

The Future is Under the Glass: Digital Design Protection and Appropriation Strategy

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Abstract

We examine how legal certainty shapes protection and appropriation of digital designs such as icons, animations, and layouts. Leveraging the 2012 *Apple v. Samsung* verdict as a decisive clarification of their protectability and enforceability, we analyze USPTO design patents from 2009–2015 using a matched difference-in-differences approach. We show that legal certainty reduces due diligence costs far more than monitoring costs. This asymmetry lowers the threshold for securing protection, leading to a roughly 10 percent increase in digital design patents. At the same time, appropriation shifted away from licensing toward transfers, with the effect strongest in dense design spaces where monitoring costs remain high despite increased legal certainty. These findings extend transaction cost theory by showing that legal certainty unevenly reduces transaction costs, which in turn alters protection thresholds and shifts appropriation strategies. They also demonstrate how policy changes influence innovation when value is created “under the glass.”

Keywords: Digital designs; Design patents; Appropriation; Transaction costs

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