

SARAH BURSTEIN
University of Oklahoma College of Law
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ACADEMIC APPOINTMENTS & AFFILIATIONS

University of Oklahoma College of Law

Associate Professor of Law, 2012–2018

Professor of Law, 2018–Present

Courses: Copyright, Intellectual Property, Trademarks & Unfair Competition, Patents,
Design Law, Art & Cultural Heritage Law, Civil Procedure I/II

Service: OU Faculty Senate; Fred Jones Jr. Museum of Art Faculty Advisory Board; Curriculum
Committee; Competition Teams Committee; Library Committee; *Pro Bono* Program
Committee; Awards & Scholarships Committee; Council of Academic Responsibility;
Code of Academic Responsibility Appeals Board; Coach, INTA (Trademark) Moot Court
Competition; Faculty Advisor, IP Society and Art & Cultural Heritage Law Association

Chicago-Kent College of Law

Affiliated Faculty, Center for Design, Law & Technology, 2017–Present

Notre Dame Law School

Visiting Professor, Fall 2019

Courses: Intellectual Property, Patents

EDUCATION

University of Chicago Law School

Juris Doctor, June 2007

Honors: Edmund A. Spencer Scholar

Iowa State University

B.A. with Honors and with Distinction, May 2004

Honors: National Merit Scholarship, Freshman Honors Program, College of Design Honors
Program, Top Graduating Senior in the College of Design

Majors: Art & Design and Journalism & Mass Communication; Minor in French

Internships: The Quad-City Times (Photojournalism), Summer 2002
Brunnier Art Museum (Collections Management), Spring 2004

PUBLICATIONS & WORKS-IN-PROGRESS

How Design Patent Law Lost its Shape, 41 CARDOZO L. REV. __ (forthcoming Dec. 2019).

Intelligent Design & Egyptian Goddess: A Response to Professors Buccafusco, Lemley & Masur, 68 DUKE L.J.
ONLINE 94 (2019).

Is Design Patent Examination Too Lax?, 33 BERKELEY TECH. L.J. 607 (2018) (symposium).

The “Article of Manufacture” Today, 31 HARV. J.L. & TECH. 781 (2018).

Cited in Order Requiring New Trial on Design Patent Damages, *Apple Inc. v. Samsung Elecs. Co., Ltd.*, No. 5:11-cv-01846 (N.D. Cal. Oct. 22, 2017), ECF 3530.

The “Article of Manufacture” in 1887, 32 BERKELEY TECH. L.J. 1 (2017).

Cited in Order Requiring New Trial on Design Patent Damages, *Apple Inc. v. Samsung Elecs. Co., Ltd.*, No. 5:11-cv-01846 (N.D. Cal. Oct. 22, 2017), ECF 3530.

Positively reviewed by Mark McKenna, *Designing Design Patent Subject Matter*, JOTWELL: THE JOURNAL OF THINGS WE LIKE (LOTS) (Mar. 22, 2018).

Costly Designs, 77 OHIO ST. L.J. 107 (2016).

The Patented Design, 83 TENN. L. REV. 161 (2015).

Positively reviewed by Pamela Samuelson in *What Scope for Design Patents?*, JOTWELL: THE JOURNAL OF THINGS WE LIKE (LOTS) (Feb. 15, 2016).

Commentary: Faux Amis in Design Law, 105 TRADEMARK REP. 1455 (2015) (invited contribution).

Moving Beyond the Standard Criticisms of Design Patents, 17 STAN. TECH. L. REV. 305 (2013) (symposium).

Republished (in shortened and updated form) as: *The Standard Criticisms of U.S. Design Patents*, 25 JAP. SOC. SCI. DES. 84 (October 2017) (translation by Kodai Kimura).

Not (Necessarily) Narrower: Rethinking the Relative Scope of Copyright Protection for Designs, 3 IP THEORY 114 (2013) (invited contribution).

Visual Invention, 16 LEWIS & CLARK L. REV. 169 (2012).

Dilution by Tarnishment: The New Cause of Action, 98 TRADEMARK REP. 1189 (2008) (peer-reviewed).

Partial Designs (work in progress).

Whole Designs (work in progress).

SELECTED ADDITIONAL WRITING

Does § 101 Apply to Design Patents?, PATENTLY-O (April 24, 2019).

In re Maatita: Has the Court Radically Redesigned Design Patent Coverage?, PATENTLY-O (August 28, 2018).

Microsoft, Corel, and the “Article of Manufacture,” PATENTLY-O (May 16, 2018).

