The Law of Everyday Design
(A book proposal)

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Goals

- qualitative empirical study informs an outdated legal system that misunderstands design practice and thus fails to serve it

- center accounts of designers and design practice in legal analysis to rehabilitate law's significance in life of everyday designers

- infuse intellectual property debates with normative values beyond commerciality, especially given contemporary struggles with resource scarcity, distributional inequality, sustainability, and political instability
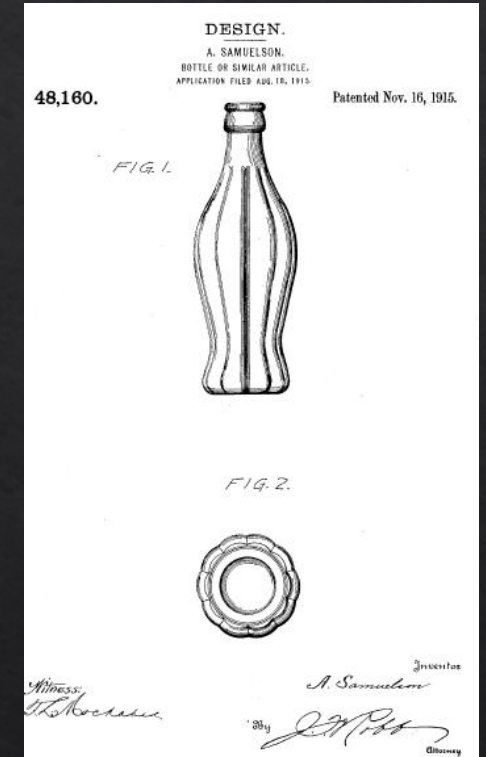
Chapters

Introduction

1. How it Began: Anchoring Binaries and Early Years of Design

2. Design Process Today: Defining Standards and Defying Binaries

3. Design Values: Normative Constraints Anchored in Human Progress

4. An Emerging Profession and Law's Response: An Ethics of Design

Conclusion

Design Patents (c. 1842)

35 USC (The Patent Act) amended to include "any new and original: (1) design for a manufacture; (2) design for printing on fabrics; (3) bust or statue; (4) impression to be placed on an article of manufacture; or (5) shape or configuration of any article of manufacture."
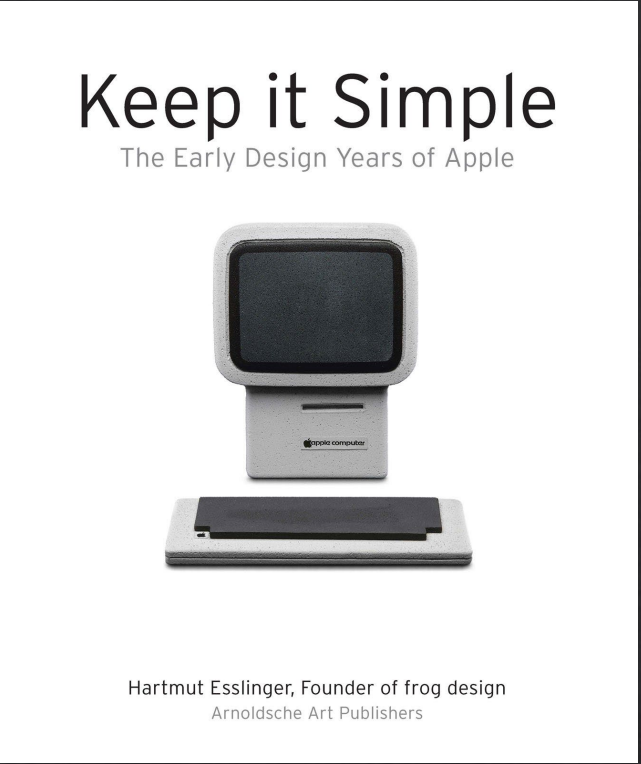
By 1902, the design patent statute was amended to define design patent subject matter as simply: "any new, original, and <u>ornamental design for an article of manufacture</u>."
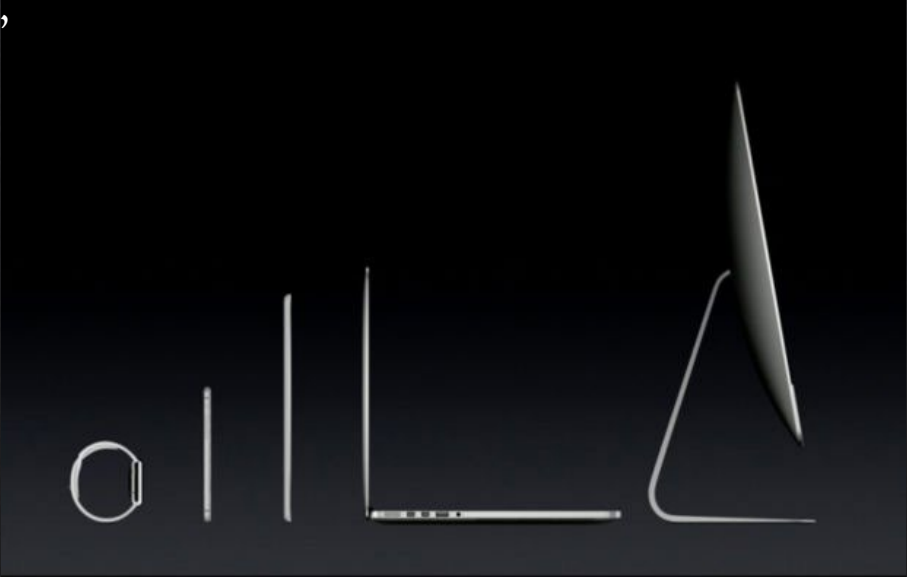
NIKE Shoes

