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*En banc Federal Circuit overrules long-standing Rosen-Durling test.*

§ 15:2 LKQ Corp. v. GM Global Technology Operations LLC..... 334  
*Applying the Graham obviousness test, the Federal Circuit applies to design patents the first part of the analogous art test for utility patents, namely, whether the art is from the same field of endeavor as the claimed invention, but leaves open further development of that test in the context of design patents. Nevertheless, a primary reference must be identified.*

§ 15:3 LKQ Corp. v. GM Global Technology Operations LLC..... 336  
*Applying second factor of Graham obviousness test to design patents: “in addressing the differences between the claimed design and prior art designs for validity purposes, we compare the visual appearance of the claimed design with prior art designs, albeit from the perspective of an ordinary designer in the field of the article of manufacture.” Applying third factor of Graham obviousness test to design patents: “that obviousness of a design patent claim is assessed from the viewpoint of an ordinary designer in the field to which the claimed design pertains.” “Where a primary reference alone does not render the claimed design obvious, secondary references may be considered.” “Consistent with KSR, the motivation to combine these references need not come from the references themselves.” “We do not disturb our existing precedent regarding the application of secondary considerations such as commercial success, industry praise, and copying to the obviousness analysis in design patents.”*

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§ 16:1 Crocs, Inc. v. Effervescent, Inc. ....	341
<i>A cause of action arises from section 43(a)(1)(B) of the Lanham Act, 15 U.S.C. § 1125(a), where a party falsely claims that it possesses a patent on a product feature and advertises that product feature in a manner that causes consumers to be misled about the nature, characteristics, or qualities of its product.</i>	
§ 16:2 Teva Branded Pharmaceutical Products R&D, Inc. v. Amneal Pharmaceuticals of New York, LLC .....	344
<i>Federal Circuit orders patent delisting. The fact that an NDA could infringe a patent does not mean that the patent “claims” the underlying drug within the meaning of the listing provision.</i>	
§ 16:3 Teva Branded Pharmaceutical Products R&D, Inc. v. Amneal Pharmaceuticals of New York, LLC .....	346
<i>Patents claiming just the device components of the product approved in an NDA do not meet the listing requirement of claiming the drug for which the applicant submitted the application.</i>	
§ 16:4 Teva Branded Pharmaceutical Products R&D, Inc. v. Amneal Pharmaceuticals of New York, LLC .....	349
<i>“When determining what a patent claims for the purpose of the listing inquiry, we apply the rubric of claim construction. But a formal Markman hearing is not required in every case.”</i>	
§ 16:5 University of South Florida Board of Trustees v. United States .....	351
<i>The breadth-indicating language of section 201(b) supports inclusion within the provision of a subcontract that provides for, among other things, payment for work already performed before the subcontract is executed or its “effective” date.</i>	
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