UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ARASHI VISION (U.S.) LLC (D/B/A INSTA360)
Petitioner,

v.

GOPRO, INC.
Patent Owner.

Patent No. D789,435

Inter Partes Review No. IPR2024-01434

PETITION FOR *INTER PARTES* REVIEW UNDER 35 U.S.C. §§ 311-319 AND 37 C.F.R. § 42.100 *et seq.*

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Petitioner Arashi Vision (U.S.) LLC (d/b/a Insta360) ("Petitioner") petitions for *inter partes* review of U.S. Patent No. D789,435 ("the D'435 patent" or "the D'435" (EX1001)) in accordance with 35 U.S.C. §§ 311-319 and 37 C.F.R. § 42.100 *et seq*.

I. INTRODUCTION

The D'435 patent claims a design for a "camera" that has several rectangular "box-like" features: a rectangular body with flat faces, a rectangular enclosure for the lens (lens hood or lens cover), rectangles for displays, and rectangular buttons/access elements. But rectangular designs were not new in 2015 (the earliest priority date for the D'435 patent). Camera designers utilized rectangular features because of the appeal to camera manufacturers and photographers. For example, displays have typically been rectangular due to ease in manufacturing rectangular-shaped screens (existing industry custom). And rectangular lens were used because they led to better image quality (market demands).

To an ordinary designer, it is desirable to have a consistent look (discussed in more detail below). Prior art like Hero4, Gioscia, and Chen680 presented cameras/camera housings that had rectangular features and overall visual impressions of rectangular "box-like" designs.

Petitioner submits that the D'435 design is unpatentable for the reasons set forth in this Petition, as supported by Mr. Peter Bressler. (EX1002.)

II. THE D'435 PATENT

A. Summary

The D'435 patent has a single claim for "[t]he ornamental design for a camera, as shown and described." (EX1001, Claim; EX1002, ¶7.) The D'435 provides 10 figures showing different views of its claimed design:

Figure	View
1	front, top, and left side perspective
2	rear, bottom, and right side perspective
3	front, top, and right side perspective
4	rear, bottom, and left side perspective
5	front elevational
6	rear elevational
7	left side elevational
8	right side elevational
9	top plan
10	bottom plan

(EX1001, 1.)

The D'435 states that "[t]he broken lines depict portions of the camera in which the design is embodied that form no part of the claimed design." (EX1001, 1; EX1002, ¶7.) The solid lines of Figures 1-10 are shown and described below.

Figure 5 (below) shows a front view of the D'435 claimed design showing ***rectangular body***[1] with flat faces, a ***top button protrusion*** near the left of the figure, and a ***small rectangle near the left side*** of front. (EX1001, Fig. 5; EX1002, ¶8.) The front shows two (***pink*** and ***green***) rectangles for a rectangular lens cover.

[1] All annotations in color have been added, unless otherwise noted.

(*Id.*)

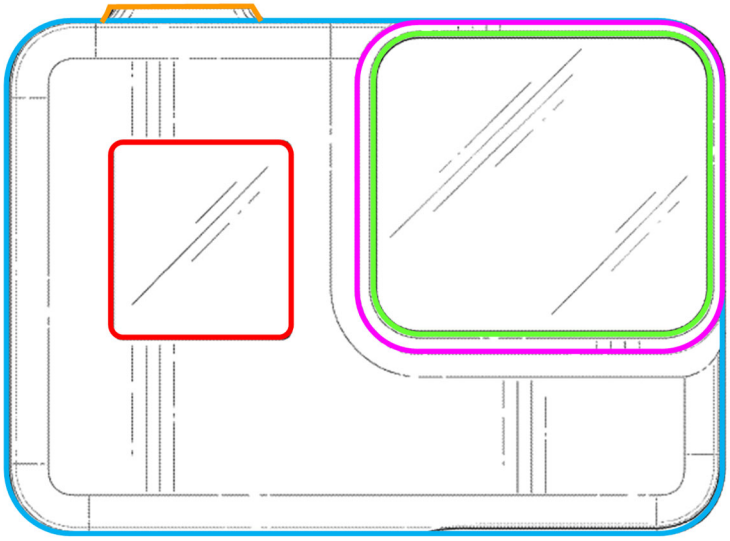


FIG. 5

Figure 6 (below) shows a rear view of the ***rectangular body*** with two inner (***pink*** and ***green***) rectangles that occupy a large part of the back, and the ***top button protrusion*** (near the top right of the figure). (EX1001, Fig. 6; EX1002, ¶9.)

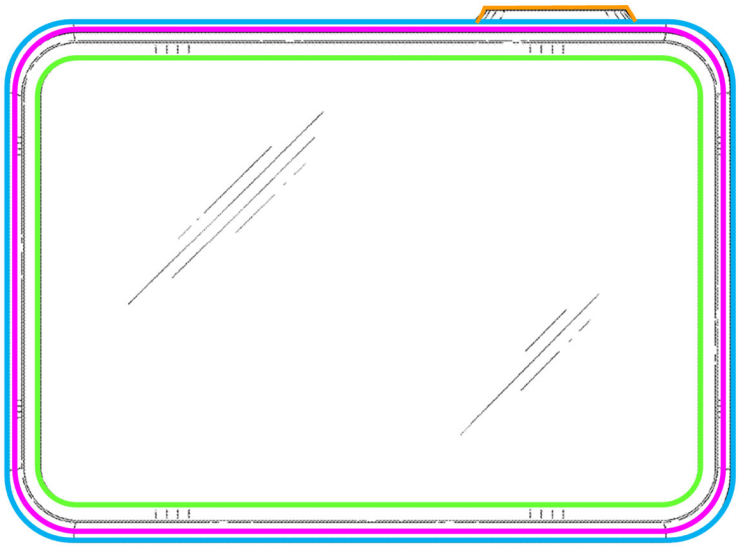


FIG. 6

Figure 7 (below) shows the left side view of the ***rectangular body*** showing ***vertical lines***, the ***top button protrusion***, and the ***rectangular lens cover*** extending outward from the body and showing a ***vertical line***. (EX1001, Fig. 7; EX1002, ¶10.) Figure 7 shows that the faces of the body are flat, including the front face.

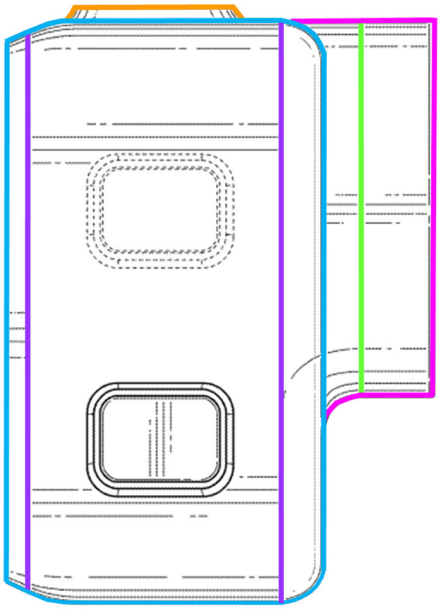


FIG. 7

The left side view (below) shows a rectangular button/access element (***pink***, ***green***, and ***orange*** rectangles) near the bottom. (EX1001, Fig. 7; EX1002, ¶11.)

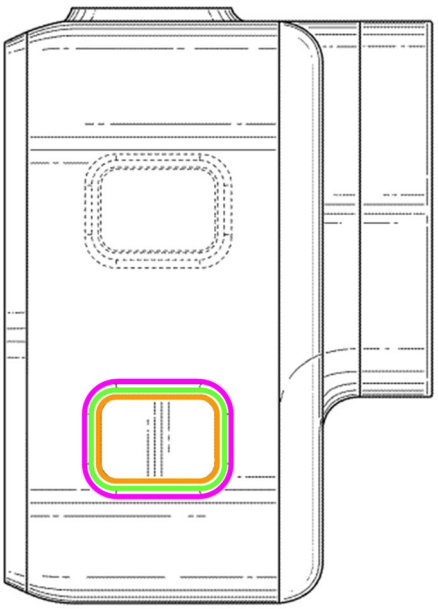


FIG. 7

Figure 8 below shows the right side view of the ***rectangular body*** showing ***vertical lines***, the ***top button protrusion***, and rectangular lens cover extending outward from the front of the body (left side of the figure) and showing a ***vertical line***. (EX1001, Fig. 8; EX1002, ¶12.)

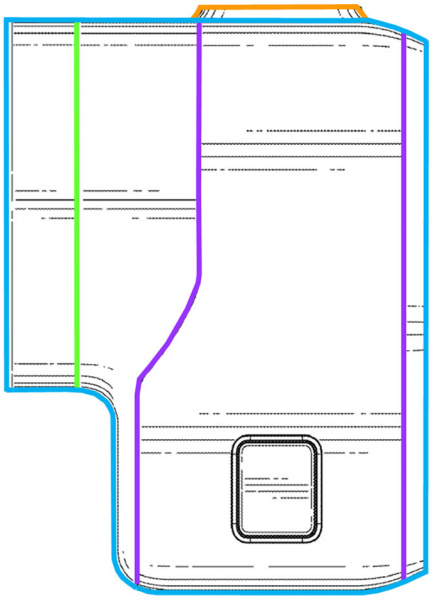


FIG. 8

The right side view (below) shows a rectangular button/access element (***pink*** and ***green*** rectangles) near the bottom. (EX1001, Fig. 8; EX1002, ¶13.)

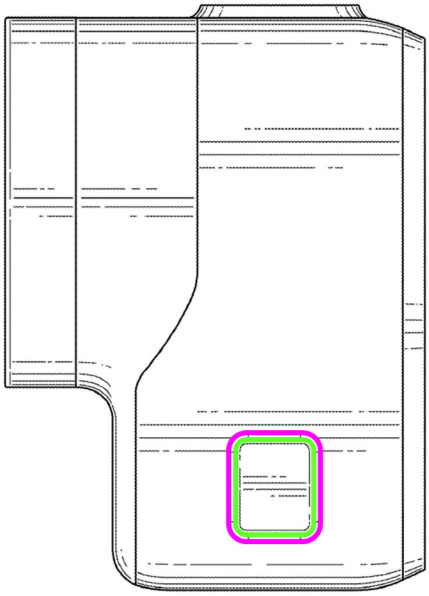


FIG. 8

Figure 9 (below) shows the top view of the ***rectangular body*** showing ***horizontal lines***, and the rectangular lens cover extending outward from the body and showing a ***horizontal line***. (EX1001, Fig. 9; EX1002, ¶14.) The top button protrusion is shown in the figure as three (***pink***, ***green***, and ***orange***) rectangles. (*Id*.)

