



## **Blocked! Court finds doggy jerseys obvious**

A ruling by the U.S. Court of Appeals for the Federal Circuit lays out an important two-part test for determining whether a patented design is invalid for being obvious. The court's application of the test in *MRC Innovations, Inc. v. Hunter Mfg., LLP* blocked the plaintiff's infringement claims.

### **Xs and Os**

MRC Innovations holds a patent on a design for a football jersey for dogs. After a souring of the business relationship between MRC and Hunter Manufacturing, a retailer of licensed pet jerseys, Hunter hired another supplier.

MRC sued for patent infringement. The district court dismissed the case before trial, finding that the design patent was invalid as obvious.

### **The playbook**

When analyzing the obviousness of a design patent, a court first must identify a "primary reference" — something existing with visual design characteristics that are basically the same as the patented design. Then, "secondary references" may be used to modify the primary reference to create a design with the same overall visual appearance as the patented design. If secondary references are "so related" to the primary reference that the appearance of certain ornamental features in one would suggest the application of them to the other, the patented design is obvious.

### **Game on**

The Federal Circuit found that the lower court correctly used a Philadelphia Eagles pet jersey as the primary reference. Although there were some differences between that jersey and the patented design, they had the same overall shape, along with similar fabric and ornamental serge stitching.

The appellate court also upheld the district court's choice of two secondary-reference jerseys. Both jerseys suggested the use of two of the differences between the primary reference and the patented design. The appellate court dismissed MRC's argument that the district court erred by failing to explain why a skilled designer would have incorporated those features with the Eagles jersey: "[I]t is the mere similarity in appearance that itself provides the suggestion that one should apply certain features to another design."

The court applied a similar reasoning to find that a design for a baseball jersey for dogs was also obvious. With both designs, it had "no trouble" concluding that the secondary references were "so related" to the primary reference that the striking similarity in appearance would have motivated a skilled designer to combine features from one with features of another in the way of the patented design.

### **Final score**

Patent holders would be well advised to note the results of this case. It provides critical clarification on the standard for design patent invalidity.