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A Fighting Chance: The Federal Circuit Has Upended the Design Patent Validity Test

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For decades, design patent holders benefited from a rigid test that led to infrequent findings of obviousness in litigation. Such an outcome stands in contrast to utility patents, where findings of obviousness are commonplace. The rigid test provided, in practice, design patents with a level of deference on the question of validity that the patent statutes governing do not facially contemplate.

This has now changed. In a recent — and rare — en banc decision, the Federal Circuit overruled the existing rigid test for obviousness. This represents a sea change in the law, and affords defendants more chances to invalidate design patents.

To read the full story from Kilpatrick's **Kevin Bell,** click here.

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