

# Design Patent Case Digest

[Wallace v. Ideavillage Products Corp.](#)



**Decision Date:** September 15, 2014

**Court:** District of New Jersey

**Patents:** [D485,990](#)

**Holding:** Defendant's motion for summary judgment GRANTED

## **Opinion:**

Allyson Wallace, initially acting *pro se*, sued Ideavillage Products Corporation for infringement of U.S. Design Patent No. D485,990 ("the '990 patent"), entitled "Body Washing Brush." Wallace is the named inventor of the '990 patent. Ideavillage is a developer and marketer of "As Seen on TV" consumer products. Wallace alleged that Ideavillage's product, [Spin Spa](#), which is an embodiment of U.S. Design Patent No. [D550,914](#), entitled "Hand Held Cleaning Unit," infringed the '990 patent. Ideavillage moved for summary judgment on the basis of non-infringement.

To determine whether a product infringes a claimed design, a court must determine whether the accused infringing product would appear substantially the same as the claimed design to the ordinary observer. This determination consists of a first level analysis where the court directly compares the accused design to the claimed design. If the claimed design and the accused design are sufficiently distinct, the patentee has not met its burden and there is no infringement. If the two designs are not plainly dissimilar under the first level, the court will continue to the second level where the accused and claimed designs are compared with the prior art to help define what the ordinary observer would consider substantially the same.

Ideavillage pointed out six differences between the '990 patent and the Spin Spa. For example, the '990 patent has a straight handle and a finger grip with a hill and valley design, while the Spin Spa has a bent or curved handle without such a finger grip. The '990 patent has a flat threaded opening at the base of the handle, but the Spin Spa has a closed pointed end. Moreover, the head of the claimed design in the '990 patent is round with a two-tiered brush and has a protrusion at the back of the head. But the Spin Spa's head is oblong without a two-tiered brush and does not have a protrusion at the back. Finally, the '990 patent lacks any decoration at the back of the handle. In contrast, the Spin Spa has an oval at the neck of the handle and an oval grip in the back of the handle. Although Wallace argued that these differences were "inconsequential to the overall designs," the court found that the two designs were sufficiently distinct and that Wallace could not prove that the designs appear substantially the same.

Although the court found the designs to be sufficiently distinct, it decided to take the further step of consulting the prior art. In part because Wallace began the lawsuit as a *pro se* plaintiff, and in part because of the delay in the case and the patience and diligence exhibited by both parties during litigation, the court concluded that the second level of analysis was “appropriate and necessary to clarify and fully explicate” the court’s decision.

The court found “the marketplace for brushes with handles” to be rather crowded. Thus it was even more appropriate to consider the prior art. Ideavillage presented 170 patents as examples of prior art and identified eight as support for its motion for summary judgment. As the primary prior art reference, the court compared U.S. Patent No. [4,417,826](#) (“the ‘826 patent”), entitled “Liquid Driven Rotary Brush with Liquid Soap Feeder,” with the Spin Spa and the ‘990 patent. According to the court, the ‘990 patent was “strikingly similar” to the ‘826 patent. For example, each has a rounded head with a protrusion on the back side and a straight handle with a hill and valley finger grip. These “remarkable” similarities highlight the differences between the Spin Spa and the ‘990 patent.

Accordingly, the court concluded that no reasonable ordinary observer would be deceived into believing the Spin Spa was the same as the design of the ‘990 patent and granted Ideavillage’s motion for summary judgment. On October 24, 2014, Wallace appealed the court’s decision to the Federal Circuit, where the case is now pending.

If you have any questions or would like additional information on this topic, please contact:

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