

An Introduction from the Editor

This year, we will mark the 10-year anniversary of the first jury verdict in the landmark IP litigation between Apple and Samsung, which resulted in the jury awarding more than \$1B to Apple. More than \$500M of that award was attributed to a finding that Samsung infringed three of Apple's design patents for the iPhone® smartphone. Since that time, interest in design patent protection has continued to grow by all measures. As interest has grown, so have the number of filings for design rights globally and so have developments in the law both through court decisions and legislation.

Once considered the intellectual property option you were left with if you were unable to obtain utility patent protection, more and more companies are seeking design patent protection in addition to, and in some cases in lieu of, utility patents. And why not? They can be less costly and time consuming to obtain and to litigate than utility patents. They can also be easier for a court, and in particular, a jury to understand. If infringement is found, the patent holder can be awarded the total profit made by the infringer from the sale of the infringing article — a remedy not available for utility patent infringement. It is no surprise then that design patents are being used more frequently to protect designs for just about anything, from breakfast pastry to running shoes.

In this inaugural issue of "The Year in Review," we will highlight some of the important legal decisions in 2021 involving design patents at the US Court of Appeals for the Federal Circuit, the US International Trade Commission, US District Courts and the US Patent and Trademark Office Patent Trial and Appeal Board. We will also provide an update on some of the recent legislative changes that are taking place globally with respect to design protection and enforcement.

The information provided in this review is the result of a collaborative process. Thank you to co-authors—Daniel Gajewski, Deirdre Wells, and Ivy Estoesta, as well as Patrick Murray who contributed important data and statistics for this review.

We appreciate your interest in this report, and we encourage you to see our firm's other recently released publications "2021 PTAB Year in Review: Analysis & Trends" and "Federal Circuit Appeals from the PTAB and ITC: Summaries of Key 2021 Decisions," which are available at sternekessler.com or by request. Please reach out to us if you have questions about this report, wish to discuss the future of design protection, and/or if you would like hard copies of any of our 2021 "year in review" reports.



Tracy-Gene G. Durkin
Chair, Mechanical & Design Practice Group