

Looks Matter...

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14th Annual Patent Law Institute

Design Patent Practitioners:
What Guidance Can You Glean from the Board?
(and a peek at the “Article of Manufacture” brouhaha)

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Alexandria VA

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The University of Texas School of Law
George Mason University Antonin Scalia Law School

AIA Proceedings

Design Patents

IPR

Petitions filed:	38
Petitions granted:	16 (42%)
Petitions denied:	22 (58%)
Final Written Decisions:	16
Design patents Valid:	6 (37.5%)
Design patents Invalid:	10 (62.5%)

PGR

Petitions filed:	6
Petitions granted:	1 (17%)*
Petitions denied:	4 (67%)*
Final Written Decisions:	1
Design patents Valid:	0
Design patents Invalid:	1

*one case settled before institution decision, so petition neither granted nor denied

All Patents (as of 12/31/18)

Petitions filed:	9,646
IPRs filed:	8,917 (92%)
PGRs filed:	150 (2%)
Petitions granted:	4,912 (51%)
Petitions denied:	2,436 (25%)
Final Written Decisions:	2,513 (51%)
Patents Valid:	477 (19%)
Patents Invalid:	2,036 (81%)
All claims invalid:	1,601 (64%)
Some claims invalid:	435 (17%)

AIA Proceedings

Design patents Valid: 37.5%

Design patents Invalid: 62.5%

Patents Valid: 19%

Patents Invalid: 81%

U.S. Design Patent Standard Invalidity Defenses

1. Anticipation
2. Obviousness
3. Priority – New Matter
4. Functionality

A. Claim Construction

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