

CURVER LUXEMBOURG, SARL, v. HOME EXPRESSIONS INC., Appeal No. 2018-2214 (Fed. Cir. September 12, 2019). Before Chen, Hughes, and Stoll. Appealed from D.N.J. (Judge McNulty)

## Background:

Curver claimed Home Expressions infringed a design patent entitled "Pattern for a Chair" and claiming an "ornamental design for a pattern for a chair." Curver alleged that baskets made and sold by Home Expressions incorporated the claimed design pattern, and thus infringed the patent.

The figures of the design patent illustrate the design pattern, and are disembodied from any article of manufacture. Although the originally applied-for patent was directed to a pattern for a furniture part, Curver amended the title to recite "a chair" in response to an objection to the title for failing to designate a particular article for the design, as suggested by the Examiner during prosecution.

The district court granted Home Expression's motion to dismiss the complaint under Rule 12(b)(6) after construing the scope of the patent, comparing the accused products to the construed scope, and determining whether the accused baskets infringed. When determining whether the accused baskets infringed, the district court found that an ordinary observer would not purchase Home Expressions's basket with the ornamental "Y" design believing that the purchase was for an ornamental "Y" design applied to a chair.

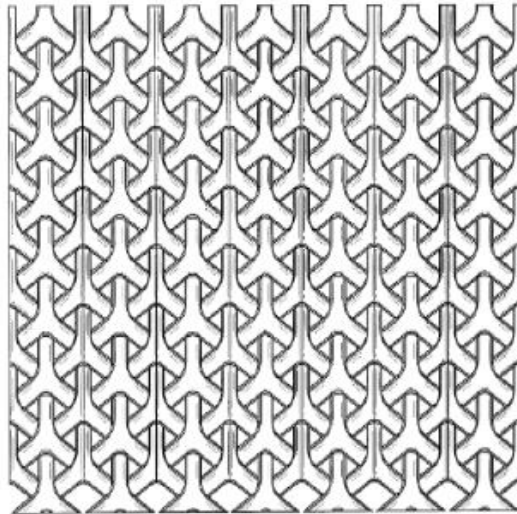
## Issue/Holding:

Did the district court err by determining that the scope of the design patent is limited by the terms in the claim? No, affirmed.

## Discussion:

On appeal, Curver argued that a determination of infringement should be based on the figures, which do not illustrate any particular article of manufacture, rather than the language of the claim. The Federal Circuit interpreted this as a request to interpret the scope of the design patent to be that of a surface ornamentation design *per se* because a chair was not present in the drawings. This was a case of first impression because this was the first time that the Federal Circuit had to address whether claim language specifying the article of manufacture should limit the scope of the design patent because the article is not illustrated in the figures.

The Federal Circuit rejected Curver's request to interpret the scope of the design patent to be that of a surface ornamentation design *per se*. The Federal Circuit acknowledged that the scope of design patents is traditionally defined by drawings rather than language, unlike utility patents. However, the Federal Circuit found that the scope of a design patent can be limited by the claim language where the claim language supplies the only instance of an article of manufacture that appears nowhere in the figures. Thus, the Federal Circuit determined that the scope of a claim of a design patent can be defined by a combination of the figures and the claim language when the claim language is necessary to identify the article of manufacture. Accordingly, the Federal Circuit affirmed the decision of the district court.



**FIG. 1**

Figure 1 of Curver's Design Patent



Home Expressions's Accused Basket