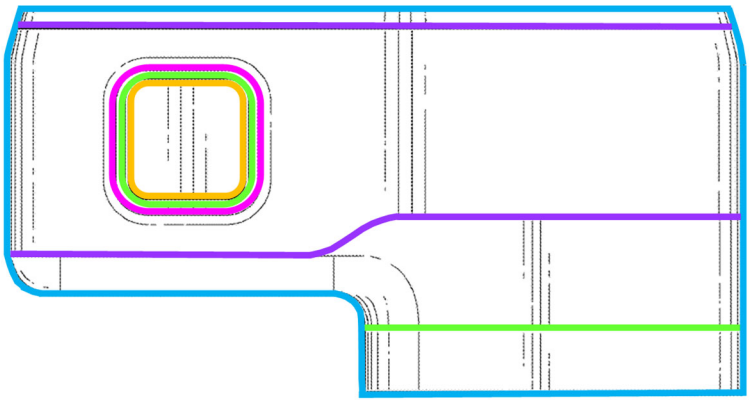


FIG. 9

Figure 10 (below) shows the bottom view of the ***rectangular body*** showing ***horizontal lines***, and a ***rectangular lens cover*** extending from the body and showing a ***horizontal line***. (EX1001, Fig. 10; EX1002, ¶15.) Figure 10 further shows two small (***pink*** and ***green***) rectangles for a button/access element. (*Id.*)

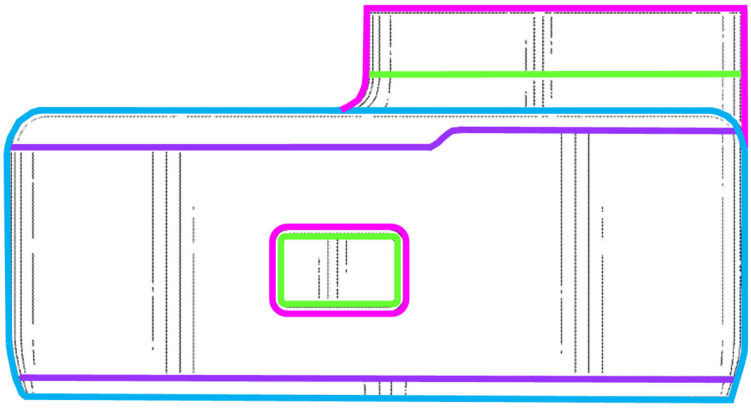


FIG. 10

Figures 1-4 (below) show the perspective views of the D'435. (EX1001, Figs. 1-4; EX1002, ¶16.) The 10 figures of the D'435 patent together give an

ordinary designer in the field an overall visual impression of a rectangular design, including a rectangular body with flat faces, a rectangular lens cover, rectangular buttons/access elements, rectangles for displays, etc. (EX1002, ¶16.)

D'435 Front, Top, and Left Side View

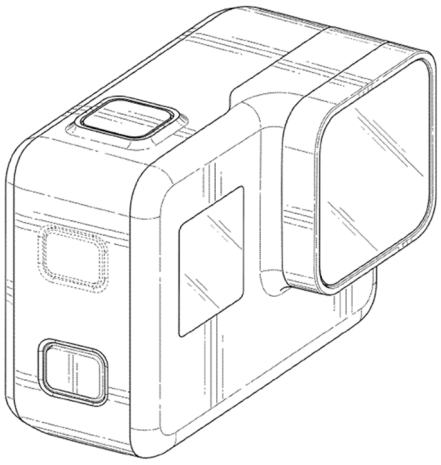


FIG. 1

D'435 Rear, Bottom, and Right Side View

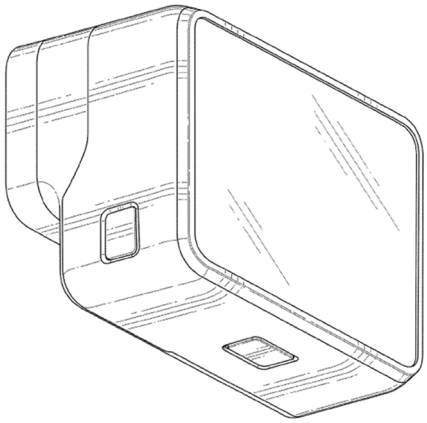


FIG. 2

D'435 Front, Top, and Right Side View

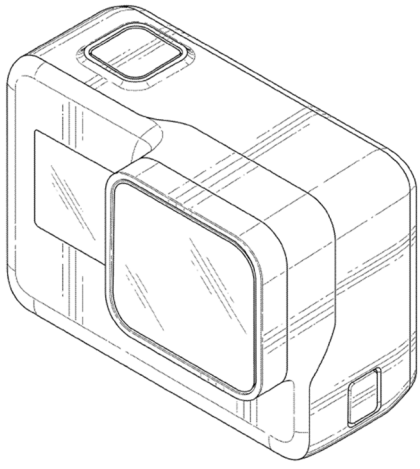


FIG. 3

D'435 Rear, Bottom, and Left Side View

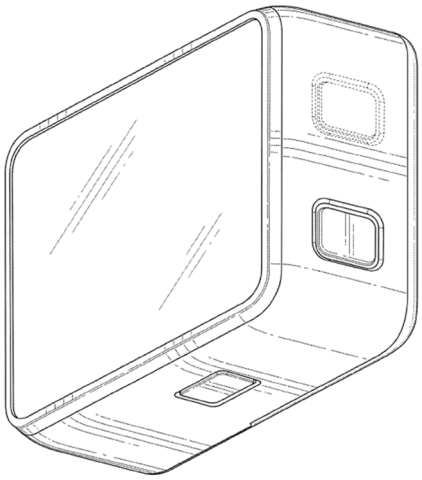


FIG. 4

B. Effective Filing Date

The D'435 patent was filed on October 26, 2016, issued on June 13, 2017,

and claims priority to two continuation applications filed on November 17, 2015, and February 16, 2016. (EX1001, Related U.S. Application Data; EX1002, ¶6.) For purposes of this Petition only, Petitioner relies on November 17, 2015, as the earliest effective filing date. (EX1002, ¶6.)

C. Prosecution History

The D'435 patent underwent minimal examination during prosecution. (EX1003; EX1002, ¶17.) Applicant filed the application on October 26, 2016, with the same claim and ten figures that would become the D'435 patent. (EX1003, 41-71.) The Examiner did not issue any Office Actions, but instead, issued a Notice of Allowance on March 16, 2017. (EX1003, 15-19; EX1002, ¶18.)

D. Level of Ordinary Skill

An ordinary designer in the field of the D'435 patent would have a bachelor's degree in industrial design or an equivalent field, or two years of experience designing cameras or camera housings. (EX1002, ¶¶22-24.)

III. CLAIM CONSTRUCTION

The claim in a design patent is defined by the drawings. Unlike utility patents, claim construction for design patents does not require a detailed verbal description of the claimed design. As the Federal Circuit has recognized, for claim construction, "it may be "helpful to point out . . . various features of the claimed design as they relate to the accused design and the prior art." *Egyptian Goddess,*

Inc. v. Swisa, Inc., 543 F.3d 665, 680 (Fed. Cir. 2008).

The sole claim of the D'435 reads: "[t]he ornamental design for a camera, as shown and described." In accordance with 37 C.F.R. § 1.152, the scope of the D'435 patent is defined by the solid lines, not the broken or dashed lines, in Figures 1-10.[2] *Door-Master Corp. v. Yorktowne, Inc.*, 256 F.3d 1308, 1313 (Fed. Cir. 2021). Accordingly, Petitioner considers the sole claim of the D'435 patent as based on the solid lines along with verbal descriptions of certain features relevant to the prior art. Here, the solid lines show that the D'435 design encompasses a rectangular body with flat faces, a rectangular lens cover extending outward from the front of the body, rectangular buttons/access elements, and rectangles for displays. As a whole, the D'435 gives an ordinary designer an overall visual impression of a rectangular design for a camera/camera housing. (EX1002, ¶¶25-26.)

[2] Petitioner interprets the challenged claims based on the breadth of GoPro's infringement allegations in the related International Trade Commission (ITC) proceeding. (EX1037; EX1038.) Petitioner reserves the right to argue in the ITC proceeding that GoPro's construction of the terms are incorrect and/or not supported by the D'435 patent specification.

IV. LEGAL STANDARD FOR DESIGN PATENTS

In determining obviousness for design patents, "the ultimate inquiry under section 103 is whether the claimed design would have been obvious to a designer of ordinary skill who designs articles of the type involved." *MRC Innovations, Inc. v. Hunter Mfg., LLP*, 747 F.3d 1326, 1331 (Fed. Cir. 2014) (citation omitted).

The Federal Circuit recently concluded "that the *Rosen-Durling* test requirements—that (1) the primary reference be 'basically the same' as the challenged design claim; and (2) any secondary references be 'so related' to the primary reference that features in one would suggest application of those features to the other—are improperly rigid." *LKQ Corp. v. GM Glob. Tech. Operations LLC*, 102 F.4th 1280, 1293 (Fed. Cir. 2024). Instead, the obviousness inquiry should apply a more flexible approach, like *KSR*. *Next Step Grp., Inc. v. Deckers Outdoor Corp.*, Case IPR2024-00525, Paper 11 at 3 (P.T.A.B. June 12, 2024) ("The Director has instructed that Board decisions addressing obviousness in the design patent context must follow the *LKQ* decision."); *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398 (2007).

The obviousness inquiry starts with a "primary reference" that is "something in existence" (*LKQ* factual inquiry one) and is "visually similar." *LKQ*, 102 F.4th at 1293. Once a primary reference is found, differences between the primary reference and the patented design are determined (*LKQ* factual inquiry two) by

comparing the visual appearance from the perspective of an ordinary designer in the field of the article of manufacture (*LKQ* factual inquiry three). *Id*. at 1298. If the differences between the primary reference and the patented design are *de minimis*, then the design is invalid as obvious without the need to consider any secondary reference. *In re Nalbandian*, 661 F.2d 1214, 1217 (C.C.P.A. 1981); MPEP § 1504.03(II) ("Examiners are advised that differences between the claimed design and a primary reference may be held to be minor in nature and unrelated to the overall aesthetic appearance of the design with or without the support of secondary references."). Secondary considerations should be taken into account, if evidence is present (*LKQ* factual inquiry four).

A design patent is invalid for obviousness if an ordinary designer in the field would have been motivated to modify the prior art design to create the same overall visual appearance as the claimed design. *LKQ*, 102 F.4th at 1299-1300. The inquiry must focus on the visual impression of the claimed design as a whole and not on selected individual pieces. *Id.* at 1299. The "more visually similar the primary reference design is to the claimed design, the better positioned the patent challenger will be to prove its § 103 case." *Id.* at 1298.

Under 35 U.S.C. § 103, the overall claimed design is what is important; small differences are inconsequential. *MRC Innovations*, 747 F.3d at 1335 (finding insubstantial and obvious the addition of an ornamental surge stitching on

top of a garment's existing seam even though no prior art had the same surge stitching in the same position as the claimed design); *In re Lamb*, 286 F.2d 610, 611-12 (C.C.P.A. 1961) (upholding the rejection of design claim as invalid because a slight change in some dimensions over the prior art was insignificant). "[T]he mere fact that there are differences over the prior art structures is not alone sufficient to justify a holding that the design is patentable." *Id.* at 611.

In assessing obviousness, relevant factors include an "ordinary skilled designer's experience, creativity," "what market demands and industry customs exist in the relevant field," and "which ornamental features are commonplace in the relevant field." *LKQ*, 102 F.4th at 1299-1300 (internation quotation marks and citation omitted); (EX1002, ¶¶19-21).

