

Quasi-Trademarks and Establishing a Theory of Design Patent Protection
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Short Abstract: I liken the state of design patent law to the pre-ball Cinderella -- hopeful, but meaningless and sitting in a pile of ashes. Design patent law is a mess. Recent cases have left design patents holding little value, and court opinions show design patents receiving the stepsister treatment. In consumer goods, however, ornamental design is incredibly important and valuable. This disconnect between the property rights and business reality raises a cascade of issues. Surprisingly, very little work has been done to establish either the theoretical or empirical foundation for design protection.

This paper examines the purposes of design patent protection and the interplay between other forms of intellectual property rights. I introduce the concept of quasi-trademarks to explain why patent rules are used to obtain trademark benefits. Along the way, I draw from both case studies and broader empirical analysis of how design patents are used (and not used) today. The study also compares the American and European approaches.