



UNITED STATES
PATENT AND
TRADEMARK OFFICE

Designs in the US and Globally

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Chief Economist
USPTO

Patent Statistics for Decision Makers
Paris - 28 November 2012



Bundling and Complementarities

- ❑ USPTO – multiple types
 - Trademarks, Utilities, Designs
- ❑ Complements?
 - Burgeoning literature
 - ✓ Level of the invention => innovation?
 - Heterogeneity achieved in different bundles?
 - ✓ Bundles within type, across types
- ❑ Designs
 - Traditionally given short shrift
 - ✓ Example, NBER data 1963-1999
- ❑ Goal today - descriptive



What do US design patents protect?

- ❑ Visual ornamental characteristics embodied in, or applied to, an article of manufacture
 - Configuration or shape of an article
 - Surface ornamentation applied to an article
 - Combination of configuration and ornamentation
- ❑ *NOT*: design that is dictated primarily by the function of the article—lacks ornamentality

U.S. Patent

Mar. 20, 2001

Sheet 1 of 4

US D439,242 S

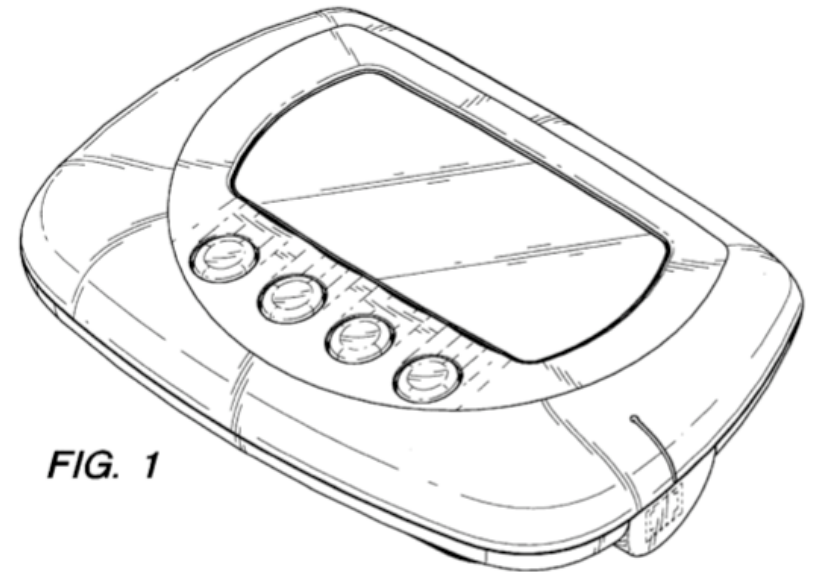


FIG. 1



How does US design differ from utility?

	Utility Patent	Design Patent
What is protected?	How an article is used and works	How an article looks
How long is the protection?	20 years from filing date	14 years from grant date
How much can be claimed?	Several independent and dependent claims	Only a single claim on a single design
What does it take to show infringement?	Infringing product or process must perform substantially the same function in substantially the same manner to achieve substantially the same result as the patented product or process	Infringing design must look substantially the same: <ul style="list-style-type: none">• resemblance so similar as to deceive ordinary observer, inducing him to buy one supposing it to be the other

Design Impact: Apple v. Samsung

Accused Samsung Product	Damage Award to Apple	(Claim 19) '381 Patent	(Claim 8) '915 Patent	(Claim 50) '153 Patent	D'677 Patent	D'087 Patent
Captivate	\$80,840,162	1	1	0		
Continuum	\$16,399,117	1	1	0		
Droid Charge	\$50,672,869	1	1	1		
Epic 4G	\$130,180,896	1	1	1		
Exhibit 4G	\$1,081,820	1	1	1		
Fascinate	\$143,539,179	1	1	1	1	
Galaxy Ace	\$0	1	0	1	0	
Galaxy Prevail	\$57,867,383	1	1	1		
Galaxy S (i9000)	\$0	1	1	1	1	1
Galaxy S 4G	\$73,344,668	1	1	1	1	1
Galaxy S II (AT&T)	\$40,496,356	1	1	1	1	0
Galaxy S II (i9100)	\$0	1	1	1	1	0
Galaxy S II (T-Mobile)	\$83,791,708		1	1	1	
Galaxy S II (Epic 4G Touch)	\$100,326,988				1	0
Galaxy S II (Skyrocket)	\$32,273,558				1	0
Galaxy S Showcase	\$22,002,146				1	
Galaxy Tab	\$1,966,691	1	1	1		
Galaxy Tab 10.1 (WiFi)	\$833,076	1	1	1		
Galaxy Tab 10.1 (4G LTE)	\$0					
Gem	\$4,075,585	1	1	0		
Indulge	\$16,011,184	1	1	0		
Infuse 4G	\$44,792,974	1	1	1	1	0
Intercept	\$0		0	0		
Mesmerize	\$53,123,612	1	1	1	1	
Nexus S 4G	\$1,828,297	1	1	0		
Replenish	\$3,350,256	1	0	1		
Transform	\$953,060		1	0		
Vibrant	\$89,673,957	1	1	0	1	1

Apple received high damage awards as to a number of infringing Samsung products.

