

Design Patent Case Digest

[MRC Innovations, Inc. v. Hunter Mfg., LLP](#)



Decision Date: January 31, 2013

Court: N.D. Ohio

Patents: [D634,488](#) and [D634,487](#)

Holding: Defendants' motion for summary judgment of invalidity GRANTED

Opinion: Plaintiff MRC Innovations, Inc. sued Hunter Mfg., LLP and CDI International, Inc. in March 2012 for infringement of U.S. Design Patents D634,488 and D634,487, entitled "Football Jersey for a Dog" and "Baseball Jersey for a Dog," respectively. Hunter sells licensed sports consumer products, including pet jerseys. Originally, Hunter received its pet jerseys from companies affiliated with Mark Cohen, the principal shareholder of MRC. The relationship between Cohen and Hunter, however, did not last. After December 2011, Cohen stopped supplying pet jerseys to Hunter. Earlier that year, Cohen obtained the '488 and '487 patents and assigned them both to MRC. The two design patents protect the design of jerseys that Hunter previously received from Cohen, the [V3 pet football jersey](#) and the [V3 pet baseball jersey](#). After Cohen stopped supplying these jerseys, Hunter hired CDI to supply pet jerseys like the V3 pet jerseys and MRC subsequently sued each company.

Hunter and CDI moved for summary judgment, arguing that both patents were invalid because the "claimed design[s] would have been obvious to a designer of ordinary skill who designs articles of the type involved." In performing an obviousness analysis a court considers (1) the scope and content of the prior art, (2) the differences between the claimed invention and the prior art, (3) the level of ordinary skill in the art, and (4) any objective indicia of nonobviousness.

The scope and content of the prior art for the '488 patent was not in dispute and included the [V2 pet football jersey](#), the ["Eagles" pet football jersey](#), and the ["Sporty K9" pet football jersey](#). To evaluate the differences between the claimed invention and the prior art a court finds a primary reference which is "basically the same as the claimed design" and then modifies it with other prior art references "to create a design that has the same overall visual appearance as the claimed design." The court acknowledged that the "Eagles" jersey qualified as "basically the same as the claimed design," only lacking a V-neck collar, ornamental surge stitching down the rear portion of the jersey, and an interlock fabric panel on the side portion. The court noted these differences as either *de minimis* (ornamental surge stitching down the rear portion of the jersey) or

suggested by the other prior art references (V-neck collar and interlock fabric panel on the side portion).

Similarly, the scope and content of the prior art for the '487 patent was also not in dispute and included the "[Sporty K9" pet baseball jersey](#) and the football jerseys mentioned above. For the baseball jersey design patent, the "Sporty K9" pet baseball jersey was the primary reference. The only differences between this primary reference and the claimed design consisted of minor differences or features that were well known in the prior art, such as the use of mesh in the pet football jerseys.

Regarding the third and fourth factors, MRC argued that Hunter failed to present evidence as to the level of ordinary skill in the art and ignored objective indicia of nonobviousness. Responding to MRC's argument that Hunter failed to present evidence as to the level of ordinary skill in the art, the court stated that there was no genuine dispute regarding this factor and Hunter was not required to submit expert evidence. Finally, MRC's evidence of objective indicia of nonobviousness lacked substantial weight because it relied primarily on the inventor's own statements. The court found both of MRC's patents invalid based on obviousness and granted the defendants' motion for summary judgment. On May 29, 2013, MRC appealed the decision to the Court of Appeals for the Federal Circuit.

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

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Special thanks to Summer Associate Steve A. Merrill for his role as a contributing author of this alert.

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