The Apple v. Samsung Retrial: Breaking Down Apple’s Design Patent Claims, COMPARATIVE PATENT REMEDIES (May 15, 2018) (by invitation).

Samsung v. Apple: A view from inside the courtroom, PATENTLY-O (Oct. 12, 2016).

“Design” & Design Patents, DESIGN.BLOG (September 8, 2016) (by invitation).

Design Patent Claim Construction: More from the Federal Circuit, PATENTLY-O (Apr. 25, 2016).

Apple, Samsung & Design Patent Claim Construction, PATENTLY-O (Jan. 4, 2016).

Cited in Br. in Opp’n to Pet. for Writ of Cert., *Samsung Elecs. Co., Ltd. v. Apple Inc.*, No. 15-777 (Feb. 3, 2016), *cert. granted in part*, 136 S. Ct. 1453 (Mar. 21, 2016).

Analysis of U.K. Legislation Criminalizing the Infringement of Registered Designs, COMPARATIVE PATENT REMEDIES (May 23, 2014) (by invitation).

TPP: what the design provisions say—and don't say!, THE IPKAT (Nov. 22, 2013) (by invitation).

Design Patent Myths—On examiners and expertise, THE FACULTY LOUNGE (Oct. 30, 2013).

Classic Design Patent Scholarship, WRITTEN DESCRIPTION (Apr. 5, 2013) (by invitation).

ACADEMIC PAPER PRESENTATIONS

International Trademark Association 141st Annual Meeting, Trademark Scholarship Symposium, *Whole Designs* (scheduled for May 21, 2019) (by invitation).

St. John's University School of Law, 2019 IP Colloquium, *Whole Designs* (Apr. 8, 2019) (by invitation).

University of Houston Law Center, Sixteenth Annual Works-In-Progress Intellectual Property Colloquium, *Whole Designs* (Feb. 9, 2019) (plenary session).

William & Mary Law School, Junior Intellectual Property Scholars Association Workshop, *Whole Designs* (Jan. 25, 2019).

Chicago-Kent College of Law, Center for Design, Law & Technology, *Whole Designs* (Nov. 14, 2018) (by invitation).

UNC School of Law, Faculty Workshop Series, *Whole Designs* (Oct. 11, 2018) (by invitation).

Northern Illinois University College of Law, Chicagoland Junior Scholars WIP Conference, *Whole Designs* (Oct. 5, 2018).

Benjamin N. Cardozo School of Law, Faculty Workshop Series, *Whole Designs* (Oct. 3, 2018) (by invitation).

UC Berkeley School of Law, Eighteenth Annual Intellectual Property Scholars Conference, *Partial Designs* (Aug. 9, 2018).

Northwestern Pritzker School of Law, Junior Intellectual Property Scholars Association Workshop, *Reviving Ornamentality* (July 25, 2018).

International Trademark Association 140th Annual Meeting, Trademark Scholarship Symposium, *Partial Designs* (May 22, 2018).

UC Berkeley School of Law, 22nd Annual BCLT/BTLJ Symposium: The Administrative Law of Intellectual Property, *Is Design Patent Examination Too Lax?* (Apr. 12, 2018) (by invitation).

DePaul College of Law, Manzo Scholars Series, *The "Article of Manufacture" Today* (Mar. 21, 2018) (by invitation).

Case Western Reserve University School of Law, Fifteenth Annual Works-In-Progress Intellectual Property Colloquium, *Partial Designs* (Feb. 16, 2018).