- BUT most of these products infringed Apple's utility and design patents.

Apple Inc. v. Samsung Electronics Ltd. Inc., No. 11-1846: Amended Jury Verdict (Aug. 24, 2012).

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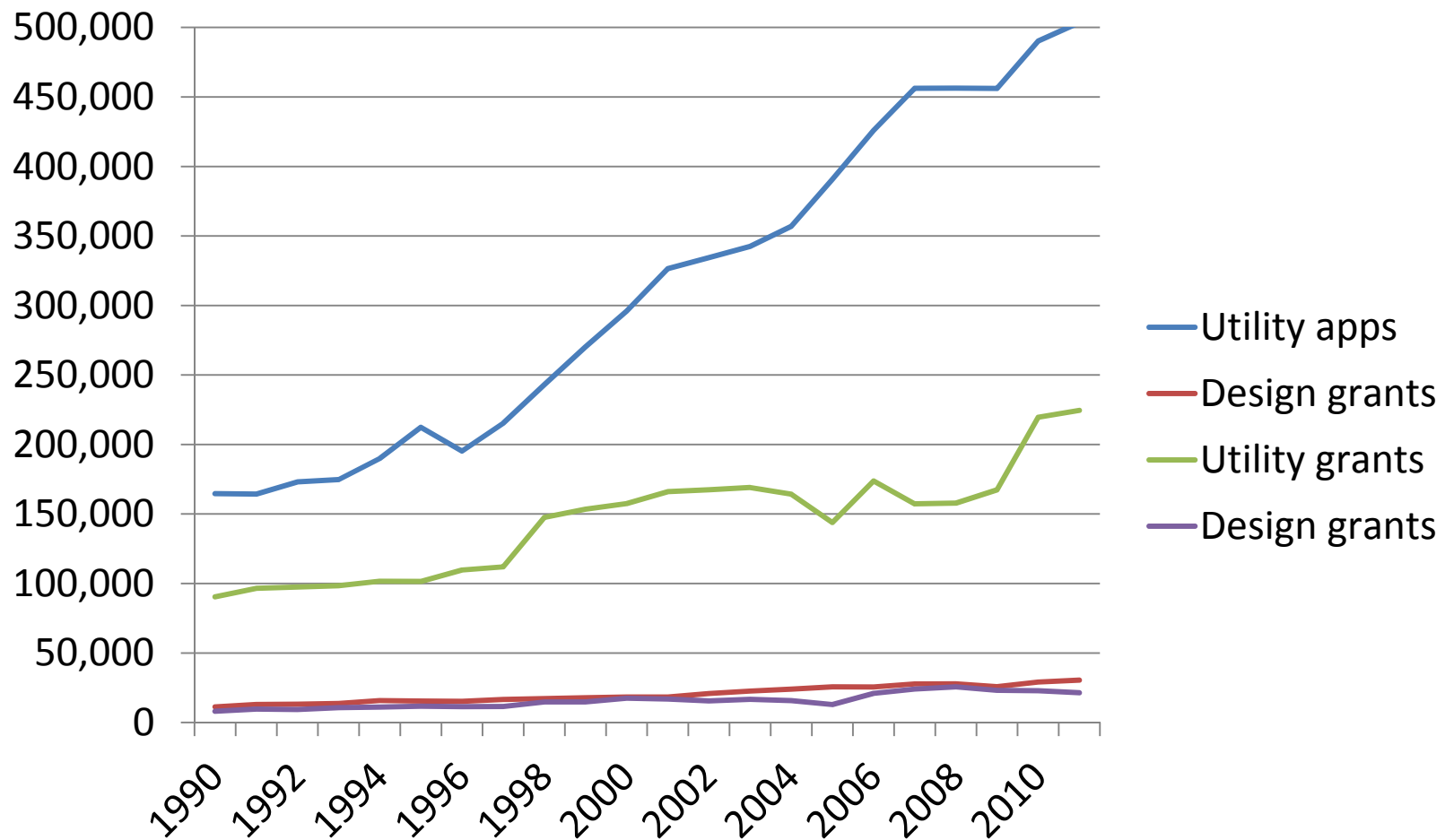
3 Samsung products infringed only Apple's design patents.

