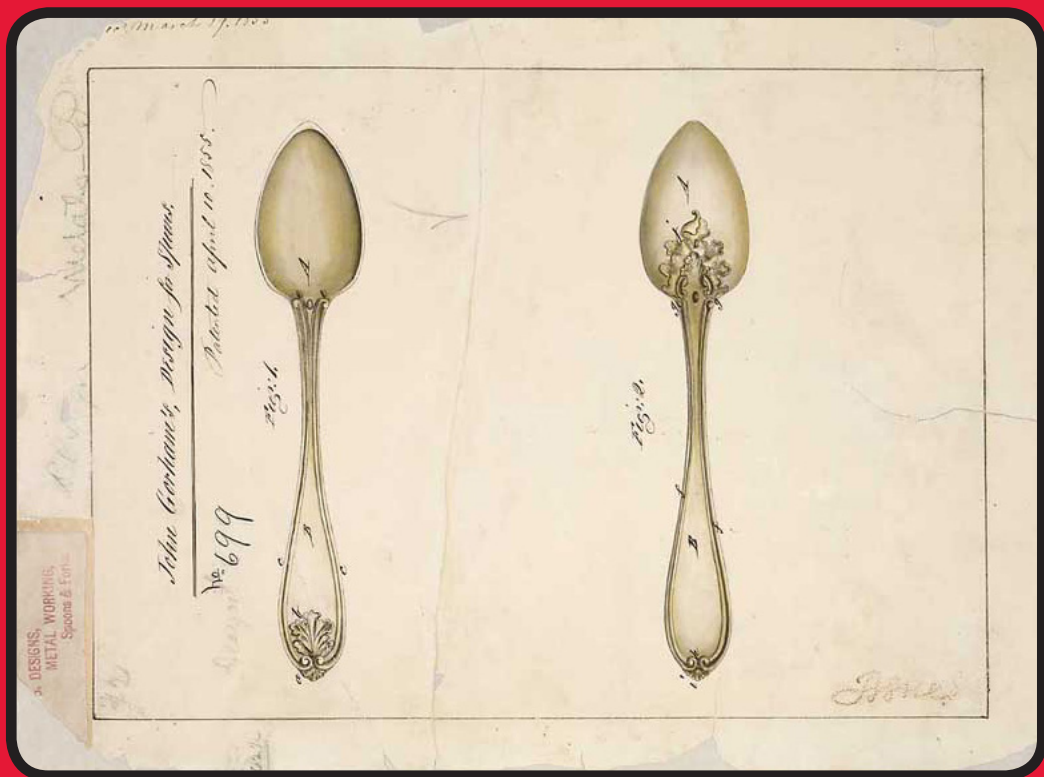


THE TWENTY-SIXTH ANNUAL FALL LECTURE

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Toward a Normative Theory of Design Patents

SARAH BURSTEIN

Professor of Law
The University of Oklahoma
College of Law

THURSDAY, NOVEMBER 7, 2019

**2019 VENUE:
THE HOUSTON CLUB**

910 Louisiana, Suite 4900, Houston, Texas

Reception 5:30 p.m. • Lecture 6:15 p.m.

One Hour of CLE Credit

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Sarah Burstein is a Professor of Law at the University of Oklahoma College of Law and an internationally-recognized expert in design patents. She has participated, by invitation, in design law conferences at the University of Oxford, Stanford Law School, the Max Planck Institute for Intellectual Property and Competition Law, ETH Zürich, and Waseda University in Tokyo. Professor Burstein is a past chair of the AALS Section on Art Law and of the ABA Design Committee.

Prior to joining the faculty at OU, Professor Burstein served as a law clerk to the Honorable Robert W. Pratt in the United States District Court for the Southern District of Iowa. She also worked as an intellectual property litigation associate in the Chicago office of Kirkland & Ellis LLP. Professor Burstein has a law degree from the University of Chicago and a B.A. in Art & Design from Iowa State University.

Selected Publications Include: Is Design Patent Examination Too Lax?, 33 BERKELEY TECH. L. J. 607 (2019); The “Article of Manufacture” Today, 31 HARV J.L. & TECH. 781 (2018); The “Article of Manufacture” in 1887, 32 BERKELEY TECH. L. J. 1 (2017); Costly Designs, 77 OHIO ST. L. J. 107 (2016); The Patented Design, 83 TENN. L. REV. 161 (2015).

Toward a Normative Theory of Design Patents

The United States has granted patents for ornamental designs since 1842 but there are still few explanations for—let alone any clear consensus about—why, exactly, the system exists and what its goals should be. Now that high-profile cases like *Apple v. Samsung* have put the U.S. design patent system back in the spotlight and put millions of dollars on the line, it is more important than ever to figure out what we want this system to do, if anything. Should the goal be to deter any and all copying in the design space? To encourage the subjective expression of designers? To incentivize any and all types of design? Do we even need design patents at all?

This talk will provide a brief history of the U.S. design patent system and examine some of the various normative justifications that have been suggested in recent years. It will then present a new working theory for how we might justify the design patent system and explore some of the implications of that theory.

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2018 FALL LECTURE, L-R: ANDREW MICHAELS, PAUL JANICKE, GREG R. VETTER,
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