

Design Patent Post-Grant: Is Anticipation Easier to Prove Than Obviousness?

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An article by [Ben Fernandez](#) and [Mark Selwyn](#), published by Bloomberg BNA's *Patent Trademark & Copyright Journal*, introduces and compares the standards for design patent anticipation and obviousness, explores the interplay between anticipation and obviousness at the PTAB, and summarizes practical takeaways from the current design patent IPR landscape.

Since the advent of AIA post-grant practice four years ago, only 26 *inter partes* review petitions have been filed for design patents. The Patent Trial and Appeal Board issued 23 institution decisions, instituted 10 of those petitions, and rendered final decisions in six. The Federal Circuit and the PTAB have articulated and applied different standards for design patent anticipation, the former seemingly narrower than the latter. Notably, each of the 23 petitions receiving institution decisions raised some type of obviousness ground under 35 U.S.C. § 103, whereas only 12 of the 23 raised some type of anticipation ground under 35 U.S.C. § 102. [Read the full article](#)

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