- The damages on these alone totaled \$154.6 million.

Apple Inc. v. Samsung Electronics Ltd. Inc., No. 11-1846: Amended Jury Verdict (Aug. 24, 2012).

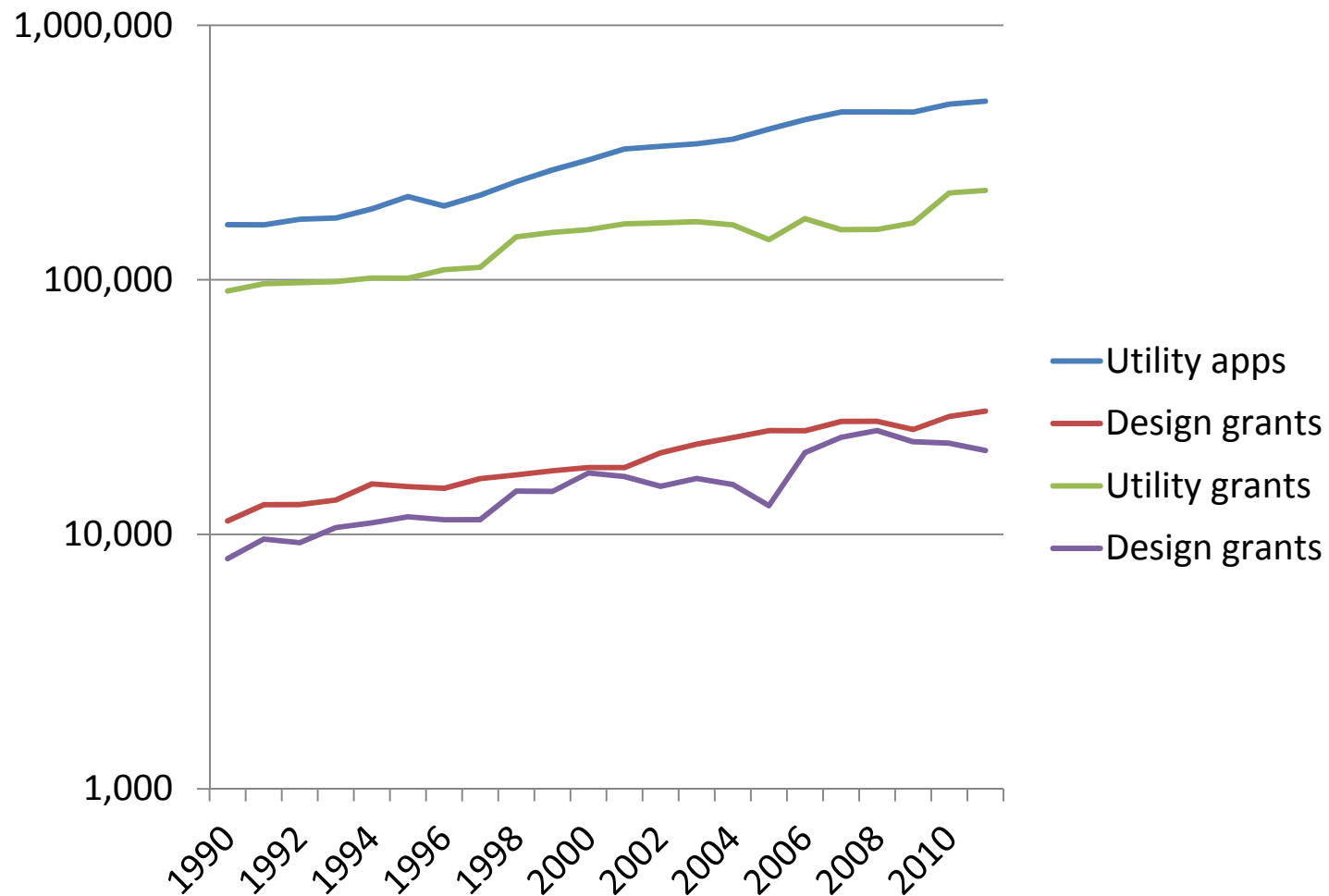


Utility and Design: Applications & Grants





Utility and Design: Applications & Grants (log scale)