Clockwise from top left: Mies Van Der Rohe, Yanko, Apple, Apple, Braun, Oxo

Keep it Simple
The Early Design Years of Apple

Hartmut Esslinger, Founder of frog design
Arnoldsche Art Publishers

Apple v. Samsung

Chapters

Introduction

Conclusion

FEATURES • BUSINESS BY DESIGN

How Great Design Could Fix the World's 'Wicked Problems'

BY **TIM BROWN WITH BARRY KATZ**

February 15, 2019 8:00 AM EST

DIGITAL HEALTH TECHNOLOGY TRENDS

By Paddy Padmanabhan, Contributor, CIO | NOV 21, 2019 8:07 AM PST

OPINION

How human-centered design is driving digital health

Healthcare tech has mostly focused on designing systems for claiming federal incentives in the past decade. Design thinking stands this logic on its head.

Chapters

Ch. 2 (Standards and Process)

Problems are "just scary enough"

Solutions "change experiences"

Ethnographic methodology – studying people, their behavior and the meaning they attach to it – is central to achieving "good design" that aligns attachment or delight with human needs.

Ch. 3 (Metrics of Human Progress)

Coherence

Minimalism

Sustainability

Accessibility

Inclusivity

Ch. 4 (Emerging Profession)
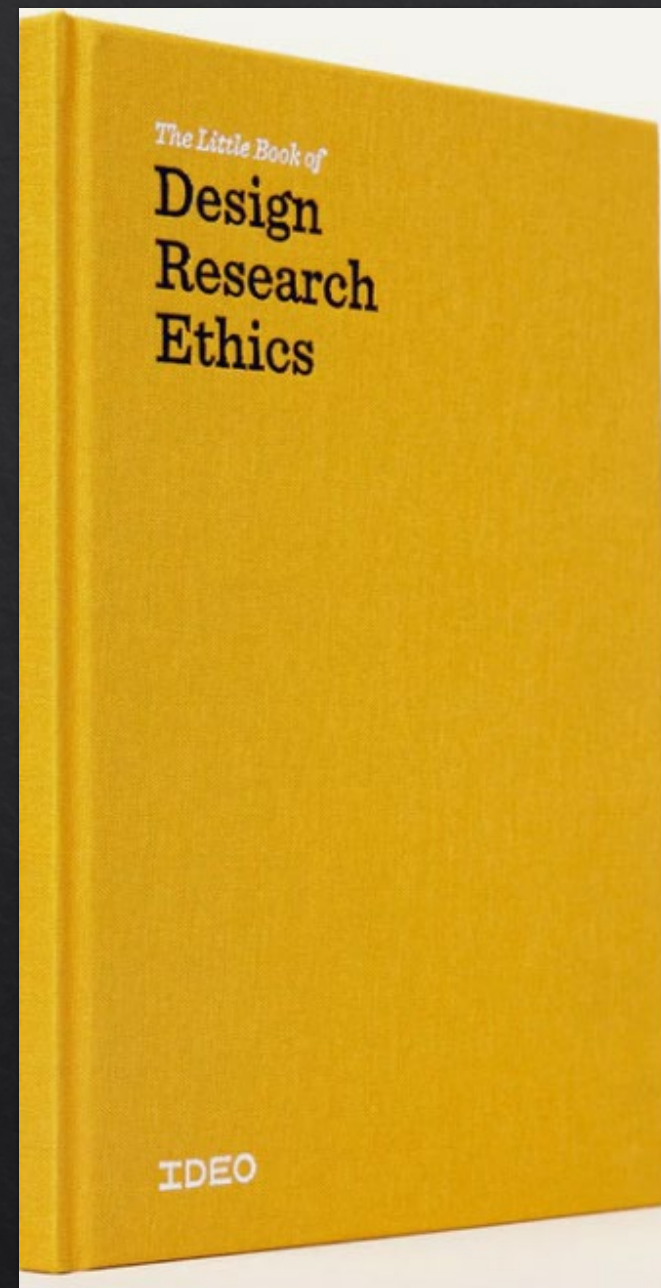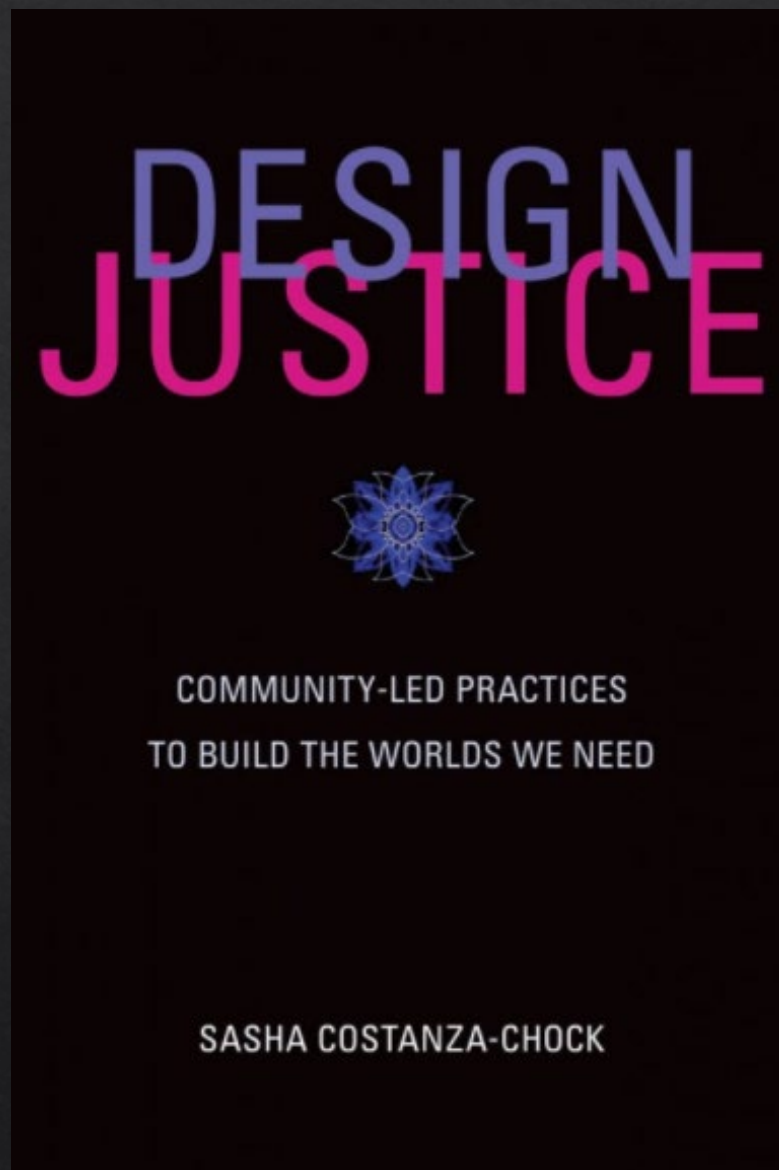
"Design Thinking"

"Design Justice"

Rise of consultancies

Centering of Design in Firms

Design Schools

REVISED AND UPDATED

HOW DESIGN THINKING
TRANSFORMS ORGANIZATIONS
AND INSPIRES INNOVATION

CHANGE
BY
DESIGN

TIM BROWN

DESIGN
JUSTICE

COMMUNITY-LED PRACTICES
TO BUILD THE WORLDS WE NEED

SASHA COSTANZA-CHOCK

The Little Book of
Design
Research
Ethics

IDEO

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Suggestions?
Questions?