V. PRECISE REASONS FOR RELIEF REQUESTED

Pursuant to 37 C.F.R. § 42.104(b), Petitioner requests cancellation of the challenged claims based on the following references (EX1002, ¶¶27-41.):

Prior Art Reference	Abbreviation (Exhibit No.)
R. Maker, *GoPro Hero4 Silver & Hero4 Black In-Depth Review*, DC Rainmaker (Nov. 13, 2014; archived Nov. 15, 2014)	"Maker" (EX1004)
Digital Photography Review, *GoPro announces Hero4 lineup*, Digital Photography Review (Sep. 29, 2014; archived Oct. 1, 2014)	"DP Review" (EX1006)

Prior Art Reference	Abbreviation (Exhibit No.)
Stoilov, *GoPro Hero4 Official Specs: 4K/30fps, Built-in Touch Screen, 1080/120fps*, 4K Shooters (Sep. 26, 2014; archived Oct. 1, 2014)	"Stoilov" (EX1008)
Gigazine, *I tried 4K shooting with the new "GoPro HERO4" Black and Silver Review*, Gigazine (Oct. 31, 2014)	"Gigazine" (EX1010)
Amazon, *GoPro Hero4 Silver*, Amazon (Oct. 3, 2014; archived Oct. 3, 2014)	"Amazon" (EX1011)
U.S. Design Patent No. D710,921	"Gioscia" (EX1013)
U.S. Design Patent No. D750,680	"Chen680" (EX1014)
English Translation of Chinese Pub. No. 204360078	"Wang" (EX1016)
U.S. Design Patent No. D750,686	"Chen686" (EX1018)
U.S. Design Patent No. D702,747	"Woodman" (EX1019)
English Translation of Chinese Design Pub. No. 303440022	"Huang" (EX1021)
English Translation of Korean Design Pub. No. 300792432	"Heo" (EX1024)
English Translation of Chinese Design Pub. No. 303358967	"Li" (EX1027)
U.S. Patent No. 9,864,258	"McVicker" (EX1029)

The statutory grounds for the challenge of each claim are set forth below. All statutory citations are AIA.

Ground	35 U.S.C. §	Prior Art Reference(s)
1	103	Hero4 and Huang/Heo
2	103	Gioscia and Huang/Heo
3	103	Chen680 and Huang/Heo; or Chen680, Huang/Heo, and Li/McVicker
4	103	Wang and Huang/Heo; or Wang, Huang/Heo, and Li/McVicker
5	103	Chen686 and Huang/Heo; or Chen686, Huang/Heo, and Li/McVicker
6	103	Woodman and Huang/Heo

Below, Petitioner discusses why the claimed design is unpatentable under the statutory grounds raised, including how and where the prior art satisfies each element of the claimed design, as required by 37 C.F.R. § 42.104(b)(4). Petitioner's showing establishes that there is a reasonable likelihood that it will prevail on each ground of unpatentability to each element of the claimed design.

A. Overview of the Prior Art and Types of Articles

1. Hero4

Maker, DP Review, Stoilov, Gigazine, and Amazon are articles (referred to collectively as "Hero4 Publications") that published views of Hero4 and were publicly available on various websites (DC Rainmaker, Digital Photography Review, 4K Shooters, Gigazine, Amazon) by at least November 15, 2014.

(EX1004; EX1006; EX1008; EX1010; EX1011.) The websites indicate that the articles were posted in 2014 (on November 13, September 29, September 26, October 31, and October 3) at least one year before the earliest priority date of the D'435. (EX1002, ¶¶42-44). The latest archive date of the Hero4 Publications is November 15, 2014, which is still one year before the earliest priority date of the D'435. (EX1002, ¶44).

These websites were well-known, public (*e.g.*, no access restrictions), searchable, and intended to reach a wide audience. (EX1002, ¶¶42-44.) For example, Digital Photography Review is a well-known website known in the field for publishing articles about cameras and digital photography. (*Id.*) Similarly, Amazon is a well-known website that allows members of the camera field to purchase products and receive information (*e.g.*, images) of the products. (*Id.*) An ordinary designer would have known about and readily located information on these websites with reasonable diligence. *Kyocera Wireless Corp. v. Int'l Trade Comm'n*, 545 F.3d 1340, 1350 (Fed. Cir. 2008) (quoting *SRI Int'l, Inc. v. Internet Sec. Sys., Inc.*, 511 F.3d 1186, 1994 (Fed. Cir. 2008)). Based on this evidence taken as a whole, the Hero4 Publications were publicly available by at least November 15, 2014, qualifying as prior art at least under § 102(a)(1) as printed publications, or as being otherwise available to the public. The Examiner never found, and Applicant never cited, any of the Hero4 Publications during

prosecution. (EX1002, ¶¶27-32.)

The Hero4 Publications provide multiple images (below) to show different views of Hero4's design:

Hero4 Front, Top, and Left Side View



Hero4 Rear, Bottom, and Right Side View



D'435 Front, Top, and Right Side View



Hero4 Front View



Hero4 Rear View



Hero4 Right Side View



Hero4 (Without Case) Bottom View



(EX1004; EX1006; EX1008; EX1010; EX1011; EX1036; EX1002, ¶45.)

The Hero4 Publications (above) disclose a design showing:

- a rectangular body with flat faces,
- a rectangular lens cover extending outward from the front of the body and showing a line,
- a rectangle for a display at the front that is flush with its front face, and a rectangle for a display that occupies a large part of the back,
- buttons/access elements at the top, left side, right side, and bottom, and
- an overall visual impression of a rectangular/"box-like" design.

(EX1002, ¶46.) Hero4's design comprises a camera case that is transparent such that components of the camera are visible and part of the outer appearance of Hero4. (*Id.*, ¶42.) The overall visual impression and features of Hero4's design are discussed in more detail in Section V.B.

2. Gioscia

Gioscia is a U.S. design patent that was filed on July 18, 2013, and issued on August 12, 2014, qualifying as prior art at least under § 102(a)(1). The Examiner never found, and Applicant never cited, Gioscia during prosecution. (EX1002, ¶¶27, 33.)

Gioscia discloses a "camera housing" design. (EX1013, Title; EX1002, ¶47.) Gioscia provides 10 figures (below) showing different views of its design:

Figure	View
1	front, top, and right side perspective
2	front, bottom, and left side perspective
3	back, top, and left side perspective
4	back, bottom, and right side perspective
5	front elevational
6	back elevational
7	left side elevational
8	right side elevational
9	top plan
10	bottom plan

(EX1013, 1.)

Gioscia Front, Bottom, and Left Side View

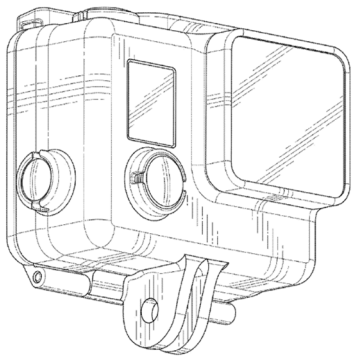


FIG. 2

Gioscia Back, Bottom, and Right Side View

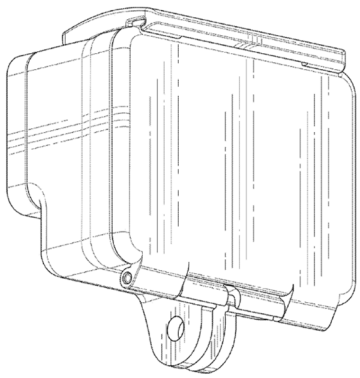


FIG. 4

Gioscia Front, Top, and Right Side View

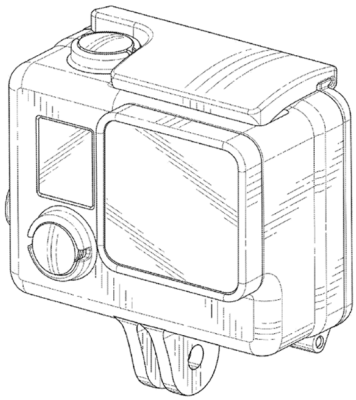


FIG. 1

Gioscia Back, Top, and Left Side View

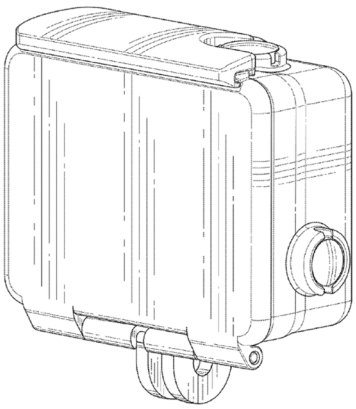


FIG. 3

Gioscia Front View

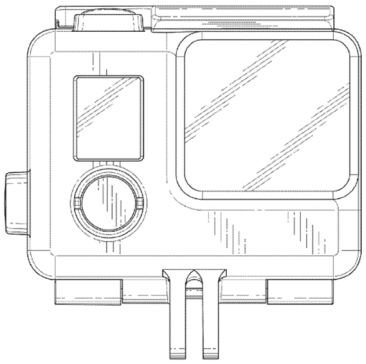


FIG. 5

Gioscia Back View

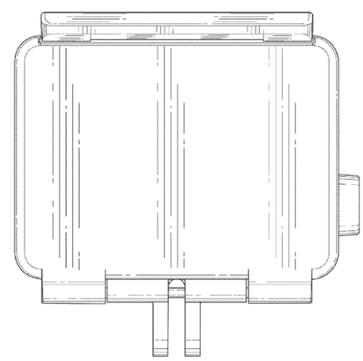
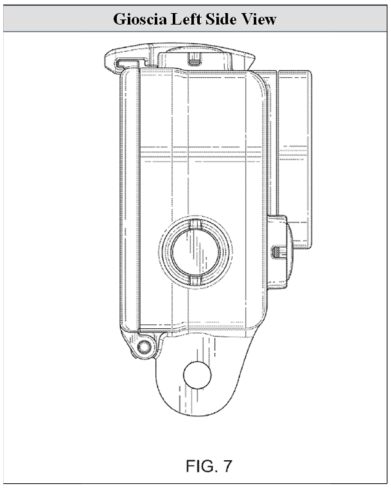
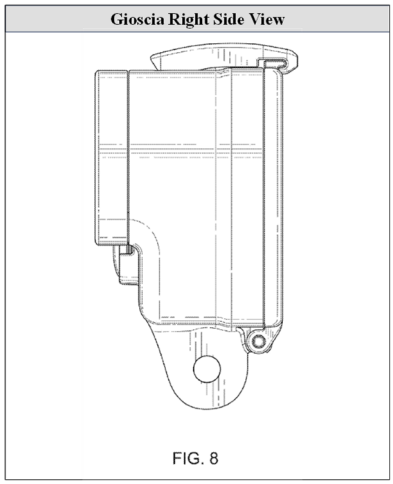
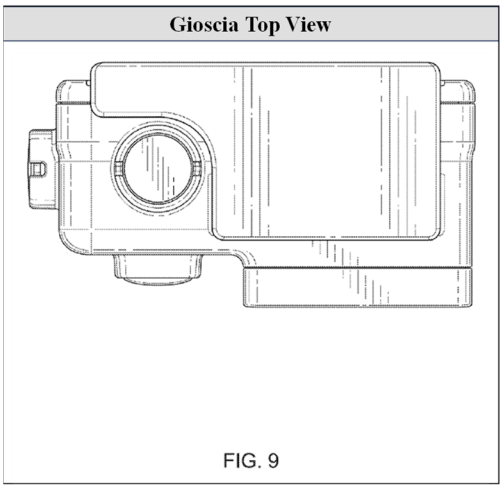
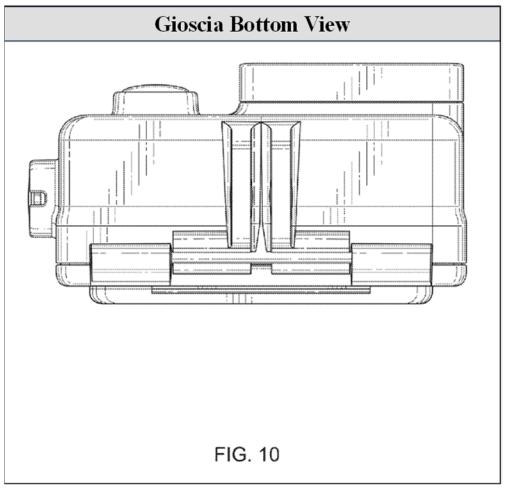


FIG. 6









(EX1013, Figs. 1-10.)

