

TOP BRAND LLC v. COZY COMFORT COMPANY LLC, Appeal No. 2024-2191 (Fed. Cir. July 17, 2025). Before Dyk, Reyna, and Stark. Appealed from D. Ariz. (Judge Logan).

Background:

Cozy Comfort owns a design patent directed to oversized sweatshirts with marsupial pockets. A competitor, Top Brand, filed a declaratory action for noninfringement of the design patent, and Cozy Comfort counterclaimed for infringement. At trial, the prosecution history was introduced as evidence, and Top Brand argued that patentee's statements made during prosecution to distinguish the prior art (White) narrowed the claim scope. Specifically, the patentee distinguished White using the following arguments: as shown in figures below, (1) the marsupial pocket in the claimed design occupies about one-third of the width of the torso whereas White's pocket occupies 90% of the torso's width; (2) the armholes in the claimed design are placed below the top of the marsupial pocket whereas the armholes in White's design are above the top of the pocket; and (3) in the claimed design, the bottom hem slopes downward whereas White's design does not have such a downward bottom hem.

The district court did not adopt Top Brand's claim construction that is narrowed by the prosecution history. At trial, the jury was simply instructed to compare the claimed design to the accused product to determine infringement. The jury found infringement and awarded over \$15 million in disgorged profits. The district court denied Top Brand's JMOL motion, and Top Brand appealed.

Issue/Holding:

Did the district court err in denying Top Brand's JMOL motion? Yes, reversed.

Discussion:

As a preliminary matter, Cozy Comfort argued that Top Brand waived its claim construction position by failing to object to the jury instruction. The Federal Circuit disagreed. The Federal Circuit made it clear that a party does not waive a claim construction argument when the construction proposed on appeal is the same as the construction proposed during earlier claim construction proceedings.

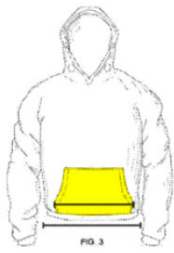
Cozy Comfort next argued that the doctrine of prosecution history disclaimer does not apply to design patents where amendments were not made because "the nature of design patents renders any purported disavowal ambiguous." The Federal Circuit disagreed and reiterated that the doctrine applies to design patents through amendments or arguments.

Cozy Comfort then argued that there was no unambiguous disavowal. The Federal Circuit disagreed. The examiner rejected the claimed design as anticipated by White, and Cozy Comfort argued that the claimed design was distinguishable from White's under the ordinary observer test by focusing on the specific features (1)-(3). By making this argument, Cozy Comfort surrendered the identified features from the claim scope. With respect to these features, Top Brand's accused sweatshirts are more like White's design and do not have any of the features in the claimed design. The Federal Circuit then concluded that the district court erred in denying JMOL of no infringement because no reasonable jury, viewing the evidence in the light most favorable to Cozy Comfort, could find infringement.

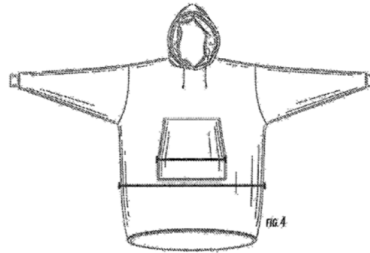
[Prior Art]

[Claim]

[Accused product]



White, Fig. 3  
(Appellants' Br. 39  
(citing J.A. 15110)  
(color alterations and  
annotations in  
original))

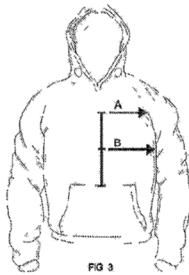


D788 patent, Fig. 4  
(J.A. 15108  
(annotations in  
original))

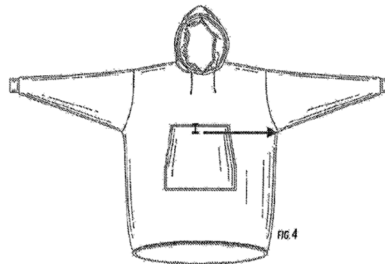


Accused product  
(Appellants' Br. 39  
(citing J.A. 17028)  
(color alterations in  
original))

(1)



White, Fig. 3  
(J.A. 15109  
(annotations in  
original))



D788 patent, Fig. 4  
(J.A. 15109  
(annotations in  
original))



Accused product  
(Appellants' Br. 40 (citing J.A. 17028)  
(color alterations in original))

(2)



White, Fig. 3  
(J.A. 15108  
(annotations in  
original))



D788 patent, Fig. 6  
(J.A. 15110  
(annotations in  
original))



Accused product  
(Appellants' Br. 40  
(citing J.A. 17028)  
(background removed  
in original))

(3)