

## Design Patent Case Digest

[Seirus Innovative Accessories, Inc. v. Cabela's Inc.](#)

Decision Date: October 25, 2011

Court: S.D. CA

Patents: [D510,652](#)

Holding: Defendant's motion for summary judgment on non-infringement of U.S. Patent No. D510,652 GRANTED

Opinion: Plaintiff, Seirus Innovative Accessories, Inc. sued Cabela's Inc. for infringement of three patents including U.S. Design Patent D510,652, entitled Neck Protector. Seirus sells a neck protector called the [Zips Microfleece Neck Up](#). Cabela's made a competing [neck warmer](#). The patented design includes a vertical zipper at the front of the protector. The accused design has a diagonal zipper. The Court granted Cabela's motion for summary judgment on non-infringement of U.S. Patent No. D510,652, finding that Cabela's neck protector did not infringe Seirus' design patent.

The court had previously determined that the proper claim construction was “[t]he ornamental design for a neck protector as reflected in Figures 1-8, depicting a vertical zipper.” In order to determine whether the Cabela's neck protector infringed the '652 patent, the Court carried out the ordinary observer test. Since an “ordinary observer will be drawn to those aspects of the claimed design that differ from the prior art” ([Egyptian Goddess](#)), the court analyzed the patented design in the context of the prior art. In particular, the Court considered prior art U.S. Patent [6,397,403](#), cited during prosecution of the Seirus design patent, which depicts a neck protector with a diagonal zipper. The Court determined that the vertical zipper disclosed in Seirus' design patent is the most notable feature distinguishing it from the prior art diagonal zipper.

According to the Court, since Cabela's product features a diagonal zipper, its design is closer to the prior art design than it is to the patented design. For this reason, an ordinary observer would not be deceived into believing that Cabela's neck warmer and Seirus' patent represent the same design. The Court believed that “there [was] no triable issue of material fact,” and therefore granted Cabela's motion for summary judgment, finding that the defendant's neck protector did not infringe on D510,652 patent.



Thumbs up:

This case is not unlike the [Arc'teryx](#) case decided shortly after [Egyptian Goddess](#), in which the district court denied summary judgment because the accused design was closer to the prior art. Although not mentioned in this opinion, the principles of [Wilson Sporting Goods](#) apply equally to design as to utility patents in that no patent shall be construed broadly enough to encompass prior art.

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

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