Gioscia's design (above) shows:

- a rectangular body with flat faces,
- a rectangular lens cover extending outward from the front of the body and showing a line,
- a rectangle for a display at the front that is flush with its front face,
- buttons/access elements at the top, left side, and right side, and
- an overall visual impression of a rectangular/"box-like" design.

(EX1002, ¶48.) The overall visual impression and features of Gioscia's design are discussed in more detail in Section 0.

3. Chen680

Chen680 is a U.S. design patent that was filed on January 20, 2015, and issued on March 1, 2016, qualifying as prior art at least under §§ 102(a)(1) and 102(a)(2). Chen680 was disclosed, but never substantively discussed or applied against the D'435 during prosecution. (EX1002, ¶¶ 27, 34.)

Chen680 discloses a "camera housing" design. (EX1014, Title; EX1002, ¶49.) Chen680 provides eight figures (below) showing different views of its design:

Figure	View
1	front, top, and right side perspective
2	front elevational
3	rear elevational
4	left side elevational
5	right side elevational
6	top plan
7	bottom plan
8	front, top, and left side perspective

(EX1014, 1.)

Chen '680 Front, Top, and Left Side View

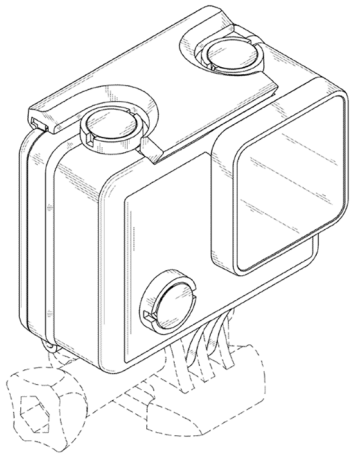


FIG. 8

Chen '680 Front, Top, and Right Side View

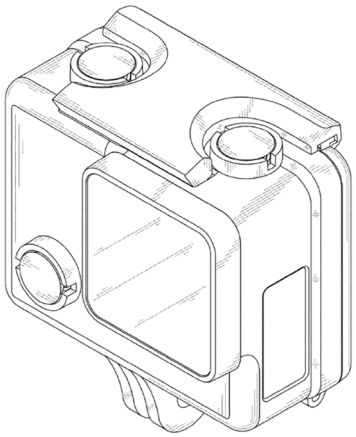


FIG. 1

Chen '680 Front View

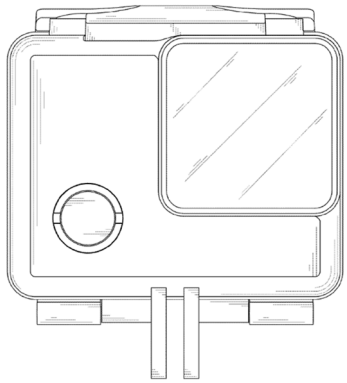


FIG. 2

Chen '680 Rear View

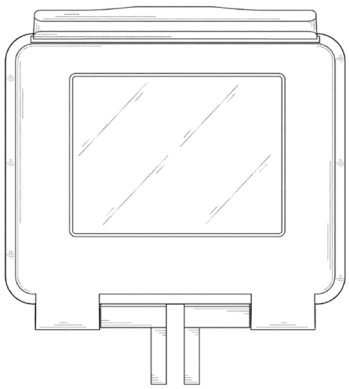


FIG. 3

Chen '680 Left Side View

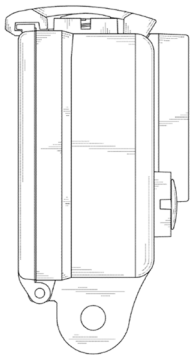


FIG. 4

Chen '680 Right Side View

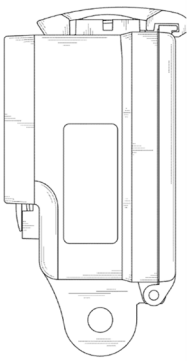
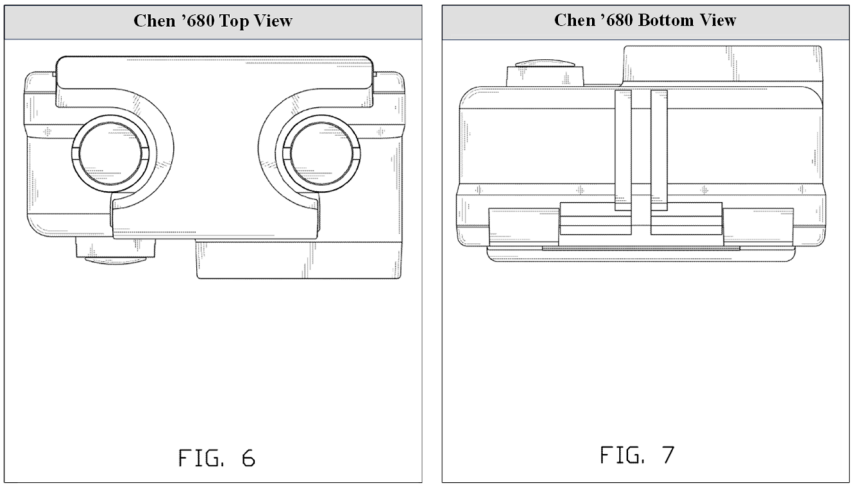


FIG. 5



(EX1014, Figs. 1-7.)

Chen680's design (above) shows:

- a rectangular body with flat faces,
- a rectangular lens cover extending outward from the front of the body and showing a line,
- a rectangle for a display that occupies a large part of the back,
- buttons/access elements at the top and right side, and
- an overall visual impression of a rectangular/"box-like" design.

(EX1014, Figs. 1-8; EX1002, ¶50.) The overall visual impression and features of Chen680's design are discussed in more detail in Section V.D.

4. Wang

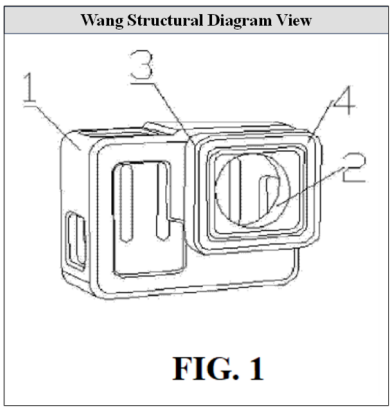
Wang is a Chinese publication that was filed on December 30, 2014, and published on May 27, 2015, qualifying as prior art at least under § 102(a)(1). The Examiner never found, and Applicant never cited Wang during prosecution.

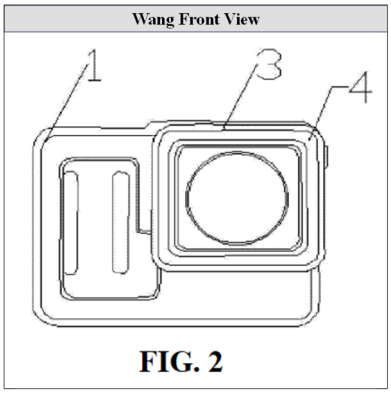
(EX1002, ¶¶ 27, 35.)

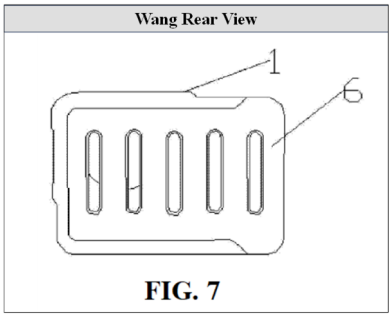
Wang discloses a "sport camera heat dissipation protection housing." (EX1016, Title; EX1002, ¶51.) Wang discloses 10 figures, seven (below) of which shows different views of its design:

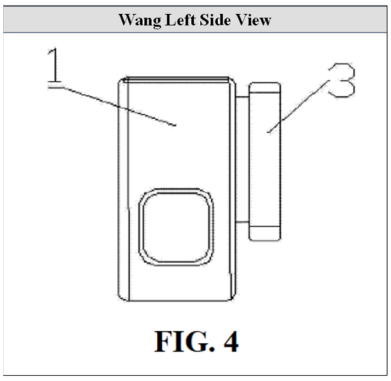
Figure	View
1	structural diagram
2	front
3	top
4	left
5	right
6	bottom
7	rear

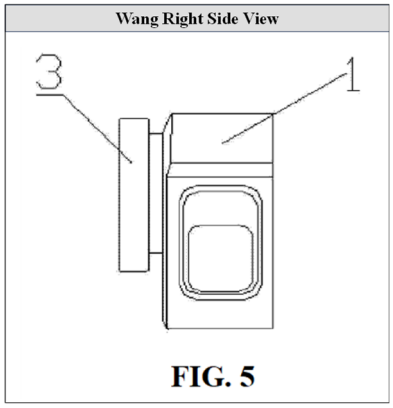
(EX1016, [0014]-[0020].)











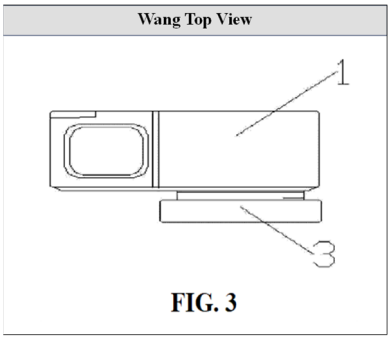


FIG. 3

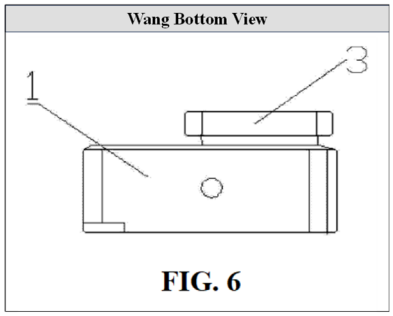


FIG. 6

(EX1016, Figs. 1-7.)

