

Publications

August 24, 2026 • Updates

Design Patents After "Range of Motion": When Should a Judge Decide Infringement?

Key Takeaways

- The Federal Circuit affirmed summary judgment of no design patent infringement in a dispute involving competing handheld massage devices, leaving its current ordinary observer framework in place.
- The decision may make functionality, claim scope and visible design differences more important in evaluating whether a design patent can be found to have been infringed before trial.
- Companies should review design patent portfolios, related utility patents and public product-performance statements when assessing how well key product appearances are protected.

Design patents protect how a product looks rather than how it works. For companies where appearance affects purchasing decisions, that protection carries real value.

A recent August 11, 2026, Federal Circuit decision shows that obtaining a design patent and enforcing it are different matters.

In *Range of Motion Products, LLC v. Armaid Company Inc.*, the Federal Circuit affirmed a summary judgment ruling of no infringement involving a design patent for a handheld massage device. The court later denied rehearing en banc. The result preserves the Federal Circuit's current approach, but the split among the judges raises a larger question:

How much of a design patent case should a judge decide before a jury sees it?

The Dispute in Simple Terms

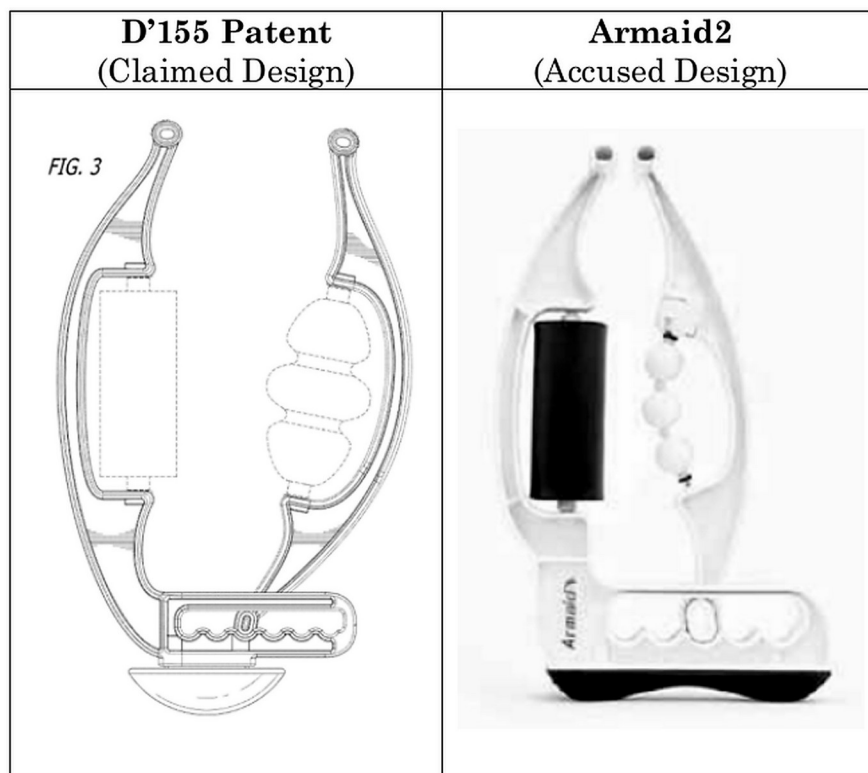
Range of Motion owned a design patent covering the appearance of its Rolflex massage device. Armaid sold a competing product called the Armaid2. A side-by-side look at the products shows why there was a dispute:

Related People

- Michael D. Pegues
- Melenie Van

Related Capabilities

- Intellectual Property
- Intellectual Property Litigation
- Patent Strategy & Prosecution
- Product Design & User Interface



Both designs use curved arms that create a similar overall shape, though the products differ in visible details. The district court granted summary judgment for Armaid, and the Federal Circuit affirmed.

The Federal Circuit agreed with the district court that parts of the patented design had functional characteristics. That analysis narrowed the ornamental scope of the patent. The Federal Circuit then held that the protected aspects of the patented design and the Armaid2 were different enough that no reasonable jury could find infringement.

Function May Narrow Design Patent Protection

A design patent protects an ornamental design. It does not give its owner exclusive rights over features dictated by function. That distinction becomes difficult when a feature serves a practical purpose but also contributes to appearance.