"we've been having a conversation [about] … phones in general, … they're sort of all converging to the same thing, and it's a flat screen, …almost n o interactions, there're subtle differences on the radius of the corner, and on the thickness and the shape of the camera, but in the end a lot of these things reduce down to their fundamental instantiation …. And a lot of that happens especially in design of objects, it's like you're trying to create a simplicity, and we're firm believers in not creating unnecessary complexity, right? Like why are we adding features, whether it's functional features, or design elements or features, with no reason? So if you start to think that way, then a lot of aesthetically pure and beautiful designs have a logical conclusion, and many times those conclusions are actually shared by others, designers doing good design, looking at similar problem, right? … companies arrive at a similar-looking thing … because it's kind of a logical one."

-- IDEO head designer

data

◈ 23 one-hour interviews with stratified sample of designers

◈ studio observations

◈ coded, transcribed + interpretive memos

◈ analyzed with Atlas.ti and Excel pivot tables
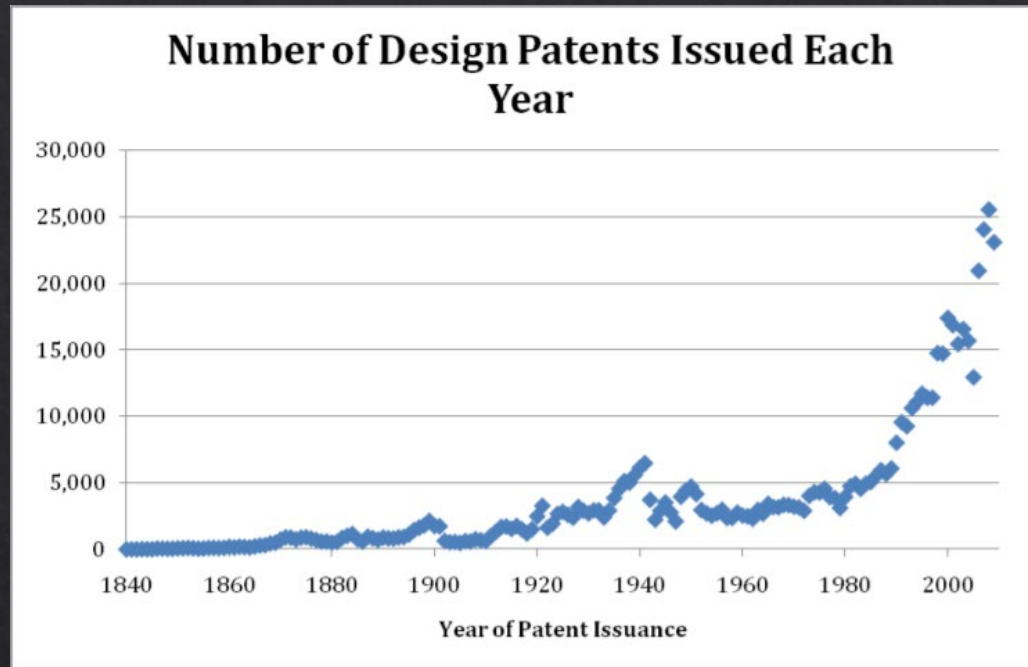
Number of Design Patents Issued Each Year

Source: Dennis Crouch, A Trademark Justification for Design Patent Rights, University of Missouri School of Law Legal Studies Research Paper No. 2010-17.

IDEO

A selection of case studies

EXPLORE WORK ⌄

QUESTIO

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Design
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B2B

BRAND

CONSUMER GOODS AND
SERVICES

DIGITAL

EDUCATION

ENERGY

ENVIRONMENT

EXPERIENCES

FINANCIAL SERVICES

FOOD AND BEVERAGE

GOVERNMENT

HEALTH AND WELLNESS

INDUSTRIAL GOODS AND
SERVICES

MEDIA

MEDICAL PRODUCTS AND
SERVICES

NON-PROFIT

ORGANIZATION

PRODUCTS

RETAIL AND HOSPITALITY

SERVICES

TECHNOLOGY

TOYS AND GAMES

TRANSPORTATION AND
MOBILITY

VENTURING

BIG QUESTIONS *Our work related to complex challenges.*

What is "design"?