Wang's design (above) shows:

- a rectangular body with flat faces,
- a rectangular lens cover extending outward from the front of the body,
- a rectangle-like shape for a display at the front that is flush with its front face,
- rectangular access elements at the top, left side, and right side, and
- an overall visual impression of a rectangular/"box-like" design.

(EX1002, ¶52.) The overall visual impression and features of Wang's design are discussed in more detail in Section V.E.

5. Chen686

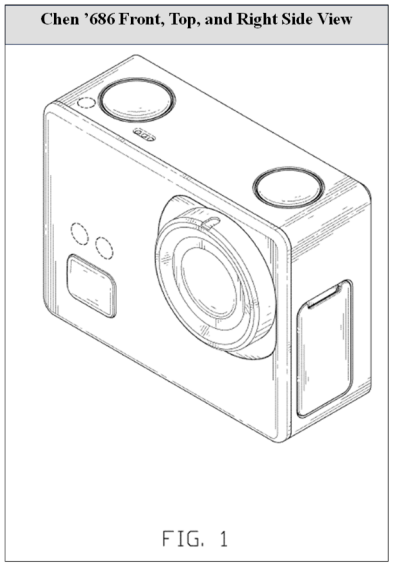
Chen686 is a U.S. design patent that was filed on January 20, 2015, and issued on March 1, 2016, qualifying as prior art at least under §§ 102(a)(1) and 102(a)(2). Chen686 was disclosed, but never substantively discussed or applied against the D'435 during prosecution. (EX1002, ¶¶ 27, 36.)

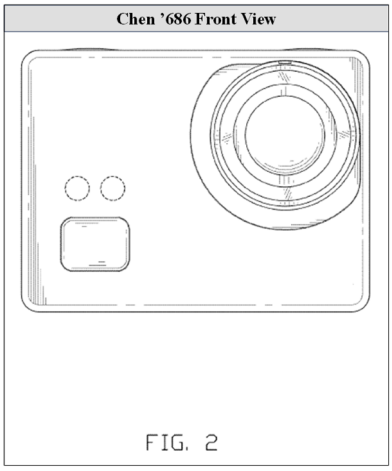
Chen686 discloses a "camera" design. (EX1018, Title; EX1002, ¶53.)

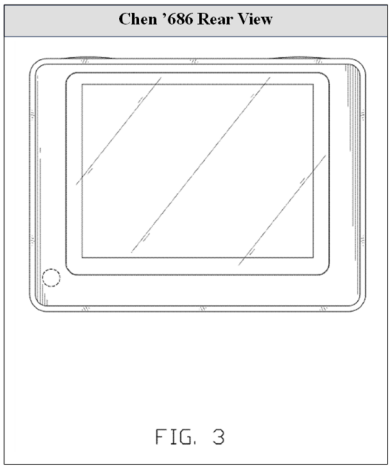
Chen686 provides seven figures (below) showing different views of its design:

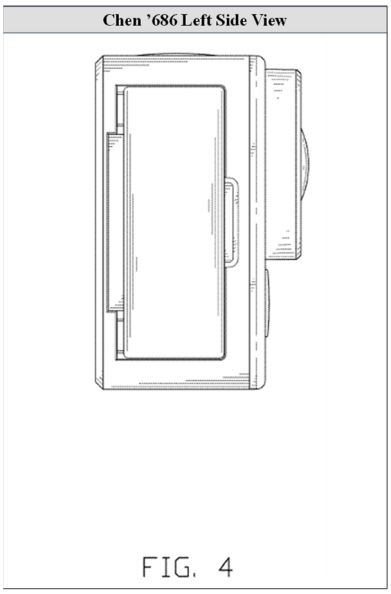
Figure	View
1	front, top, and right side perspective
2	front elevational
3	rear elevational
4	left side elevation
5	right side elevation
6	top plan
7	bottom plan

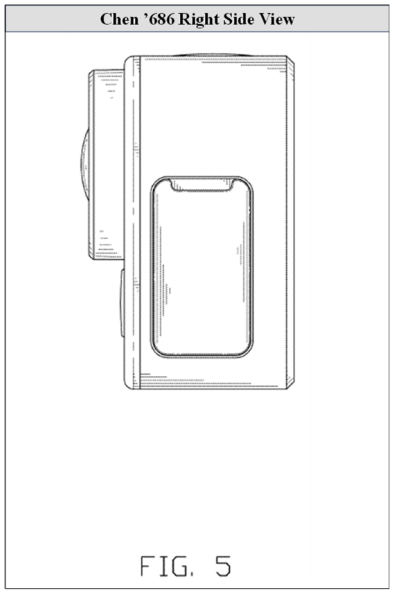
(EX1018, 1.)

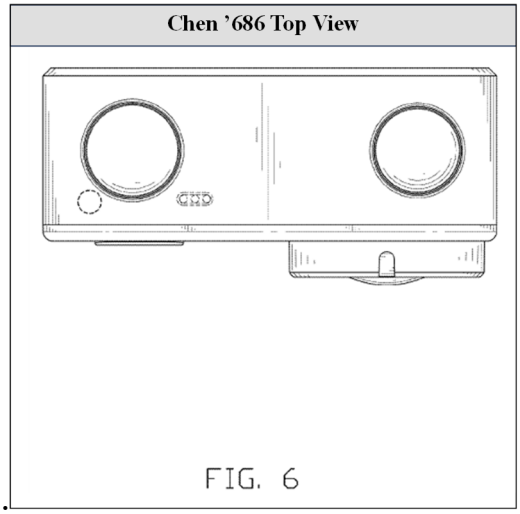


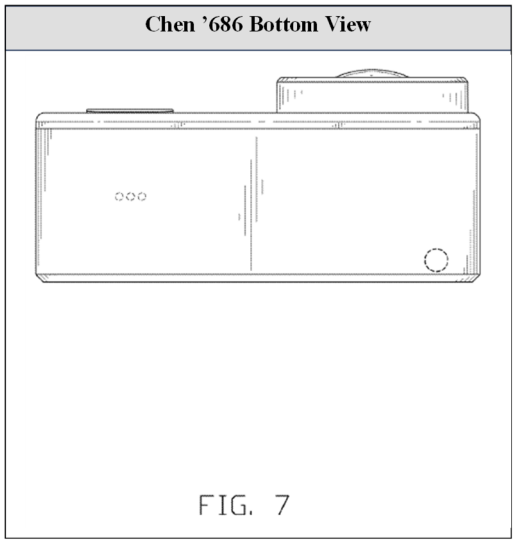












(EX1018, Figs. 1-7.)

Chen686's design (above) shows:

- a rectangular body with flat faces,
- a rectangle at the front of the body that is flush with its front face, and a rectangle for a display that occupies a large part of the back,
- buttons/access elements at the top, left side, and right side, and

- an overall visual impression of a rectangular/"box-like" design.

(EX1002, ¶54.) The overall visual impression and features of Chen686's design are discussed in more detail in Section V.F.

6. Woodman

Woodman is a U.S. design patent that was filed on September 11, 2012, and issued on April 15, 2014, qualifying as prior art at least under § 102(a)(1). The Examiner never found, and Applicant never cited, Woodman during prosecution. (EX1002, ¶¶ 27, 37.)

Woodman discloses a "camera housing" design. (EX1019, Title; EX1002, ¶55.) Woodman provides 10 figures (below) showing different views of a design:

Figure	View
1	front, top, and right side perspective
2	front, bottom, and left side perspective
3	back, top, and left side perspective
4	back, bottom, and right side perspective
5	front elevational
6	rear elevational
7	left side elevational
8	right side elevational
9	top plan
10	bottom plan

(EX1019, 1.)