Most Design Patent Grants, by Class, 2011

Class	Class Description (abbrev.)	Type	Counts
D14	Recording/Comm./Info	Grants	2,457
D12	Transportation	Grants	1,391
D06	Furnishings	Grants	1,319
D09	Packages/Containers	Grants	1,311
D26	Lighting	Grants	1,284
D24	Medical/Laboratory	Grants	1,186
D08	Tools/Hardware	Grants	1,178
D07	OtherFood/DrinkEquip.	Grants	1,153
D13	EnergyProd./Dist./Transform.	Grants	1,138
D23	Environmental,Misc.	Grants	1,085
D02	Apparel/Haberdashery	Grants	925
D21	Games/Toys/SportsGoods	Grants	896



Design Patents: Growth

Class	Description	Avg. Growth Since 2001
D05	Textile/PaperYard	7.76%
D13	EnergyProd./Dist./Transform.	7.54%
D30	AnimalHusbandry	7.31%
...		
D06	Furnishings	-3.22%
D99	Miscellaneous	-3.35%
D27	Tobacco/Smoking	-3.54%



Judicial Treatment of Designs in US

Cohort Appl. Month	Applications		Monthly YoY %change		Moving 12month YoY %change	
	Design	Utility	Design	Utility	Design	Utility
2012/10/01	2,743	31,015	15.06%	13.95%	7.37%	6.49%
2012/09/01	2,497	37,328	-4.44%	2.83%	7.15%	6.94%
2012/08/24: Samsung v. Apple Amended Decision						
2012/08/01	2,699	34,104	6.51%	11.77%	8.13%	7.53%
2012/07/01	2,593	30,468	17.28%	15.54%	7.79%	6.43%
2012/06/01	2,831	33,757	7.60%	4.06%	6.76%	5.64%
2012/05/01	2,952	31,362	16.50%	10.70%	7.26%	6.04%
2012/04/01	2,626	29,778	5.59%	8.40%	5.76%	5.17%
2012/03/01	2,863	34,421	7.39%	2.46%	5.11%	5.03%
2012/02/24: Crocs Inc. v. ITC Decision						
2012/02/01	2,494	28,671	17.92%	11.52%	5.04%	5.28%
2012/01/01	2,437	27,158	0.16%	5.14%	4.52%	5.31%
2011/12/01	2,519	34,430	-0.08%	2.43%	4.96%	5.39%
2011/11/01	2,554	28,446	11.38%	1.10%	6.02%	6.07%



International participation in US Design Patenting, 2000-2010

Year	Grants	Any foreign inventor	Share	First inventor foreign	Share
2010	17,262	8,021	46.47%	7,694	44.57%
2009	20,056	9,277	46.26%	8,889	44.32%
2008	21,297	10,490	49.26%	10,063	47.25%
2007	21,660	10,475	48.36%	10,030	46.31%
2006	20,454	9,733	47.58%	9,345	45.69%
2005	20,952	9,838	46.95%	9,421	44.96%
2004	19,670	8,929	45.39%	8,600	43.72%
2003	18,655	7,777	41.69%	7,531	40.37%
2002	17,201	7,059	41.04%	6,774	39.38%
2001	15,589	6,485	41.60%	6,249	40.09%
2000	15,833	6,297	39.77%	6,104	38.55%



Top Countries in Industrial Designs (WIPO)