- University of Oklahoma College of Law, Junior Intellectual Property Scholars Association Workshop, *The "Article of Manufacture" Today* (Jan. 26, 2018).
- Texas A&M University School of Law, Intellectual Property Scholars Roundtable, *The "Article of Manufacture" Today* (Oct. 14, 2017).
- Indiana University Maurer School of Law, Intellectual Property Colloquium, *The "Article of Manufacture" Today* (Sept. 14, 2017).
- Benjamin N. Cardozo School of Law, Seventeenth Annual Intellectual Property Scholars Conference, *The "Article of Manufacture" Today* (Aug. 10, 2017).
- New York University School of Law, Design2 Conference, *Partial Designs* (May 11, 2017) (by invitation).
- Northwestern Pritzker School of Law, PatCon 7, *The "Article of Manufacture" Today* (Apr. 8, 2017).
- Kanazawa University, Fifth Asia-Pacific IP Forum, Presenter, *Partial Designs* (Mar. 19, 2017) (by invitation).
- Chicago-Kent College of Law, Chicago IP Scholars Works in Progress, *The "Design" in Design Patents* (Feb. 23, 2017).
- Boston University School of Law, Fourteenth Annual Works-In-Progress Intellectual Property Colloquium, *The "Design" in Design Patents* (Feb. 11, 2017).
- The Ohio State University Moritz College of Law, Junior Intellectual Property Scholars Association Workshop, *The "Article of Manufacture" in 1887* (Jan. 20, 2017).
- Texas A&M University School of Law, Intellectual Property Scholars Roundtable, *The "Article of Manufacture" in 1887* (Oct. 8, 2016).
- University of Oklahoma College of Law, Fourth Annual Oklahoma Junior Scholars Conference, *The "Article of Manufacture" in 1887* (July 28, 2016).
- University of Washington School of Law, Thirteenth Annual Works-In-Progress Intellectual Property Colloquium, *Revising Ornamentality* (Feb. 19, 2016).
- University of Washington School of Law, Fourth Asia-Pacific IP Forum, Presenter, *U.S. Design Patent Damages* (Feb. 18, 2016) (by invitation).
- Indiana University Robert H. McKinney School of Law, Center for Intellectual Property and Innovation Distinguished Speakers Series, *Revising Ornamentality* (Nov. 11, 2015) (by invitation).
- Texas A&M University School of Law, Intellectual Property Scholars Roundtable, *Revising Ornamentality* (Oct. 9, 2015).
- DePaul University College of Law, Fifteenth Annual Intellectual Property Scholars Conference, *Revising Ornamentality* (Aug. 6, 2015).
- University of Oklahoma College of Law, Third Annual Oklahoma Junior Scholars Conference, *Revising Ornamentality* (July 23, 2015).

- Washington University School of Law, Junior Faculty Regional Workshop, *Costly Designs* (May 1, 2015).
- Suffolk University Law School, Boston Intellectual Property Colloquium, *The High Cost of Cheap Design Protection* (Apr. 2, 2015) (by invitation).
- Drake University Law School, Intellectual Property Scholars Roundtable, *The High Cost of Cheap Design Protection* (Mar. 28, 2015).
- New York University School of Law, NYU Colloquium on Innovation Policy, *The Patented Design* (Feb. 19, 2015) (by invitation).
- U.S. Patent & Trademark Office, Twelfth Annual Works-In-Progress Intellectual Property Colloquium, *The High Cost of Cheap Design Rights* (Feb. 7, 2014).
- The George Washington University Law School, IP Speaker Series, *Costly Designs* (Oct. 16, 2014) (by invitation).
- UC Berkeley School of Law, Fourteenth Annual Intellectual Property Scholars Conference, *The Patented Design* (Aug. 8, 2014).
- Southeastern Association of Law Schools (SEALS) Annual Conference, New Scholars Workshop, *The Patented Design* (Aug. 4, 2014).
- University of Oklahoma College of Law, Second Annual Oklahoma Junior Scholars Conference, *The Patented Design* (July 10, 2014).
- Washburn University School of Law, Junior Intellectual Property Scholars Association Workshop, *The Case for Product-Specificity in Design Protection* (June 12, 2014).
- Drake University Law School, Intellectual Property Scholars Roundtable, *The Patented Design* (Mar. 29, 2014).
- Marquette University Law School, Intellectual Property Colloquium Series, *Prior Art, Egyptian Goddess & Design Patent Infringement* (Mar. 21, 2014) (by invitation).
- College Art Association 102nd Annual Conference, Session on "Design and the Law: Opportunity and Constraint," *Costly Designs* (Feb. 13, 2014) (selected by session chair Carma Gorman, Ph.D.).
- Santa Clara Law, Eleventh Annual Works-In-Progress Intellectual Property Colloquium, *The Patented Design* (Feb. 8, 2014).
- Chicago-Kent College of Law, Chicago Intellectual Property Colloquium, *Costly Designs* (Jan. 28, 2014) (by invitation).
- Franklin Pierce Center for Intellectual Property at UNH School of Law, Third Annual IP Scholars' Roundtable, *Costly Designs* (Nov. 8, 2013) (by invitation).
- Benjamin N. Cardozo School of Law, Thirteenth Annual Intellectual Property Scholars Conference, *Costly Designs* (Aug. 9, 2013).