Woodman Front, Bottom, and Left Side View

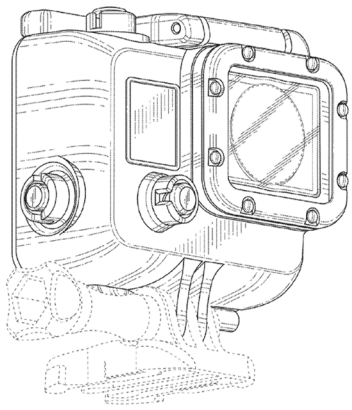


FIG. 2

Woodman Front, Top, and Right Side View

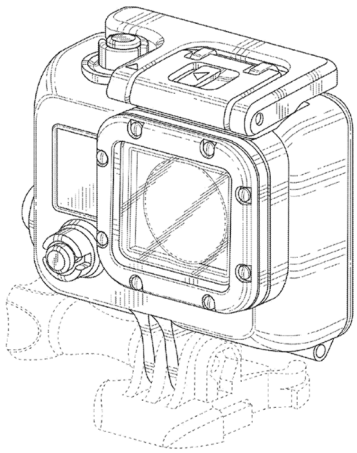


FIG. 1

Woodman Back, Bottom, and Right Side View

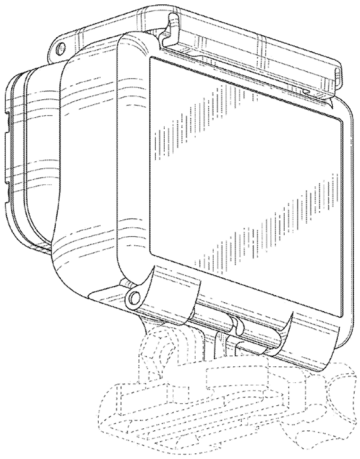


FIG. 4

Woodman Back, Top, and Left Side View

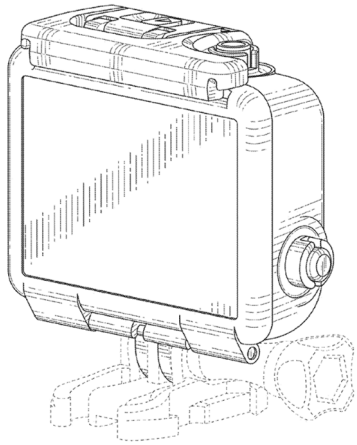


FIG. 3

Woodman Front View

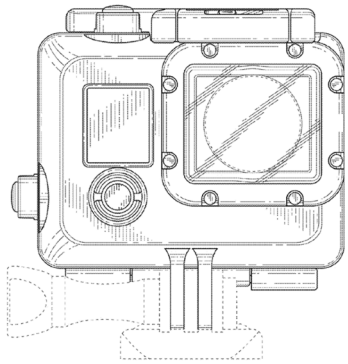


FIG. 5

Woodman Rear View

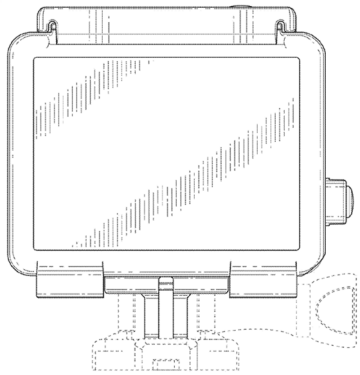
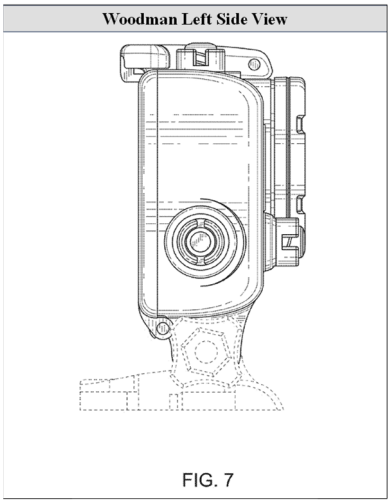
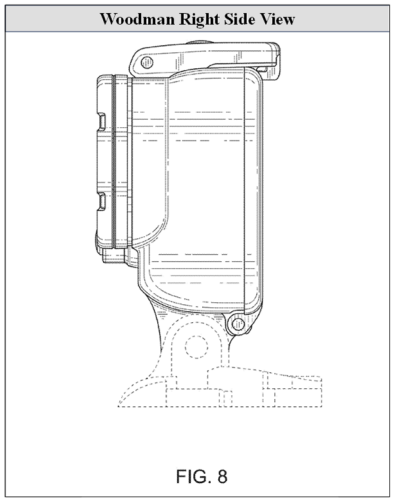
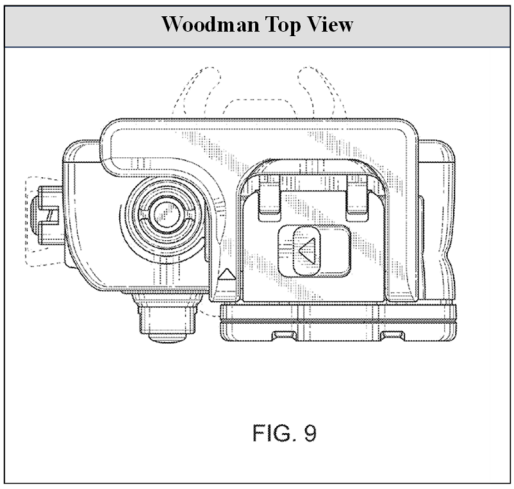
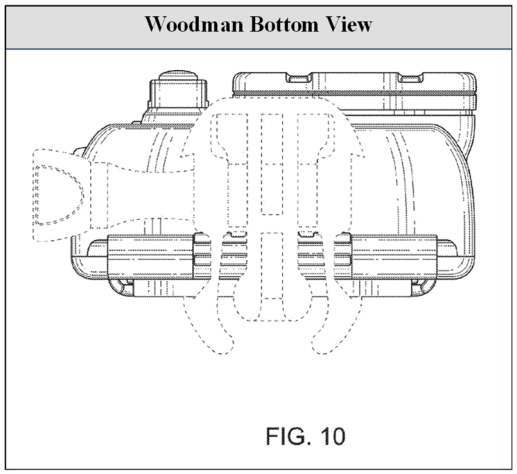


FIG. 6









(EX1019, Figs. 1-10.)

Woodman's design (above) shows:

- a roughly rectangular body,
- a rectangular lens cover extending outward from the front of the body and showing a line,
- a rectangle for a display at the front that is flush with its front face, and a rectangle for a display that occupies a large part of the back,

- buttons/access elements at the top and left side, and
- an overall visual impression of a rectangular/"box-like" design.

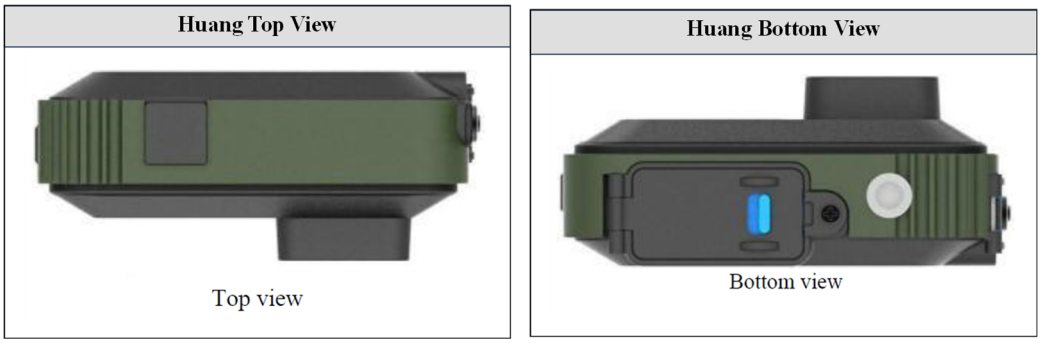
(EX1002, ¶56.) The overall visual impression and features of Woodman's design are discussed in more detail in Section V.G.

7. Huang

Huang is a Chinese design application that was filed on February 11, 2015, and published on November 11, 2015, qualifying as prior art at least under § 102(a)(1). The Examiner never found, and Applicant never cited Huang during prosecution. (EX1002, ¶¶ 27, 38.)

Huang discloses a "[c]amera" design. (EX1021, Title; EX1002, ¶57.) Huang provides five figures (below) showing different views of its design: Front, Left, Right, Top, and Bottom views. (EX1021, 2.) Huang's figures show a roughly rectangular body, a rectangular lens cover extending outward from the front of the body, a rectangle for a display at the front that is flush with its front face, and rectangular buttons/access elements at the top, left side, right side, and bottom. (EX1002, ¶58.) The overall visual impression and features of Huang's design are discussed in more detail in Sections V.B-V.G.





8. Heo

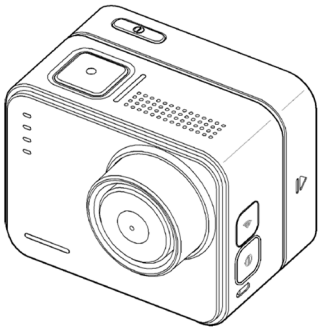
Heo is a Korean design application that was filed on April 30, 2014, published on April 16, 2015, and issued on April 9, 2015, qualifying as prior art at least under § 102(a)(1). The Examiner never found, and Applicant never cited Heo during prosecution. (EX1002, ¶¶ 27, 39.)

Heo discloses a "Portable Balckbox [sic]" design. (EX1024, Title; EX1002, ¶59.) Heo provides seven figures (below) showing different views of a design: perspective, front side, rear, left side, right side, plan, and bottom views. Heo's figures show a rectangular body with flat faces, a rectangle for a display that occupies a large part of the back, and rectangular buttons/access elements at the

top, left side, right side, and bottom. (EX1002, ¶60.) The overall visual impression and features of Heo's design are discussed in more detail in Sections V.B-V.G.

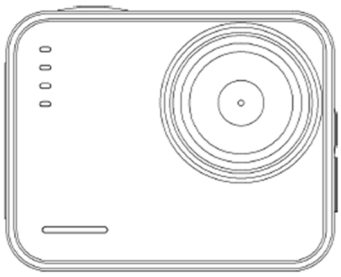
Heo Perspective View

perspective view



Heo Front View

front side view



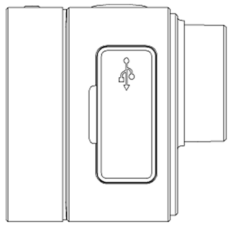
Heo Rear View

rear view



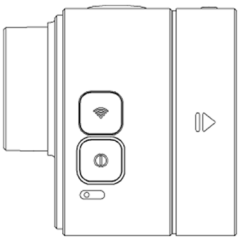
Heo Left Side View

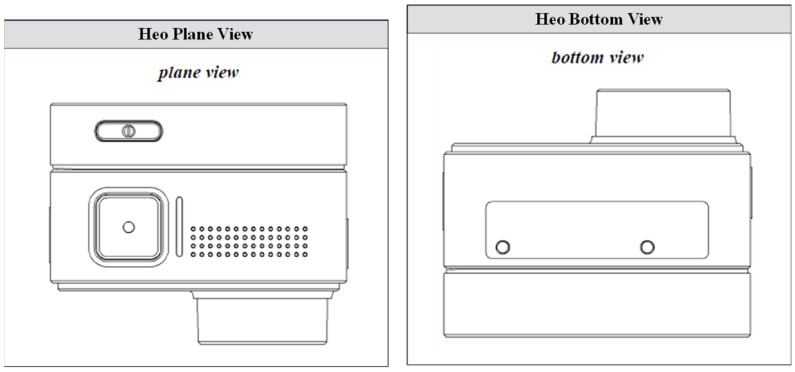
left side view



Heo Right Side View

right side view

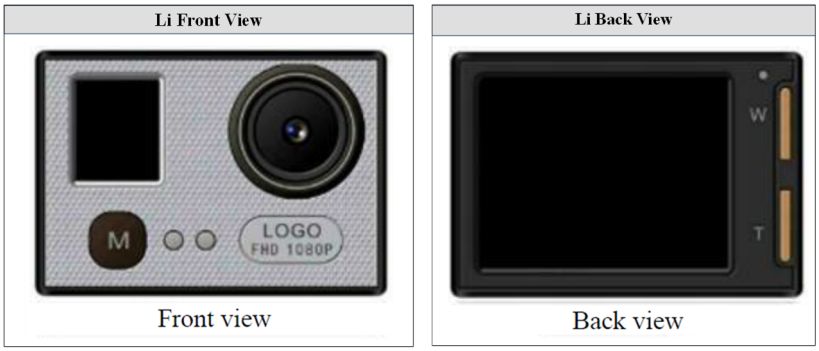




9. Li

Li is a Chinese design application that was filed on February 17, 2015, and published on September 2, 2015, qualifying as prior art at least under § 102(a)(1). The Examiner never found, and Applicant never cited Li during prosecution. (EX1002, ¶¶ 27, 40.)

Li discloses a "[s]port camera" design. (EX1027, Title; EX1002, ¶61.) Li provides six figures showing different views of its design: Front, Back, Left, Right, Top, and Bottom views. Li's figures show a rectangular body with flat faces, a rectangle for a display at the front that is flush with its front face, and a rectangle for a display that occupies a large part of the back. (EX1002, ¶62.) The overall visual impression and features of Li's design are discussed in more detail in Sections V.D-V.F.



10. McVicker

McVicker is a U.S. utility patent that was filed on April 22, 2015, and issued on January 9, 2018, qualifying as prior art at least under §§ 102(a)(1) and 102(a)(2). The Examiner never found, and Applicant never cited McVicker during prosecution. (EX1002, ¶¶ 27, 41.)

McVicker's "action camera system" (Figure 2 below) comprises an action camera 38 (right) that shows a rectangular body with flat faces, a rectangular lens cover extending outward from the front of the body and showing a line, a rectangle for a display at the front that is flush with its front face, and buttons/access elements at the top and left side. (EX1029, Abstract, 3:38-39, Fig. 2; EX1002, ¶¶63-64.)