- design practice (interviews and observations)
- design literature

design practice v.
design doctrine

- ◈ designers are not the usual IP protagonists; "design" is a process not a thing.
- ◈ IP insists on separating function from form; designers insist on their seamless integration.
- ◈ designers are committed to ethics and a humanist-centered politics; IP insists on agnosticism.

Design 299A   Design 299B   Design 074   Design 078   Design 0815

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purposive interdisciplinarity

"There's been a shift … from designers thinking of themselves as form-givers to thinking of themselves as problem-solvers, multidisciplinary. [My friend at] Google, for example, she … went from a director to a lead in UX, but she's formerly an industrial designer. … She doesn't do UX work. So this is where I think the future is … you just wear many hats. It doesn't matter what your title is, you just solve the situation. … the topic at hand, because designers are capable of wearing many hats."

- Michael Kahwaji, Whirlpool

blurring boundaries

" …you have an expertise, but you know a lot about everything, which is kind of daunting. You have to go out and continue to learn about everything. I mean, back in the day, industrial design was like, 'I designed teakettles for my entire life,' and now it's just completely different…. The blend-y ones are industrial design, which is like a really big term. You'd say like UI, UX. Even, I blend a tiny bit with architecture, even now, too."

- John Traub (PepsiCo, formerly)

design as process

"So the work has become much more about strategy and thinking and less about the production of individual objects, even though the product of individual objects remains a concern and an interest for us, it's not the main focus of our work anymore. *So there's this dematerialization of the work over time*, which goes from a production, labor production which results in a physical object resulting in the world, to a kind of intellectual consulting, the end result may or may not be tangible."

- Michael Rock, 2x4

design as process

"A management consultant will tell you how they have a known answer. … They engineer a process to hit that target. … When we do our work with design consulting, you don't know what the answer is. It's an unknown outcome, so our learning is generative. … And so we have to do our qualitative learning … So go talk to customers, we'll talk to, on a typical project I'll say sixteen customers in in-depth learning interviews. One and a half hours is typical. If I do a restaurant project, I'll spend an hour and a half in someone's home, and then go have dinner with them …"

- Lee Moreau, CONTINUUM

problem finding: open-ended exploration

"Somebody comes to you and they say, 'We want you to design us a toaster,' and the response is, 'We think you're actually trying to warm bread. Is that true? Right? *Because that opens it up*."   -Denise Burchell, Salesforce

"the true magic of OXO I think is *when we solve problems people don't realize are problems until we solve them*, and the best example of that is … the angled measuring cup."

   - OXO Design Executive

designing experiences

"so originally like we're hired to like design the thing, you know, the product, and we team up to be able to do that … but as we start to realize that we can actually have a bigger impact if we can also think about … all the other things that surround the experience, then we can design a more holistic experience and therefore have a broader impact … that's how *we went from sort of designing things to designing experiences*, right? Holistic experiences."

- Head Designer, IDEO

designing behavior

"We are creating new experiences. The Swiffer is … what the Swiffer does, which is magical, is it creates a new behavior, and the new behavior is, instead of every six weeks, I mean everybody says they clean their kitchen floor once a week, they f***ing don't. They f***ing don't. They do it once every six weeks if they have to, if it's that bad, and if they have company coming. *What it does is it changes the behavior*. It enables a behavior, which is I'm just gonna, once or twice a week, tidy up a bit … so it's very effective, and you feel a sense of accomplishment."

\- Lee Moreau, CONTINUUM

merging form and function

"So there's different values to it. I think one first value is probably emotional. When … it triggers a emotion, good emotion, it's a good sign of a good design … Then there's obviously the functional value. If that works, that delivers the purpose … I think that for me, personally, when I did something, and … I feel like it makes sense … makes sense for us to produce these kind of objects now. If it's something that I feel is not necessary, or is not finished, or could have been way better, it's not gonna be satisfying … everything's there for a reason, that's why it makes sense."

