



**14th Annual Advanced Patent Law Institute
USPTO - March 21-22, 2019**

Design Patent Practitioners: What Guidance Can You Glean from the Board?

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Following is a collection in table format of all IPR and PGR design patent cases filed in the PTAB, along with the outcome of the petitions and final written decisions.

The statistics are as follows:

IPR

Petitions filed:	38	
Petitions granted:	16 (42%)	
Petitions denied:	22 (58%)	
Final Written decisions (for granted petitions):	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 (for granted petitions):	1	
Design patents Valid:	0	
Design patents Invalid:	1	

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

IPR DECISIONS OF THE PTAB IN DESIGN PATENT CASES

Case	Design Patent Number	Institution Decision Date	Petition Granted or Denied	Issues Raised in Petition	Final Written Decision Date	Patent found valid or invalid	Outcome of each issue
Skechers USA, Inc. v. Nike, Inc., IPR2017-00607, (PTAB 2017).	D696,853	July 6, 2017	Denied	§ 103			Both (2) grounds in favor of patent owner
Skechers USA, Inc. v. Nike, Inc., IPR2017-00608, (PTAB 2017).	D707,032	July 6, 2017	Denied	§ 103(a)			Both (2) grounds in favor of patent owner
Skechers USA, Inc. v. Nike, Inc., IPR2017-00617, (PTAB 2017).	D723,772	July 6, 2017	Denied	§ 103(a)			All (10) grounds in favor of patent owner
Skechers USA, Inc. v. Nike, Inc., IPR2017-00619, (PTAB 2017).	D725,356	July 6, 2017	Denied	§ 103(a)			All (10) grounds in favor of patent owner
Skechers USA, Inc. v. Nike, Inc., IPR2017-00620, (PTAB 2017).	D723,783	July 6, 2017	GRANTED	§ 103	June 28, 2018	Valid	Petitioner showed reasonable likelihood of prevailing on 3 (out of 10) grounds. Therefore, petition granted. Petitioner did not prevail on any grounds.
Skechers USA, Inc. v. Nike, Inc., IPR2017-00621, (PTAB 2017).	D723,781	July 6, 2017	GRANTED	§ 103	June 28, 2018	Valid	Petitioner showed reasonable likelihood of prevailing on 3 (out of 10) grounds. Therefore, petition granted. Petitioner did not prevail on any grounds.
Skechers USA, Inc. v. Nike, Inc., IPR2017-00623, (PTAB 2017).	D725,359	July 6, 2017	Denied	§ 103(a)			All (10) grounds in favor of patent owner

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First appeared as part of the conference materials for the
14th Annual Advanced Patent Law Institute session

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