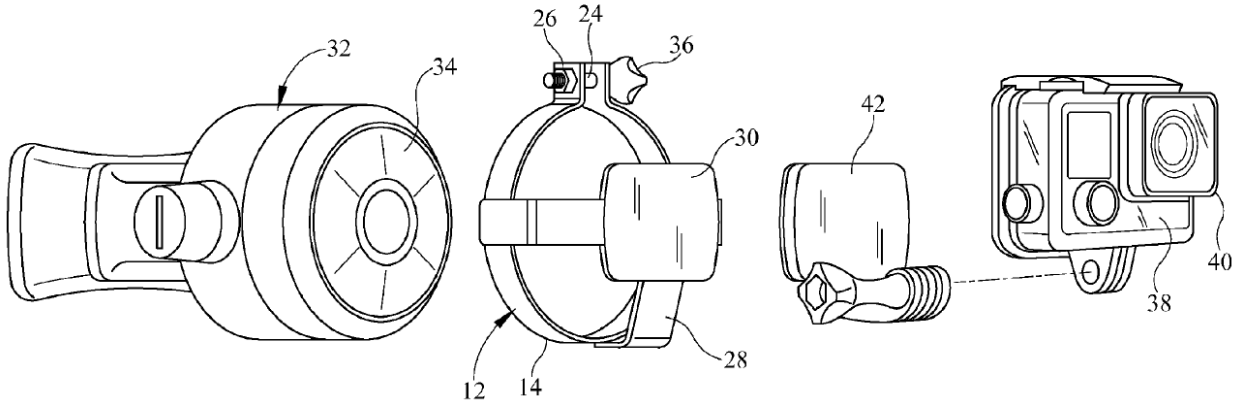


FIG. 2

11. Types of Articles in the Field

U.S. design patents are classified into classes of subject matter and "organized into subclasses to permit efficient searching for specific types of industrial designs."[3] The D'435 has classifications, such as D16/200, which means that its design belongs to Class D16 Photography and Optical Equipment, and subclass 200 Camera or Body Therefor.[4] Prior art having the same classifications

[3] https://www.uspto.gov/patents/laws/examination-policy/seven-classification-design-patents#:~:text=Classification%20of%20design%20patents%20is,claimed%20in%20the%20Design%20patent.

[4] https://www.uspto.gov/web/patents/classification/uspcd16/schedd16.htm#CD16S200000.

may be considered as the same types of articles in the field. *In re Ellis*, 476 F.2d 1370, 1372 (C.C.P.A. 1973) ("While we find the diverse Patent Office classification of references to be some evidence of 'nonanalogy,' and likewise find the cross-references in the official search notes to be some evidence of 'analogy,' we consider the similarities and differences in structure and function of the inventions disclosed in the references to carry far greater weight.").

The prior art of this Petition has overlapping classifications with the D'435 patent. For example, Gioscia's "camera housing" design has several classifications and subclasses that are the same as the D'435's "camera" design, including D16/200. (EX1001, References Cited; EX1013, References Cited.)

And there are similarities between the designs of cameras and camera housings. The designs of both a camera and a camera housing refer to their outer appearances and design elements (structure). (EX1002, ¶65.) For example, cameras and camera housings typically include a body and design elements for outer components of the body (*e.g.*, buttons/access elements, lens cover, rectangles for display(s)). The prior art references Chen686, Huang, Heo, and Li each discloses a "camera" design whose outer appearance and structure show a body, buttons/access elements, and a lens cover. (EX1018, Title; EX1021, Title; EX1024, Title; EX1027, Title.) Similarly, the prior art references Gioscia, Chen680, and Woodman each discloses a "camera housing" design, which shows a

body, buttons/access elements, and a lens cover. (EX1013, Title; EX1014, Title; EX1019, Title.) And both cameras and camera housings have the same function of protecting the internal components. (*Id.*) Further, the design considerations are the same for cameras and camera housings. For example, an ordinary designer would want both cameras and camera housings for an action camera to be compact and lightweight. (EX1039, 1; EX1040, 2.) In fact, an ordinary designer would have wanted a "camera [to] fit[] the housing like a glove," which results in the camera and camera housing having similar outer appearances. (EX1041, 1.)

Although there may be general differences between a camera and a camera housing, these differences do not relate to the aesthetics of the designs. Thus, an ordinary designer for the D'435 would look to designs of camera housings. *LKQ*, 102 F.4th at 1297 ("designs of the same article of manufacture or of articles sufficiently similar to a person of ordinary skill would look to such articles for their designs."). That is, the D'435 design, the cameras of the prior art, and the camera housings of the prior art all relate to the same types of outer appearance, and are in the same field of design. (EX1002, ¶65.)

This is further shown by the D'435 prosecution history, which involved citations to "camera housing" prior art. Both the Patent Owner and Examiner found "camera housing" prior art as material to patentability for the D'435. (EX1003, 31 (applicant citing U.S. Design Patent Nos. D750,680, D750,686,

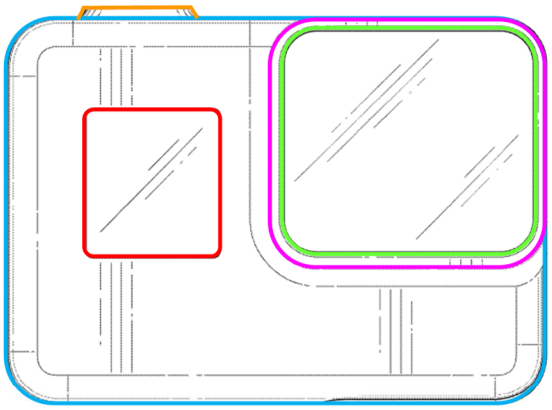
D750,146, D725,169, D710,922 (each titled "Camera housing"), U.S. Patent No. 8,544,643 (titled "Waterproof camera case with a lock mechanism"); EX1003, 22 (examiner citing U.S. Design Patent Nos. D732,593, D734,799 (each titled "Camera housing").)

B. Ground 1: The D'435 Patent is Obvious Over Hero4 and Huang; or Hero4 and Heo

Hero4 is "something in existence," and alone or in combination with Huang/Heo, is "visually similar" to the D'435. *LKQ*, 102 F.4th at 1298; (EX1002, ¶¶66-67.)

1. Front View

The front views shows that Hero4 and the D'435 are highly visually similar. Each design (side-by-side below) shows a ***rectangular body*** with flat faces and (***pink*** and ***green***) rectangles for a rectangular lens cover. (EX1011, 1; EX1002, ¶68.) The front shows a ***rectangle*** for a display and a ***top button protrusion***. (*Id.*) Although Hero4's button protrusion is slightly taller, this difference is insubstantial/slight/insignificant. (*Id.*, ¶69.)

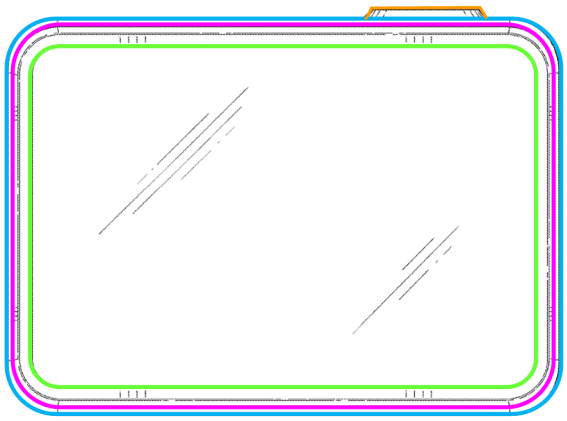
D'435	Hero 4
 FIG. 5	

To the extent that the D'435 patent requires that the outer body itself comprise a rectangle at the front, it would have been obvious. (*Id.*, ¶69.) An ordinary designer would have understood that the Hero4 camera case includes portions that are designed to be transparent due to the desire to have certain components of the camera be visible. (*Id.*) An ordinary designer would have known that it was desirable for the front display to be visible, and a rectangle at the outer body would help draw attention to the front display and its rectangular shape, contributing to an overall rectangular design. (*Id.*)

2. Rear View

The rear views of Hero4 (bottom right) and the D'435 (bottom left) are also highly visually similar. Each design shows a ***rectangular body*** with flat faces, and

two inner (*pink* and *green*) rectangles that occupy a large part of the back. (EX1006, 4; EX1002, ¶70.) The (*blue*, *pink*, and *green*) rectangles of Hero4 show partial sections at the bottom/top, but an ordinary designer would have viewed this as insubstantial/slight/insignificant because the body is still rectangular, and the rectangles still occupy a large part of the back. (EX1002, ¶71.)

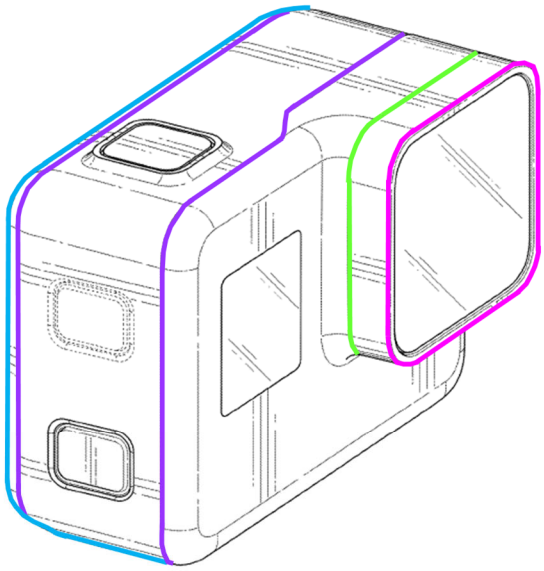
D'435	Hero 4
 FIG. 6	

Although Hero4's rear view does not show the top button protrusion, the button protrusion is still part of Hero4's design, as viewed from the front, top, and left side view below. (EX1006, 3; EX1002, ¶72.)



3. Front, Top, and Left Side View

Below is a side-by-side comparison of the front, top, and left side view of Hero4 (right), showing that its top and left sides are visually similar to the D'435 (left). (EX1006, 3; EX1002, ¶73.) The top and left sides of Hero4 show the ***rectangular body*** showing ***lines***, and the ***rectangular lens cover*** extending outward from the body and showing a ***line***. (*Id.*)

D'435	Hero 4
 FIG. 1	

Hero4's design and the D'435 each shows buttons at the left side and top. (EX1001, Fig. 1; EX1006, 3; EX1036, 3; EX1002, ¶73.)

While Hero4 has circular buttons, an ordinary designer would have been motivated to modify the buttons of Hero4 to be rectangular. EX1002, ¶74.) An ordinary designer would have desired a design that has an overall visual impression of a rectangular design, including a rectangular body, a rectangular lens cover, rectangular buttons/access elements, rectangles for the displays, etc. (*Id.*)

At the time of the D'435 purported invention, there were prior art designs, such as Huang/Heo (below), that had rectangular buttons at the left side and top. (EX1021, Left view, Top view; EX1024, left side view, plan view.)