- Francois Dematrin-Donos, Smart Design

design as coherence

"As a basic way you could say what design is, is a way of creating coherence around things … [The coherence] is in voice, it's in materiality, it is in context, there's a lot of different ways of thinking about coherence, but … the job of a designer is to figure out how to achieve those coherences, which are usually fictional, right?"

- Michael Rock, 2x4

ethics: inclusion

"to do with love, accessibility, and getting people in the front door equitably, right? Like forever it was, 'You can go around the back, and there's a ramp in the back to the loading dock, and you can take some freight elevator up,' right? I mean everything now is changing, which is great. It's: 'we want everybody going in the front door.' So we integrate all of our accessibility as best as we can into the landscape so that anyone who is disabled feels like...they belong in there, or everybody's just using the same way."

- Crowley and Cottrell (Landscape designers)

ethics: less stuff, more impact

"I really appreciate aesthetics, and look and feel, and beautiful things, and that's part of my passion. But I do not want to do something superficial. Because I don't think this world needs more junk, for lack of a better word. ..., the ideal is some balance ... and something that I know will have a real impact."

\- Alissa Rantanen, Insight (medical design)

ethics: social welfare

"We happen to love the fact that like growth has two meanings in our world, there's deep economic growth that is interconnected to the growth that comes at the individual level, and certainly like a billion dollars of value might mean like big returns, but it also might mean a billion dollars of impact on a local community, right? Or, you know, a billion people lifted out of poverty. So these things are all interconnected into each other, I think. That's the place we start. We start with that bigger why for the organization, like who are you and why do you exist? And we often hope to bring our clients along the same types of questions."

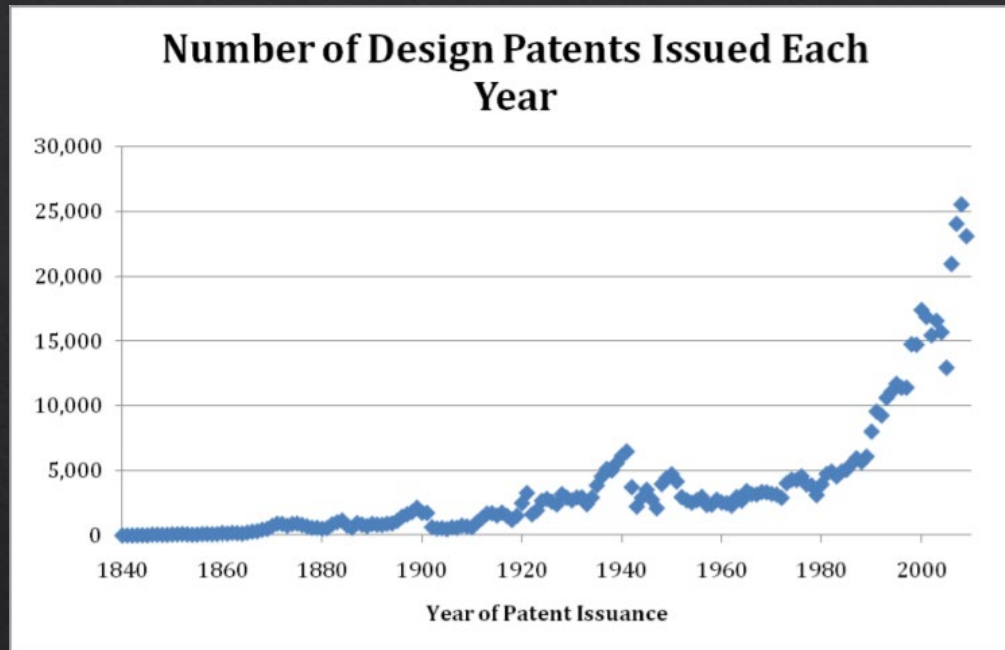- Jay, Jump Associates (Silicon Valley)

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Delightful Design

"How much space can I get in this vehicle? Can I give the people more space in the middle? The center console's a big issue for people. I'll use an example. So I had an older model of the Ford Expedition, and loved the vehicle. Big vehicle. The center console, extremely small inside for that size of vehicle. And so small was frustrating. The new Ford Expedition … you'll notice that that center console's almost twice the size. So it matches the size of the vehicle. So what a designer will do in automotive is, you know, and probably in interior there's more problem solving because that's where you spend 95 percent of your time is on the inside. You know, how can we give you freedom of motion, but still have enough space for things? What little areas can we make that would be a *nice surprise and delight* for somebody to utilize?"

