

DESIGN
LAW
2022



WELCOME

Rob Katz, Banner Witcoff
Tracy Durkin, Sterne Kessler



#designlaw2022



Are We Forcing Utility Patent's Jurisprudence Into Design Patent Law

- When does it not apply?
- When it deviates, what makes sense?



Are We Forcing Utility Patent's Jurisprudence Into Design Patent Law – Obviousness



- Invalidations based on utility patent law for obviousness combinations
- *Rosen* generally fixed it

Are We Forcing Utility Patent's Jurisprudence Into Design Patent Law – Best Mode



- Invalidation arguments based on failure to disclose the best mode
- *Racing Strollers* fixed/clarified it

Are We Forcing Utility Patent's Jurisprudence Into Design Patent Law - Teasers



- Inventorship
- Anticipation
- Secondary considerations of non-obviousness

Are We On Road Or Off Road?



Are We On Road Or Off Road? Test For Infringement



- *Litton* – point of novelty
 - Inverse scope
 - Excessive gamesmanship
 - Increased enforcement costs
- *Lawman* - Point of novelty couldn't be a combination of elements
- Non-trivial advance standard
- So far of the road

Are We On Road Or Off Road? Test For Infringement



Are We On Road Or Off Road? Test For Infringement



- 25 years later
- *Egyptian Goddess* ultimately pulled us from the cliff and got us back on track

Are We On Road Or Off Road? Ornamentality/Functionality Considerations



- *Richardson*: excise portions from the design claim features that have a function/purpose

Are We On Road Or Off Road? Ornamentality/Functionality Considerations



- We never said that
- *Ethicon/Sport Dimension:* can't excise features; look to the design as a whole

So...



- Are we off the road?
- If so,
 - How close are we to the cliff?
 - Can we get back on track?
 - If so, how?

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Thank you!