

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: Faculty Senate; Curriculum Committee; Competition Teams Committee; Council of Academic
Responsibility; Code of Academic Responsibility Appeals Board; Coach, INTA 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 Student 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).

Cited in *Curver Luxembourg SARL v. Home Expressions, Inc.*, No. 2018-2214, 2019 WL 4308879 (Fed. Circ. Sept. 12, 2019).

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) in Japanese 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

Design Patents After Curver Luxembourg: Design FOR an Article of Manufacture, PATENTLY-O (Sept. 16, 2019).

Design Patents and Treble Damages, COMPARATIVE PATENT REMEDIES (July 31, 2019).

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

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

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

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

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

Cited by Jeanne Curtis & Christopher Buccafusco, *The Design Patent Bar: An Occupational Licensing Failure*, 37 CARDOZO ARTS & ENT. L.J. 263 (2019).

Cited by Nicholas Matich, *Patent Office Practice After the America Invents Act*, 23 FED. CIRCUIT B.J. 225, 242 n.119 (2013).

Design Patent Myths—You can only get design patents for applied ornaments, THE FACULTY LOUNGE (Oct. 21, 2013).

Cited by Christopher Buccafusco & Jeanne C. Fromer, *Fashion's Function in Intellectual Property Law*, 93 NOTRE DAME L. REV. 51 (2017).

Cited by Ralph D. Clifford & Richard J. Peltz-Steele, *The Constitutionality of Design Patents*, 14 CHI.-KENT J. INTELL. PROP. 553, 556 (2015).

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

Heart, soul and US design patents, CLASS 99 (Oct. 17, 2012).

Guest Post: Design Patents and Apple v. Samsung, MADISONIAN.NET (Aug. 27, 2012).

Cited by Rebecca Tushnet, *The Eye Alone Is the Judge: Images and Design Patents*, 19 J. INTELL. PROP. L. 409, 426 (2012).

Guest Post by Sarah Burstein: Apple v. Samsung, PATENTLY-O (May 18, 2012).

ACADEMIC PAPER PRESENTATIONS

Michigan Law School, Intellectual Property Workshop, *Whole Designs* (scheduled for Nov. 25, 2019).

Notre Dame Law School, Faculty Colloquium, *Whole Designs* (Sept. 10, 2019).

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

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

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).

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

- 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).
- 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).
- DePaul College of Law, Manzo Scholars Series, *The "Article of Manufacture" Today* (Mar. 21, 2018).
- 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).
- 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).
- 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, *Reviving Ornamentality* (Feb. 19, 2016).
- University of Washington School of Law, Fourth Asia-Pacific IP Forum, Presenter, *U.S. Design Patent Damages* (Feb. 18, 2016).
- Indiana University Robert H. McKinney School of Law, Center for Intellectual Property and Innovation Distinguished Speakers Series, *Reviving Ornamentality* (Nov. 11, 2015).
- Texas A&M University School of Law, Intellectual Property Scholars Roundtable, *Reviving Ornamentality* (Oct. 9, 2015).
- DePaul University College of Law, Fifteenth Annual Intellectual Property Scholars Conference, *Reviving Ornamentality* (Aug. 6, 2015).
- University of Oklahoma College of Law, Third Annual Oklahoma Junior Scholars Conference, *Reviving 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).
- 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).
- 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).
- 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).

College Art Association 102nd Annual Conference, Session on “Design and the Law: Opportunity and Constraint,” *Costly Designs* (Feb. 13, 2014).

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).

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).

Indiana University Maurer School of Law, Center for Intellectual Property Research, *In Defense of Design Patents* (Mar. 28, 2013).

University of Oxford, The Future of Design Protection Conference, *Not (Necessarily) Narrower: Rethinking the Relative Scope of Copyright for Designs* (Nov. 3, 2012).

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).

Notre Dame Law School, Participant, Remedies Roundtable (June 20, 2019).

- International Trademark Association 141st Annual Meeting, Panelist, “Comparative Design Remedies” (May 18, 2019).
- New York University School of Law, Panelist, Engelberg Center Symposium, “Proving Damages” (May 16, 2019).
- Notre Dame Law School, Guest Speaker, Intellectual Property Law Society, “What’s the Point of Design Patents?” (April 23, 2019).
- Association of American Law Schools Annual Meeting, Section on Remedies, Panelist, “Intellectual Property Remedies at the Supreme Court and Worldwide” (Jan. 4, 2019).
- International Trademark Association 139th Annual Meeting, Panelist, “Design Law as Applied to ‘Functional’ Aspects of Designs” (May 21, 2017).
- University of Notre Dame Law School, Scope of IP Rights Roundtable, Commentator for *Claiming Design* by Jeanne Fromer & Mark McKenna (Mar. 31, 2017).
- Waseda University, Presenter, “Design Protection in the US: The Patent Approach and its Application Towards Industry 4.0” (Mar. 11, 2017).
- 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).
- ETH Zürich, Transatlantic Innovation Scholarship Conference: “Design Protection → Design Innovation?,” Participant & Session Discussion Leader (June 11–12, 2015).
- The George Washington University Law School, Design Law 2014, Panelist, “Remedies” (Nov. 21, 2014).
- Association of American Law Schools Annual Meeting, Section on Intellectual Property, Moderator, “Protecting Design” (Jan. 4, 2014).
- Max Planck Institute for Intellectual Property and Competition Law, Participant, Design Law Roundtable (Nov. 22–23, 2013).
- Stanford Law School, Design Patents in the Modern World Conference, Panelist, “The Scope of Design Patents” (Apr. 5, 2013).

TEACHING & RESEARCH INTERESTS

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

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 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)

SELECTED MEDIA QUOTATIONS & PODCASTS

Quoted in news outlets including THE WALL STREET JOURNAL, NATIONAL PUBLIC RADIO (ALL THINGS CONSIDERED), REUTERS NEWS, WIRED.COM, FORBES.COM, TIME.COM, & CO.DESIGN (FAST COMPANY)

Interviewed by Katherine Minarik, *Sarah Burstein: Design Patents, Tweeting the Law, & the Academic Meat Market*, HEELS OF JUSTICE PODCAST (June 6, 2019).

Interviewed by Brian Frye, *Sarah Burstein on the Ontology of the Patented Design*, IPSE DIXIT PODCAST (Apr. 1, 2019).

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

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