies should consider taking the following steps to strengthen and future-proof their design patent strategies:

- **Audit existing design portfolios and new technology** to identify opportunities for protection of visual and user facing features;
- **File design patents earlier and more broadly**, particularly for GUIs, icons, and AR/VR or spatial computing elements;
- **Approach designs with enforcement in mind**, ensuring the claimed design reflects a cohesive overall visual impression; and
- **Prepare for more aggressive early-stage challenges** in litigation, including arguments based on dissimilarity and functionality.

What This Means for Design-Driven Businesses

Design patents are playing an increasingly important role in protecting branding, product design and user facing features, particularly in technology-driven industries. However, evolving judicial approaches to infringement analysis introduce new uncertainty in how those rights are enforced.

Polsinelli’s **Product Design & User Interface** team is closely monitoring these developments and advising clients on strategies to align design patent portfolio development and enforcement to maximize protection and reduce risk as standards continue to evolve.

For additional information, please contact any member of our Product Design & User Interface team or your Polsinelli contact.