INDUSTRIAL DESIGN APPLICATIONS FOR THE TOP 15 OFFICES, 2010

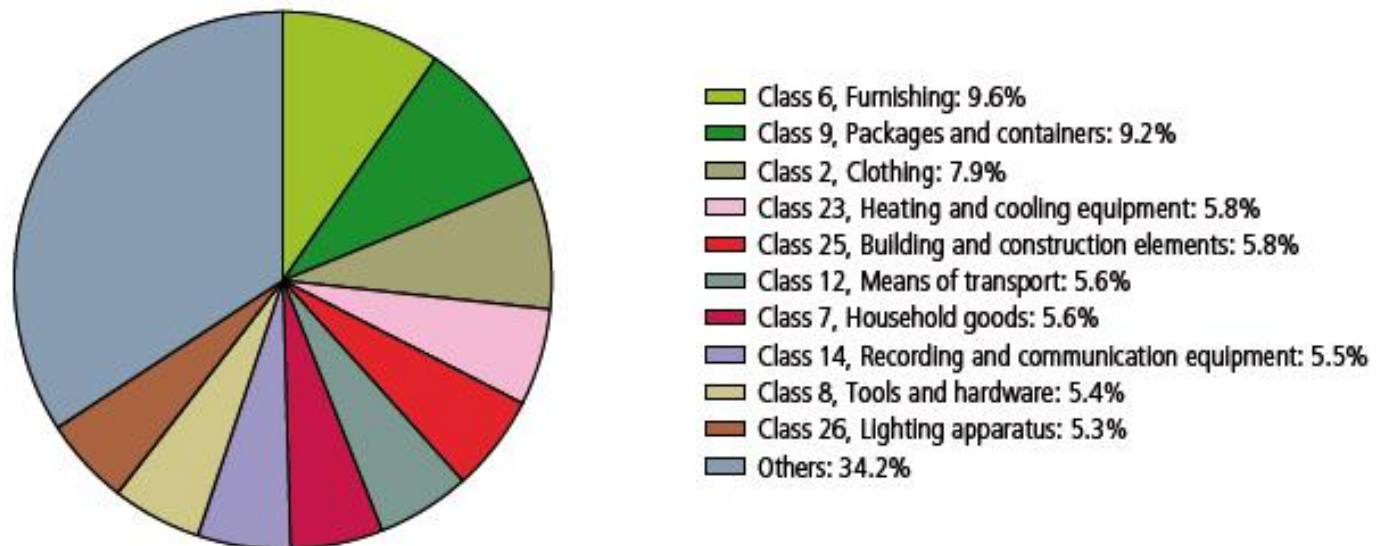
Source: WIPO Statistics Database, May 2012

Office	Application Year			Share of total (%): 2010	Growth (%): 2009-10
	2008	2009	2010		
Total	557,000	587,000	669,000	100.0	14.0
China	312,904	351,342	421,273	63.0	19.9
Republic of Korea	56,750	57,903	57,187	8.5	-1.2
Japan	33,569	30,875	31,756	4.7	2.9
USA	27,782	25,806	29,059	4.3	12.6
OHIM	20,143	20,288	21,898	3.3	7.9
Turkey	7,243	7,092	7,920	1.2	11.7
Germany	5,941	5,900	6,285	1.0	6.5
India*	6,557	6,092	-	1.0	-7.1
Australia	6,077	5,136	5,863	0.9	14.2
Brazil	2,761	5,292	5,501	0.8	3.9
Canada	5,282	4,269	5,142	0.8	20.4
France	4,473	4,846	4,891	0.7	0.9
Indonesia	4,307	4,563	4,066	0.6	-10.9
Russian Federation	4,711	3,740	3,997	0.6	6.9
Thailand	3,820	3,873	3,614	0.5	-6.7
Others	54,680	49,983	60,548	9.1	21.1



International Class Distribution (WIPO)

D.5 TOP CLASSES SPECIFIED IN APPLICATIONS, 2010



Note: For a complete list of the 32 class definitions, refer to the International Classification for Industrial Designs under the Locarno Agreement: www.wipo.int/classifications/nivilo/

WIPO Statistics Database, May 2012



Industrial Design versus Design Patents (WIPO and USPTO data)

TOP CLASSES SPECIFIED IN INDUSTRIAL DESIGN APPLICATIONS, 2010

Source: WIPO Statistics Database, May 2012 - USPTO Data

THESE COLUMNS ADDED FROM
USPTO

Top 10 Classes					
Class	Applications	Share of total (%)	US App's	Share of US total (%)	US Rank
Class 6, Furnishing:	14,131	9.6	1,892	6.7	2
Class 9, Packages and containers:	13,578	9.2	1,733	6.1	3
Class 2, Clothing:	11,639	7.9	1,307	4.6	10
Class 23, Heating and cooling equipt:	8,613	5.8	1,304	4.6	11
Class 25, Building and construction:	8,603	5.8	491	1.7	19
Class 12, Means of transport:	8,327	5.6	1,610	5.7	5
Class 7, Household goods:	8,194	5.6	1,635	5.8	4
Class 14, Recording and comm. equipt.	8,142	5.5	3,275	11.6	1
Class 8, Tools and hardware:	8,012	5.4	1,510	5.3	9
Class 26, Lighting apparatus:	7,749	5.3	1,512	5.3	8
Others:	50,447	34.2	12,026	42.5	



In Sum

- ❑ Designs being used increasingly, although in many countries comparatively small numbers
 - But, value in tail?
- ❑ The research challenge
 - How do these rights relate to different aspects of value, or appropriability?
 - What evidence can we generate to enable evidence-based policymaking in how these rights, and their use, relate to innovation and economic growth?

