

U.S. District Courts: Significant Design Patent Cases on District Court Docket in 2023

BY DEIRDRE M. WELLS

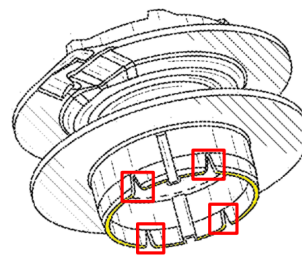
2023 was another busy year for district court decisions! There were patent- and case-dispositive design patent decisions across a range of venues and at a range of case postures, including claim construction rulings, summary judgment decisions, and even multiple jury trials. We summarize below three of the most noteworthy of these decisions: *Torvent LLC v. Techtronic Industries Co., Ltd*, *North Star Technology v. Latham Pool Products, Inc.*, and *Range of Motion Products, LLC v. The Armaid Company Inc.* The decision in *Torvent* came out of a claim construction ruling in the District of Delaware, the decision in *North Star* followed summary judgment briefing in the Eastern District of Tennessee, and the decision in *Range of Motion* followed summary judgment briefing in the District of Maine.

Torvent LLC v. Techtronic Industries Co., Ltd.

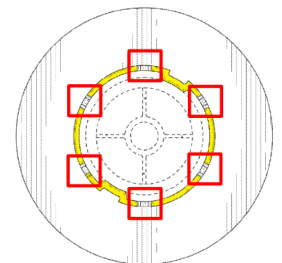
Torvent LLC filed a district court action against several defendants, including multiple Techtronic entities, Home Depot, and Walmart alleging infringement of several design and utility patents, including U.S. Patent No. D970,321 ("D'321 patent), which is directed to the ornamental design for a line trimmer component. The D'321 patent is a continuation of a utility patent. Torvent alleged that Defendants infringe its patents with their strong line trimmer heads used to cut vegetation (line trimmers are also known as weed-whackers). Home Depot and Walmart sell the Techtronic entities' products.

During claim construction, Torvent argued that the D'321 patent required no construction. Defendants argued that the claim is indefinite because its figures contain four irreconcilable inconsistencies: 1) figure 1 shows four cut-outs along the tapered bottom portion of the spool while figure 6 shows six cut-outs, 2) figure 1 shows these cut-outs as "triangular cut-outs extending uniformly to the lower cylindrical portion's edge" while figures 4 and 5 show "a 'mouse-door'

shape having a curved top and that angles outward as it extends to the lower cylindrical portion's edge," 3) figure 1 shows recessions that are a different size and width from the recessions shown in figures 4 and 6, and 4) figure 1 shows a different geometry of the trimmer line channel opening than the geometry depicted in figures 2 and 4. Defendants provided side-by-side comparisons with annotations highlighting each of these inconsistencies, which are reproduced below in the same order as Defendants presented them.



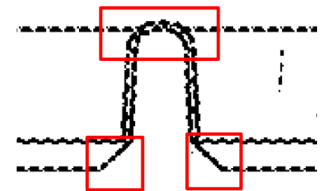
D321 Patent, Fig. 1



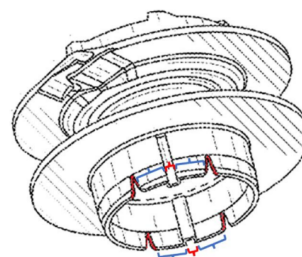
D321 Patent, Fig. 6



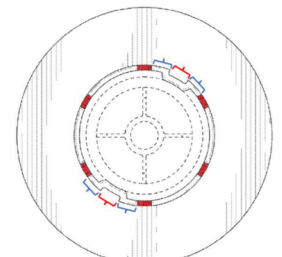
D321 Patent, Fig. 1 (Close-Up)



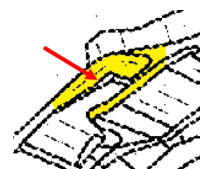
D321 Patent, Fig. 4 (Close-Up)



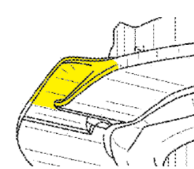
D321 Patent, Fig. 1



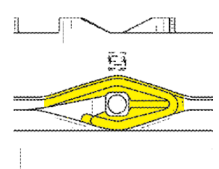
D321 Patent, Fig. 6



D321 Patent, Fig. 1



D321 Patent, Fig. 2



D321 Patent, Fig. 4

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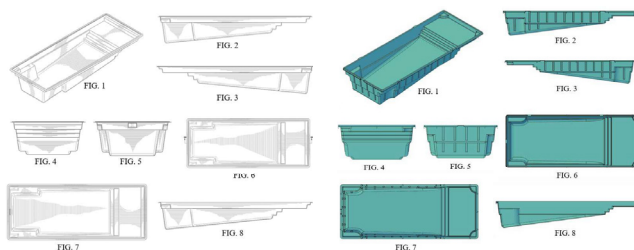
The district court sided with Defendants and ruled that the D'321 patent is invalid as indefinite. The court agreed that one skilled in the art, viewing the design as would an ordinary observer, would not understand the scope of the design with reasonable certainty. The court said the patent presents two different styles for the cut-outs and recessions: Figure 1 shows a style with four v-shaped cut-outs and narrow recessions and Figures 4–6 show a version with six rounded cut-outs and wider recessions. The court said it is impossible to determine which style of cut-outs and recessions is actually claimed. In particular, the court said it is impossible to determine whether the claimed design has four or six cut-outs, whether these cut-outs are triangular or rounded, whether the bottom of the cut-outs is smooth or contains an angle, and whether the recessions should be narrow or wide. The court held that the inconsistencies in the cut-outs and recessions preclude the overall understanding of the scope of the claimed design and therefore render the D'321 patent's claim indefinite.