- University of Oklahoma College of Law, First Annual Oklahoma Junior Scholars Conference, *Costly Designs* (July 19, 2013).
- Drake University Law School, Intellectual Property Scholars Roundtable, *Costly Designs* (Apr. 13, 2013).
- Stanford Law School, Design Patents in the Modern World Symposium, *In Defense of Design Patents* (Apr. 6, 2013) (by invitation).
- Indiana University Maurer School of Law, Center for Intellectual Property Research, *In Defense of Design Patents* (Mar. 28, 2013) (by invitation).
- University of Oxford, The Future of Design Protection Conference, *Not (Necessarily) Narrower: Rethinking the Relative Scope of Copyright for Designs* (Nov. 3, 2012) (by invitation).
- Stanford Law School, Twelfth Annual Intellectual Property Scholars Conference, *In Defense of Design Patents* (Aug. 9, 2012).
- Drake University Law School, Intellectual Property Scholars Roundtable, *In Defense of Design Patents* (Mar. 30, 2012).
- UC Berkeley School of Law, Tenth Annual Intellectual Property Scholars Conference, *Visual Invention* (Aug. 12, 2010).

SELECTED ADDITIONAL PRESENTATIONS, PANELS & CONFERENCES

- University of Houston Law Center, Lecturer, Intellectual Property & Information Law (IPIL) Institute Fall Lecture (scheduled for Nov. 7, 2019) (by invitation).
- International Trademark Association 141st Annual Meeting, Panelist, “Comparative Design Remedies” (scheduled for May 18, 2019) (by invitation).
- New York University School of Law, Engelberg Center Symposium, “Proving Damages” (scheduled for May 16–17, 2019) (by invitation).
- Notre Dame Law School, Guest Speaker, Intellectual Property Law Society (April 23, 2019) (by invitation).
- Association of American Law Schools Annual Meeting, Section on Remedies, Panelist, “Intellectual Property Remedies at the Supreme Court and Worldwide” (Jan. 4, 2019) (by invitation).
- Chicago-Kent College of Law, Annual Supreme Court IP Review, Panelist, Copyright & Design Patent Panel (Sept. 28, 2017) (by invitation).
- International Trademark Association 139th Annual Meeting, Panelist, “Exploring the Boundaries of Functionality: Aesthetic & Acquired Functionality in the U.S. & Europe” (May 22, 2017) (by invitation).
- International Trademark Association 139th Annual Meeting, Panelist, “Design Law as Applied to ‘Functional’ Aspects of Designs” (May 21, 2017) (by invitation).

University of Notre Dame Law School, Scope of IP Rights Roundtable, Commentator for *Claiming Design* by Jeanne Fromer & Mark McKenna (Mar. 31, 2017) (by invitation).

Waseda University, Presenter, "Design Protection in the US: The Patent Approach and its Application Towards Industry 4.0" (Mar. 11, 2017) (by invitation).

Association of American Law Schools Annual Meeting, Moderator & Organizer, Section on Art Law Program on "Art, Separability, and the Future of Copyright for Designs" (Jan. 4, 2017).

University of Pennsylvania Law School, Design Intellectual Property Exploratorium (co-hosted by the University of Pennsylvania Integrated Product Design Program & The Industrial Designers Society of America), Roundtable Participant & Presenter (Apr. 8, 2016) (by invitation).

Northwestern Pritzker School of Law, Northwestern Journal of Technology & Intellectual Property Symposium, Panelist, "Design Patent Construction in the post *Apple v. Samsung* Era" (Mar. 10, 2016) (by invitation).

ETH Zürich, Transatlantic Innovation Scholarship Conference: "Design Protection → Design Innovation?," Participant & Session Discussion Leader (June 11–12, 2015) (by invitation).

The George Washington University Law School, Design Law 2014, Panelist, "Remedies" (Nov. 21, 2014) (by invitation).

Association of American Law Schools Annual Meeting, Section on Intellectual Property, Moderator, "Protecting Design" (Jan. 4, 2014) (by invitation).

Max Planck Institute for Intellectual Property and Competition Law, Design Law Roundtable, Participant (Nov. 22–23, 2013) (by invitation).

Stanford Law School, Design Patents in the Modern World Conference, Panelist, "The Scope of Design Patents" (Apr. 5, 2013) (by invitation).

CONFERENCES ORGANIZED

University of Oklahoma College of Law, Junior Intellectual Property Scholars Association Workshop (Jan. 25–26, 2018).

University of Oklahoma College of Law, Fourth Annual Oklahoma Junior Scholars Conference (July 28, 2016) (co-organizer).

University of Oklahoma College of Law, Third Annual Oklahoma Junior Scholars Conference (July 23, 2015) (co-organizer).

University of Oklahoma College of Law, Second Annual Oklahoma Junior Scholars Conference (July 10, 2014) (co-organizer).