-- Richard Gresens, Automotive Designer

Number of Design Patents Issued Each Year

Cumulative number of U.S. utility patents issued from 1790 up to the year indicated on the horizontal axis of the plot.

Source: Dennis Crouch, A Trademark Justification for Design Patent Rights, University of Missouri School of Law Legal Studies Research Paper No. 2010-17.
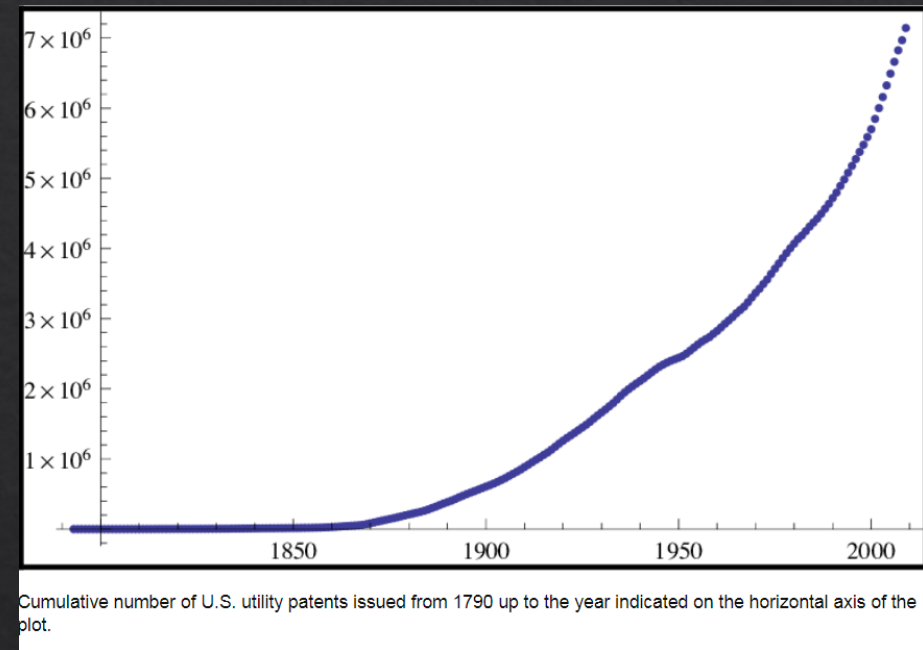
Source: John Golden, Innovation Dynamics, Patents, and Dynamic-Elasticity Tests for the Promotion of Progress, 24 HARV. J.L. & TECH. 47 (2010)

"This is so lovely"

So like two o'clock in the morning they finished drilling into my apartment, I had like shards of metal all over the floor, I had a door that wouldn't lock, I mean, it was like a nightmare. So I had just gotten from work this OXO hand-held dustpan. It wasn't even like a fancy one. It was like, you know, you had to get down on your knees and do this. And I was like tired, I was furious, I was worried about my safety, like they were like drilling in [unintelligible], whatever, long story short, the simplest products from the portfolio, and I did it, I went, "*Damn. This is so lovely.*" Like the actual broom, it wasn't a straight broom, it curved ever so slightly, so my arm had to curve ever so less slightly, so in the most frazzled, angry, not thoughtful state I probably have been in my life in the recent past, I was like, "They just nailed it." Like it was that tiny thing, that, like, I couldn't even do a good job of explaining, we certainly can't explain it well in copy, you just have to experience it, and you're like, "They thought of it. They thought of everything."

- OXO Design Executive

merging form and function

"we've been having a conversation with iPhones and phones in general, … they're sort of all converging to the same thing, and it's a flat screen, it's probably almost no interactions, there're subtle differences on the radius of the corner, and on the thickness and the shape of the camera, but in the end a lot of these things reduce down to their fundamental instantiation …. And a lot of that happens especially in design of objects, it's like you're trying to create a simplicity, and we're firm believers in not creating unnecessary complexity, right? Like why are we adding features, whether it's functional features, or design elements or features, with no reason? So if you start to think that way, then a lot of aesthetically pure and beautiful designs have a logical conclusion, and many times those conclusions are actually shared by others, designers doing good design, looking at similar problem, right? … companies arrive at a similar-looking thing and it's not because anyone had access to the other person's designs, it's because it's kind of a logical one."

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