Practice Tip:

While it is perfectly proper, and sometimes very advantageous, to file a design patent application as a continuation of a pending utility patent application, such applicants would be wise to carefully consider the accuracy of the figures of the utility patent application before doing so. That is because there is no requirement that utility patent drawings be internally consistent, like there is for design patents and because utility patent drawings can disclose a variety of embodiments in a single application. Before filing a design patent application based on a prior filed utility patent application, applicants should be careful to choose *only* the figures that consistently depict the desired design to be claimed.

North Star Technology v. Latham Pool Products, Inc.

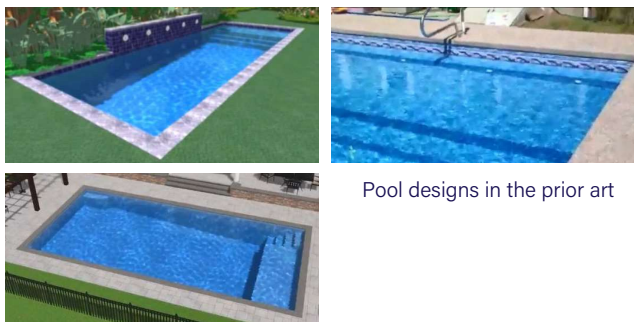
North Star Technology International Limited and North Star Technology Limited filed a district court action in the Eastern District of Tennessee asserting that Latham Pool Products, Inc. infringes North Star's U.S. Design Patent No. D791,966 ("D'966 patent") directed to swimming pools. The two North Star entities are intellectual property holding companies for a family of entities known as Leisure Pools. Latham Pool moved for summary judgment of non-infringement. A side-by-side comparison of the claimed design (on the left) and the accused product (on the right) are reproduced below.



Figs. 1–8 of the 'D966 Patent

Accused Products

Latham Pool argued that the appearance of the accused products is plainly dissimilar from the D'966 patent, especially considering the prior art and that any similarities that exist between the design of the accused products and the patent stem from the use of design elements that were commonly used in pool designs before the patent. Latham Pool pointed to a number of prior art pools as pertinent prior art. Some examples are shown below.



Pool designs in the prior art

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continued

North Star, in response, argued that Latham Pool's non-infringement arguments impermissibly focused on viewing the design features in isolation rather than considering whether the designs, when viewed in their entirety, are deceptively similar pursuant to the ordinary observer test. Here, the parties agreed that the "ordinary observer" is a "homeowner that is considering purchasing and installing a swimming pool at their home."

The court ruled that Latham Pool is entitled to summary judgment of non-infringement because to the ordinary observer the accused products' overall ornamental appearance is sufficiently distinct from, and plainly dissimilar to, the D'966 patent. In particular, the court noted that the patented design is angular and based on rectangles, whereas the accused design is curved and based on curved, rounded shapes. The court noted the following specific differences:

1. the patent has one rectangular full-width entry step but the accused products have two separate curved entry steps in the corners of the pool;
2. in the patent the steps leading from the tanning ledge into the main body of the pool are two different lengths but the steps in the accused products are equal in length;
3. in the patent the benches in the deep end are rectangular with smaller rectangular steps on top but the benches in the accused products are curved with no steps;
4. in the patent the safety ledge extends around the perimeter of the pool from the top of the main pool entry steps but the safety ledge in the accused products is positioned deeper in the pool, starting at the bottom of the main pool entry steps.

Additionally, the court found that the similarities between the designs (the fact that both designs consist of a roughly rectangular pool with a tanning

ledge, full-width stairs, and deep end benches) are high-level similarities that are not sufficient to demonstrate infringement.

Thus, the court held that the patented design and accused designs are "plainly dissimilar" such that no ordinary observer would mistake the angular design of the D'966 patent with the curved design of the accused products. The court granted Latham Pool summary judgment of non-infringement.

Range of Motion Products, LLC. v. The Armaid Company Inc.

Range of Motion Products, LLC filed a district court action in the District of Maine against The Armaid Company Inc. alleging infringement of U.S. Patent No. D802,155 ("D'155 patent"), which claims the ornamental design for a body massaging apparatus. Range of Motion accused the design of Armaid's body massaging product (known as the Armaid2). Armaid moved for summary judgment of non-infringement. The below images show the design claimed in the D'155 patent (on the left), the accused Armaid2 (in the middle), and the Armaid1 (prior art) (on the right).



The court noted that the D'155 patent is broadly similar to the Armaid1 prior art, stating that both have opposable, curved arms, roller cutouts, handles, and arms attached to a hinge apparatus with multiple slots

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for size adjustment. The court also noted distinctions between the three designs, including: (1) differences in the connection between the hinge apparatus and the arm; (2) differences in the number of adjustment slots in the hinge apparatus; and (3) differences in the shape of the roller cutouts. The court noted that for the Armaid2, the separation of the hinge apparatus contributes to the overall segmented appearance of the Armaid2, which is different and distinct from the design in the D'155 patent. The court also noted

that the size-selection slots in the Armaid2 are larger than those in the D'155 patent. Finally, while the court agreed that there are aspects of the D'155 patent and the Armaid2 that are similar, the court found that these similarities are likenesses to the D'155 patent's functional features, which are not protected by the design patent. Thus, the court concluded that the Armaid2 is plainly dissimilar from, and not substantially similar to, the design claimed in the D'155 patent.

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