

# Design Patent Case Digest

[Victor Stanley, Inc. v. Creative Pipe, Inc.](#)



Decision Date: September 30, 2011

Court: D. Maryland

Patents: [D523,263](#)

Holding: Defendants liable for design patent infringement

Opinion: Plaintiff, Victor Stanley, Inc. sued Creative Pipe, Inc. for infringement of U.S. Design Patent D523,263, entitled End Frame for a Bench. Victor Stanley sells park benches, including a number of similar benches in the [Framers Modern Series](#). Creative Pipe made competing park bench called the [Nebelli Bench](#) and the [Necati Bench](#). The court found Creative Pipe liable for design patent infringement and further awarded damages and attorney fees to Victor Stanley and ordered a permanent injunction against the Nebelli bench.

In order to determine whether the Nebelli and Necati park benches infringed the '263 patent, the Court carried out the ordinary observer test. Since the Nebelli bench appeared "substantially the same" as the '263 patent, the court analyzed the patented design in the context of the prior art. In particular, the Court considered prior art U.S. Design Patent [D419,341](#), which depicts the end of a park bench and was cited during prosecution of the Victor Stanley design patent. The Court determined that the curvature of the legs, the height and roundness of the armrest, and the depth of the seat compared to the armrest were the most notable features distinguishing the Victor Stanley patent from the prior art. With these factors in mind, the court determined that an ordinary observer "would be unable to easily distinguish [the Nebelli bench design and the Victor Stanley design] in a side-by-side comparison" and therefore ruled that the Nebelli bench infringed the '263 patent.

The Necati bench, while nearly identical to the Nebelli bench in most respects, includes an additional oval element below the seat of the bench. Because of the addition of this element, the court found that the "overall impression" of the Necati bench is "aesthetically different" than that of the design patent. For that reason, the court noted that an ordinary observer would not confuse the two and therefore found that the Nebelli bench did not infringe the '263 patent. The Necati bench was also patented by defendant under [D578,808](#), but the court did not rely on that to conclude that the bench did not infringe.



Thumbs up:

It appears the court correctly found infringement of the patent by the Nebelli bench. However, the finding of non-infringement by the Necati bench, which was nearly identical to the Nebelli bench, but included an additional ornamental feature suggests that unlike in the Utility patent context, where infringement will not be negated if an accused product incorporates more than all of the elements of the patent claim, the same may not be true for design patent infringement if the additional features result in a design which has an overall ornamented appearance that is not substantially similar to the patent.

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

Tracy-Gene G. Durkin, Director  
[tdurkin@skgf.com](mailto:tdurkin@skgf.com)

David K.S. Cornwell, Director  
[davidc@skgf.com](mailto:davidc@skgf.com)

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