University of Oklahoma College of Law, First Annual Oklahoma Junior Scholars Conference (July 19, 2013) (co-organizer).

SELECTED MEDIA QUOTATIONS & INTERVIEWS

Gaston Kroub, *3 Questions For Design Patent Guru, Sarah Burstein*, ABOVE THE LAW (Mar. 19, 2019).

Diana Budds, *New 'midcentury-inspired' furniture looks a lot like classics—does it matter?*, CURBED (Jan. 29, 2019).

Jan Wolfe, *U.S. Supreme Court to hear challenge to ban on profane trademarks*, REUTERS NEWS (Jan. 4, 2019).

Louise Matsakis, *Tumblr's Porn-Detecting AI Has One Job—And It's Bad at It*, WIRED.COM (Dec. 5, 2018).

Brian Frye, *Sarah Burstein on Design Patent Law, Doctrine & Policy*, IPSE DIXIT PODCAST (Nov. 7, 2018).

Camila Domonoske, *The Tinder-Bumble Feud: Dating Apps Fight Over Who Owns The Swipe*, NATIONAL PUBLIC RADIO (ALL THINGS CONSIDERED) (October 30, 2018).

Shara Tibken, *Apple and Samsung finally settle their patent dispute*, CNET (June 27, 2018).

Ellie Mertens, *Calculating Design Patent Damages After Apple v. Samsung*, MANAGING IP (June 11, 2018).

Jan Wolfe & Stephen Nellis, *U.S. jury awards Apple \$539 million in Samsung patent retrial*, REUTERS (May 24, 2018).

Scott Graham, *Samsung Hit With Half-Billion-Dollar Verdict in Latest Apple Patent Trial*, THE RECORDER (May 24, 2018).

Stephen Shankland, *Samsung must pay Apple \$539 million for infringing iPhone design patents, jury finds*, CNET (May 24, 2018).

Jan Wolfe, *Design patent case against Tesla holds no truck with experts*, REUTERS (May 2, 2018).

Mark Wilson, *Tomorrow's Brands Might be Impossible to Trademark*, CO.DESIGN (Aug. 1, 2017).

Dan Friedell, *A Real-Life Education in Protecting Your Creative Work In a Digital Age*, 99U.COM (May 11, 2017).

Shelby Carpenter, *Why Tech Giants Want Samsung To Beat Apple In The Supreme Court*, FORBES.COM (Oct. 11, 2016).

Jeff John Roberts, *Everything You Need to Know About the Apple-Samsung Supreme Court Showdown*, TIME.COM (Oct. 10, 2016).

Ashby Jones & Daisuke Wakabayashi, *Samsung Asks Supreme Court to Hear Appeal of Patent Feud With Apple*, THE WALL STREET JOURNAL (Dec. 15, 2015).

Amanda Hurley, *New York Architect Loses Copyright Infringement Lawsuit*, ARCHITECT: THE MAGAZINE OF THE AMERICAN INSTITUTE OF ARCHITECTS (June 12, 2014).

TEACHING & RESEARCH INTERESTS

Design Law, Copyright, Trademarks, Patents, Art & Cultural Heritage Law, Civil Procedure, Torts, Evidence, Remedies

SELECTED PROFESSIONAL ORGANIZATIONS & SERVICE

The Association of American Law Schools (AALS):

Executive Board, Intellectual Property Law Section, 2019

Chair, Section on Art Law, 2016

Chair-Elect, Section on Art Law, 2015

Junior Intellectual Property Scholars Association (JIPSA), 2013–2019

International Trademark Association (INTA):

Designs Committee, 2016–Present

Design Emerging Issues Subcommittee, 2018–2019

Designs Communications Subcommittee, 2016–2017

Professor Member, 2012–Present

American Bar Association Section of Intellectual Property Law (ABA-IPL):

Chair, Design Committee (f/k/a Industrial Design Committee), 2014–2017

Vice Chair, Industrial Design Committee, 2013–2014

BAR ADMISSIONS

U.S. Court of Appeals for the Federal Circuit (2017), Supreme Court of the United States (2016),
U.S. District Court for the Northern District of Illinois (2007), Supreme Court of Illinois (2007)

PROFESSIONAL EXPERIENCE

The Honorable Robert W. Pratt, U.S. District Court for the Southern District of Iowa
Law Clerk, September 2010–July 2012

Kirkland & Ellis LLP, Chicago, Illinois
Intellectual Property Litigation Associate, September 2007–July 2010
Summer Associate, June 2006–August 2006

The Honorable Richard A. Posner, The University of Chicago Law School
Academic Research Assistant, June 2005–May 2006