In *Range of Motion*, the district court found that the shape of the device's arms served functional purposes. The record included a related utility patent and statements about how the product operated. The Federal Circuit upheld that analysis. It also rejected the argument that a feature shown in solid lines must be treated as ornamental for infringement purposes.

A functional component does not disappear from the comparison. It may still have an ornamental appearance. But functionality may narrow the patent's scope before the accused product is compared with the claimed design.

For companies, that matters long before litigation. Choices about what is claimed in solid lines and what is disclaimed with broken lines may affect claim scope, although solid lines do not prevent a later functionality analysis by the court. Utility patents and statements about product performance may also influence that analysis.

The Role of the Jury

The modern infringement test traces back to the Supreme Court's 1871 decision in *Gorham Co. v. White*. The question is whether an ordinary observer would regard the patented design and the accused design as substantially the same.

The Federal Circuit's 2008 *Egyptian Goddess v. Swisa* decision remains the leading modern authority. It recognizes that some designs may be different enough for a court to find noninfringement without first comparing the designs to prior art. That principle played a central role in *Range of Motion*. The panel majority concluded that a court may resolve infringement at summary judgment when no reasonable jury could find substantial similarity. It also agreed, as an alternative basis, that a three-way comparison with the prior art supported the same result.

Chief Judge Kimberly Moore disagreed. Joined by Judge Reyna, she dissented from the denial of rehearing en banc. Judges Stoll and Stark also dissented without separate opinions. Judges Cunningham and Hughes, by contrast, concurred in the denial and defended the panel's approach as consistent with existing precedent. The concurrence emphasized that assessing substantial similarity necessarily requires considering both similarities and differences, and that courts may resolve clear cases at summary judgment.

Moore argues that Federal Circuit law has shifted too much responsibility from juries to judges. Her reasoning begins with the nature of a design patent. The claim is usually presented through drawings rather than a written description. In her view, deciding whether two visual designs create substantially the same overall impression resembles the factual judgment juries have long been asked to make.

Moore also questions whether courts should decide functionality as part of claim construction when that determination may depend on testimony or evidence about alternative designs. Her other concern involves the phrase "plainly dissimilar." Moore argues that asking whether designs are plainly dissimilar may shift the focus from overall appearance to individual differences. She also argues that the factfinder should always compare the claimed and accused designs in light of the prior art. This can provide a frame of reference for assessing the significance of similarities and differences. A decision-maker looking for differences may give those differences more weight than an ordinary purchaser would.

Moore does not argue that every design patent case must go to trial. If reasonable jurors could disagree about substantial similarity, she believes the jury should decide.

What This Means for Companies

Range of Motion should affect how companies evaluate design patent portfolios.

Companies should consider whether key visual features might later be characterized as functional. They should also review related utility patents and public statements about product performance.

A single design patent may leave room for a competitor to change visible details while preserving much of a product's overall look. Multiple design patents directed to different aspects of an important product may offer stronger practical protection.

What This Means for Lawyers

For litigators, *Range of Motion* increases the importance of the early stages of a design

patent case.

Claim scope may shape the infringement analysis before trial. Defendants have an incentive to develop a functionality record and seek summary judgment based on differences in the designs' ornamental appearance. The decision therefore reinforces summary judgment as a potentially case-dispositive strategy for accused infringers.

Patent owners will need to resist an analysis that breaks a design into isolated parts and loses sight of overall appearance. Evidence of alternative designs may help show that a particular appearance was not dictated by function. Patent owners should also develop the prior art record to explain why similarities between the claimed and accused designs matter to the ordinary observer.

The Federal Circuit did not announce a new design patent test when it denied rehearing in *Range of Motion*. The August 11, 2026 order left the precedential panel decision and existing framework in place.

Four judges disagreed with the court's refusal to rehear the matter. Chief Judge Moore's dissent asks whether modern Federal Circuit doctrine has moved design patent infringement too far from the ordinary observer envisioned by *Gorham*.

Design patent protection begins before an infringement suit is filed. Companies should think about future enforcement when applications are prepared.

The larger question remains unresolved: When reasonable people look at two products and reach different conclusions about their overall appearance, should a judge decide the issue or should a jury?

Range of Motion leaves the current framework intact, but the divided court suggests that these issues may return. *Range of Motion* may seek Supreme Court review, which could give the Court an opportunity to address the proper roles of judges and juries in design patent infringement cases. For questions about the issues discussed in this alert, contact your Polsinelli attorney.