

Design Patent Case Digest

[Keurig, Inc. v. JBR, Inc.](#)



Decision Date: May 24, 2013

Court: D. Massachusetts

Patents: [D502,362](#)

Holding: Defendant's motion for summary judgment of non-infringement GRANTED

Opinion: Plaintiff Keurig, Inc. sued JBR, Inc. in November 2011 for infringement of U.S. Design Patent No. D502,362 entitled "Disposable Beverage Filter Cartridge." Keurig obtained its patent in 2005 to cover a design for single-use coffee filters that may be used with its coffee brewers, but it does not use this design in its products. JBR sells [OneCups](#), another single-use coffee filter, for use in Keurig's brewers as an alternative to Keurig's [K-Cups](#) (not covered by the '362 patent). In response to the suit, JBR moved for summary judgment based on non-infringement of the '362 patent. Summary judgment resolves a dispute without completing the entire trial process, and thus is only appropriate when a party fails to "establish the existence of an element essential to [it]s case" for which it bears the burden of proof. Here, that element is the substantial similarity between the OneCups design and Keurig's patented design.

The court used the ordinary observer test to determine whether the OneCups design is substantially similar to Keurig's patented design. This test asks whether the similarity is such that it would deceive an ordinary observer to purchase one product thinking it was the other. The court identified two levels of analysis for this test. First, a threshold analysis determines if the two designs are "plainly dissimilar." If the designs are plainly dissimilar, this ends the inquiry. But if the designs are not plainly dissimilar, the court will then make a comparison with the prior art to aid in its determination of substantial similarity.

As part of the threshold analysis, the court determined which of the design features were functional. JBR asserted that the circular shape of the lid, the overall tapered shape of the filter, and the depending skirt were all functional features. The court only agreed with JBR as to the functionality of the filter's tapered shape and left this similarity out of its comparison. The overall design of the remaining features led the court to find OneCups "plainly dissimilar" from the patented design. According to the court, features that distinguished the two designs included the longer skirt on the OneCups filter and the OneCups filter's hemispherical shape compared with the triangular prism of the patented design filter. Thus, the court concluded, an ordinary observer "would

not be deceived that they are one and the same." Because the designs were plainly dissimilar, the court did not conduct a comparison to the prior art and it granted summary judgment for JBR.

If you have any questions or would like additional information on this topic, please contact:

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