

Design Patent Case Digest

[Robinson v. JoeyBra LLC](#)



Decision Date: May 8, 2013

Court: W.D. Virginia

Patents: [D448,541](#)

Holding: Plaintiff's motion for reconsideration of order denying preliminary injunction DENIED

Opinion: Plaintiff Charles Robinson sued JoeyBra LLC in May 2012 for infringement of U.S. Design Patent No. D448,541 entitled "Brassiere." Robinson obtained a patent for his pocketed bra design in 2001. JoeyBra's product, the [JoeyBra](#), is also a pocketed bra intended to hold phones, IDs, keys, and other small items. This opinion addresses Robinson's motion for reconsideration following the court's denial of a motion for preliminary injunction on the basis that Robinson was not likely to succeed on the merits. Robinson claimed the court erred in its likelihood of success determination in two respects: (1) it relied on a 2010 patent of a pocketed bra design to determine that his patent was likely not novel, and thus invalid; and (2) it determined that the JoeyBra design was substantially different than the patented design.

To invalidate a patent based on novelty, a court must rely only on prior art references which were available before the patent's filing date. Thus, Robinson would have been correct if the court truly relied on a 2010 patent to find Robinson's 2001 patent to not be novel. The judge dismissed the first argument by stating that the court had not considered the 2010 patent in the context of the validity of Robinson's patent, but had merely mentioned the 2010 patent to indicate that Robinson's patent had "not been a bar on other [later] pocketed bra design patents." Therefore, not all pocketed bra designs would necessarily infringe on Robinson's patent.

The test for infringement of a patent design is whether "the product's design appears 'substantially the same' as the patented design to the 'ordinary observer.'" Robinson argued that the court erroneously "assum[ed] his patent drawings were to scale" when it decided that "'the size, orientation, and accessibility' of the pocket" of the JoeyBra were substantially different from that of the patent. The court noted that for design patents, unlike utility patents, the drawings must be to scale because the patent specifically claims the design "as shown and described." Robinson further argued that any difference between his design and the JoeyBra were only minor or insubstantial, thus invoking the doctrine of equivalents. The court responded that "the Federal Circuit

has stated that “[t]he substantial similarity test [for design patent infringement] by its nature subsumes a doctrine of equivalents analysis.” Thus, the court denied Robinson’s motion for reconsideration of the order denying his preliminary injunction request.

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

Tracy-Gene G. Durkin, Director
tdurkin@skgf.com

David K.S. Cornwell, Director
davidc@skgf.com

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