



Director of USPTO Reopens the Door to Design Patent IPRs

Top Glory Trading Group Inc. and DP Dream Pairs Inc. v. Cole Haan LLC, IPR2025-01395

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A recent decision by United States Patent and Trademark Office (“USPTO”) Director Squires may signal renewed interest in inter partes review (“IPR”) as a vehicle for challenging design patents. On January 12, 2026, the Director issued a decision in *Top Glory Trading Group Inc. and DP Dream Pairs Inc. v. Cole Haan LLC*, declining to discretionarily deny institution of an IPR challenging a Cole Haan design patent. The Director emphasized that the Federal Circuit’s decision in *LKQ Corp. v. GM Global Tech. Operations LLC*, 102 F.4th 1280 (Fed. Cir. 2024), “fundamentally changed the obviousness standard for design patents,” which outweighed any “settled expectations” the patent owner might have.

The *LKQ* decision was a significant departure from decades of design patent obviousness law. There, the Federal Circuit overturned the long-standing *Rosen-Durling* test, which had required challengers to identify (1) a primary reference that was “basically the same” as the claimed design and (2) secondary references that were “so related” that their ornamental features would naturally be combined. Irwin IP, LLP argued that this framework was too rigid and inconsistent with the flexible obviousness analysis articulated in *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398 (2007), which governs utility patents. The Federal Circuit agreed, aligning design patent obviousness more closely with *KSR*’s expansive, flexible approach.

Recently, the USPTO has often treated patents that have been in force for approximately six years or more as having sufficiently “settled expectations” to justify discretionary denial of an IPR petition, absent compelling countervailing considerations. Under this doctrine, the Director considers whether the passage of time and the conduct of the parties have created a reasonable expectation that a patent would not be challenged — for example, where a patent has been in force for many years and potential challengers were aware of it but declined to seek early review.

The design patent at issue in *Top Glory* was issued more than nine years ago, well beyond the timeframe that has typically triggered settled expectations concerns. Nevertheless, Director Squires concluded that the fundamental change in law effected by *LKQ* outweighed those reliance interests. That reasoning suggests a meaningful shift: parties may now have greater latitude to challenge “older” design patents (prosecuted prior to the *LKQ* decision) that were previously viewed as poor candidates for IPR due to the likelihood of discretionary denial. This change is particularly notable because such challenges will now be evaluated under a markedly more challenger-friendly obviousness standard.

Taken together, *Top Glory* and *LKQ* undercut a current narrative that IPRs, especially for design patents, are in terminal decline. To the contrary, the decision hints at a more receptive posture toward post-grant challenges, even where design patents have been in force for many years. Whether this reflects a broader philosophical shift under Director Squires remains to be seen. At a minimum, however, the decision provides fresh incentives for accused infringers and other interested parties to reconsider IPR as a viable and powerful tool in design patent disputes.