

## *Design Beauty In The Eye Of The Judicial Beholder*

**Andrew W. Torrance**

Humans tend to demonstrate strong preferences for images they consider aesthetically pleasing. Aesthetic preferences often manifest themselves in the law, and are especially relevant to forms of intellectual property protection for visual designs, works, marks, and aspects of celebrity. This study uses empirical data from human subject experiments to examine what influences aesthetic preferences may have on decisions regarding validity and infringement of visual intellectual property: design patents, trademarks, copyrights, and rights of publicity. Based on a study of issued design patents litigated to final adjudication, design patents found invalid by courts tend to be relatively unattractive, those found valid but not infringed tend to be of intermediate attractiveness, and those found both valid and infringed tend to be relatively attractive. These results challenge current design patent doctrine and assumptions about associated judicial decisionmaking, in which the patentability of designs is generally considered independent of aesthetic considerations, and may have implications for the doctrines surrounding other forms of intellectual property, such as copyright, trademark, and rights of celebrity publicity. In addition to implications for legal doctrine, this study evaluates cognitive, neurobiological, evolutionary, and cultural explanations for aesthetic preferences in visual intellectual property.