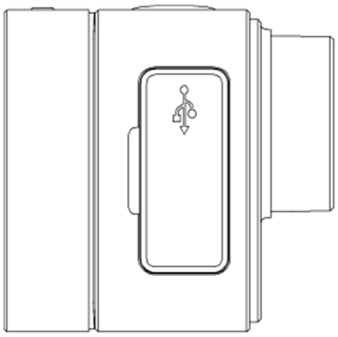
Huang Left View



Left view

Heo Left Side View

left side view



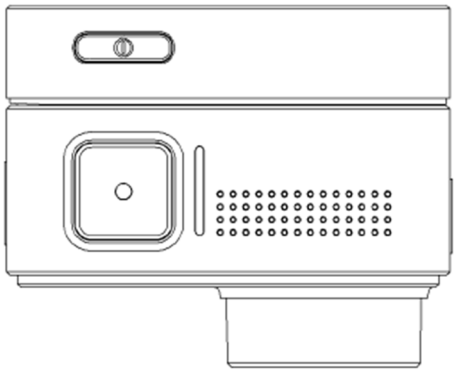
Huang Top View



Top view

Heo Plane View

plane view

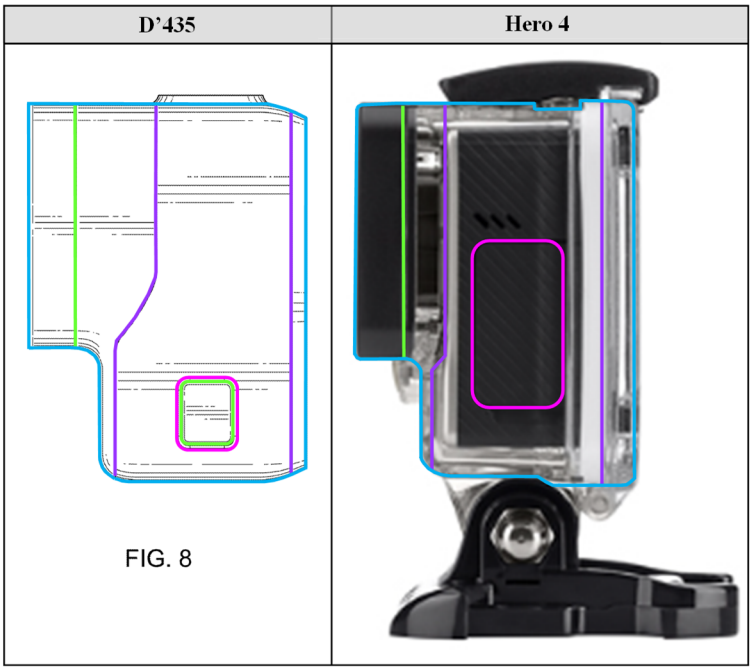


There are several features in cameras and camera housings that are already rectangular, such as the camera body, displays, lens cover, etc., and an ordinary designer would have wanted an overall design that has consistent features. (EX1002, ¶¶74-75.) Making the buttons rectangular would add to the already rectangular features of the design, thereby enhancing the overall visual impression of a rectangular design. (*Id.*) Further, changing the shape of Hero4's buttons

would have been a known and easy modification (reasonable expectation of success).

4. Right Side View

Like the D'435 (below left), Hero4's right side view (below right) shows the ***rectangular body*** with flat faces and the ***rectangular lens cover*** extending outward from the body. (EX1006, 4; EX1002, ¶76.) The right side view shows the rectangular body and the rectangular lens cover showing vertical lines (***purple*** and ***green***). (*Id.*)



Although Hero4's right side view does not show the top button protrusion, it is still part of Hero4's design, as viewed from the front, top, and left side view below. (EX1006, 3; EX1002, ¶77.)



Each design shows a ***rectangular button/access element*** on the right side. (EX1006, 4; EX1002, ¶78.) Although Hero4's rectangular button/access element is slightly larger and is depicted as a single rectangle, an ordinary designer would have viewed this difference as insignificant, as the button/access element is still rectangular and contributes to an overall visual impression of a rectangular design. (EX1002, ¶78.) Thus, an ordinary designer would have viewed Hero4 as visually similar to the D'435. (*Id.*)

To the extent that a slight larger button/access element is not viewed as insignificant, Huang/Heo disclose a rectangle at the right side (below). (EX1021, Right view; EX1024, right side view; EX1002, ¶79.) It would have been obvious to combine Hero4 with Huang/Heo. (EX1002, ¶78; Section V.B.3.)

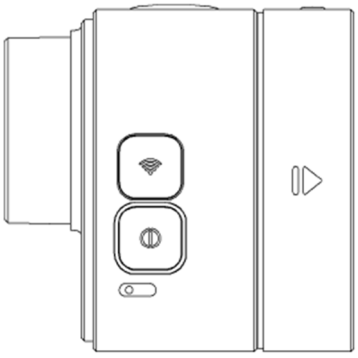
Huang Right View



Right view

Heo Right Side View

right side view

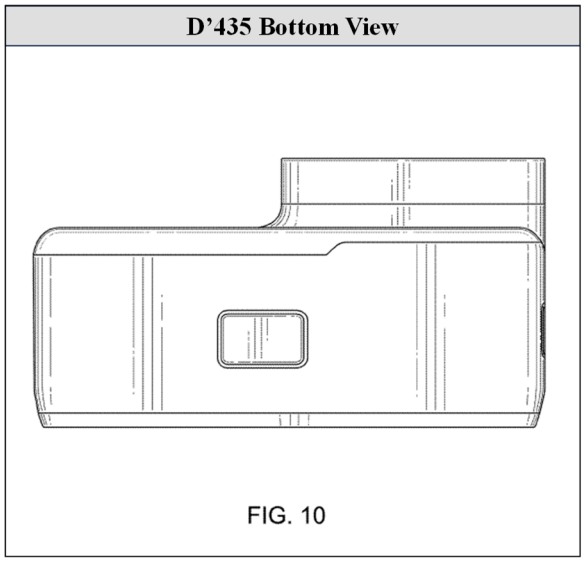


To the extent that the D'435 patent requires that the outer body itself comprise a rectangle at the right side, it would have been obvious. (*Id.*, ¶79.) An ordinary designer would have understood that the Hero4 camera case includes portions that are designed to be transparent due to the desire to have certain components of the camera be visible. (*Id.*) One example portion is the right side of the camera case that is transparent so that the right side button/access element is visible. An ordinary designer would have been motivated to have the outer body comprise a rectangle at the bottom to help draw attention to the button/access element and its rectangular shape, contributing to an overall rectangular design. (*Id.*)

5. Bottom View

The bottom view of D'435 (below) shows the rectangular body, the

rectangular lens cover extending outward from the body, and a rectangular button/access element. (EX1001, Fig. 10.)



Hero4 shows a rectangular body and a rectangular lens cover extending outward from the body. (Sections V.A.1, V.B.1.) The bottom view (below) of Hero4 without a case shows a rectangular button/access element at the bottom. (EX1010, 11.)

The Hero4 camera case is transparent. (Sections V.A.1, V.B.1; EX1004, 12, 116.) An ordinary designer would have understood that when inside the camera case, the bottom view of Hero4 would show the rectangular body and rectangular button/access element at the bottom. (EX1002, ¶¶80-81.)

To the extent that the D'435 patent requires that the outer body itself comprise a rectangle at the bottom, it would have been obvious. (*Id.*, ¶81.) An ordinary designer would have understood that the Hero4 camera case includes

portions that are designed to be transparent due to the desire to have certain components of the camera be visible. (*Id.*) One example portion is the bottom of the camera case that is transparent so that the button/access element is visible. An ordinary designer would have been motivated to have the outer body comprise a rectangle at the bottom to help draw attention to the button/access element and its rectangular shape, contributing to an overall rectangular design. (*Id*.)

Hero4 (Without Case) Bottom View



To the extent that Hero4 does not disclose the bottom view of the D'435, it would have been obvious in view of Huang/Heo. (EX1002, ¶82.) Huang and Heo (below) each disclose a rectangular button/access element at the bottom. (EX1021, Bottom view; EX1024, bottom view.) It would have been obvious to combine Hero4 with Huang/Heo to achieve a design that has an overall visual impression of a rectangular design. (Section V.B.3.)

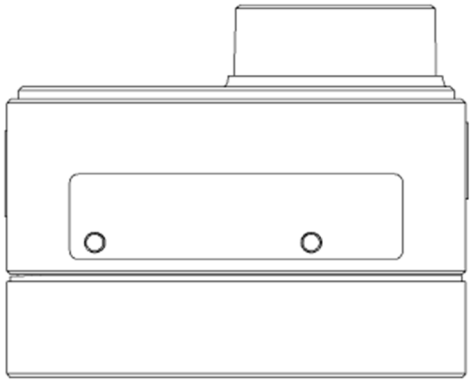
Huang Bottom View



Bottom view

Heo Bottom View

bottom view



To the extent that Hero4 is not considered a "camera" design, it would have been obvious to combine teachings from a "camera housing" design (*e.g.*, Hero4) and a "camera" design (*e.g.*, Huang, Heo). An ordinary designer would have been motivated to look to and combine the designs of cameras and camera housings since both have similar outer appearances and design elements, and since both are for protecting internal components. (EX1002, ¶82.) For example, cameras and camera housings typically include a body and design elements for the outer

components of the body (*e.g.*, buttons/access elements, lens cover, rectangle(s) for display(s)). (*Id.*) An ordinary designer would have desired the same design features for a camera design as would have been desired for a camera housing design. (*Id.*) For example, an ordinary designer would have desired that the cameras and camera housings be compact and lightweight, where the "camera fits the housing like a glove." (*Id.*; EX1041, 1.)

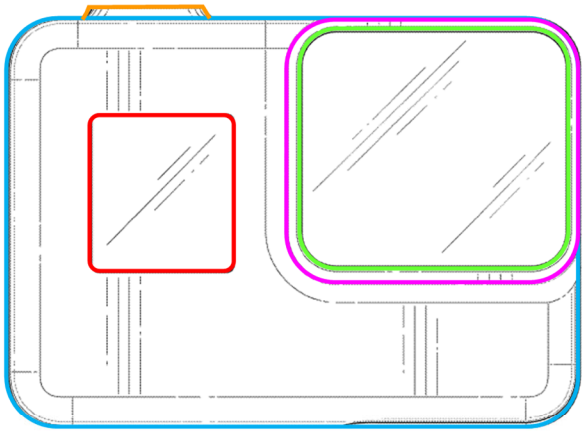
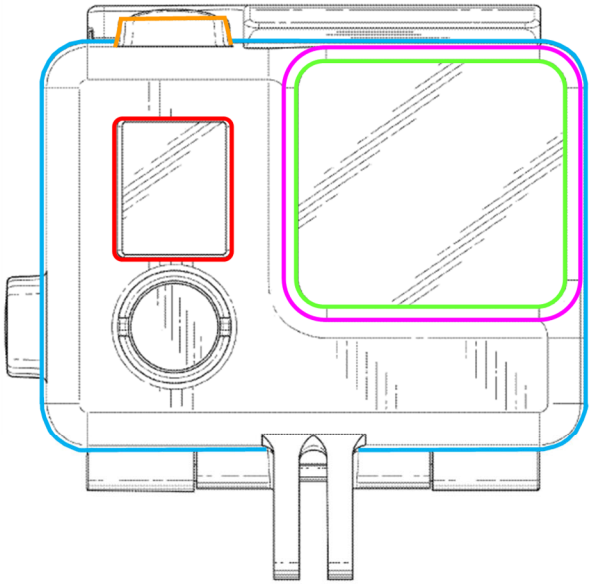
Accordingly, the combination of Hero4 with Huang/Heo results in a design that has the same overall visual appearance as the D'435. (EX1002, ¶83.)

C. Ground 2: The D'435 Patent is Obvious Over Gioscia and Huang; or Gioscia and Heo

Gioscia is "something in existence," and alone or in combination with Huang/Heo, is "visually similar" to the D'435. *LKQ*, 102 F.4th at 1298; (EX1002, ¶¶84-85.)

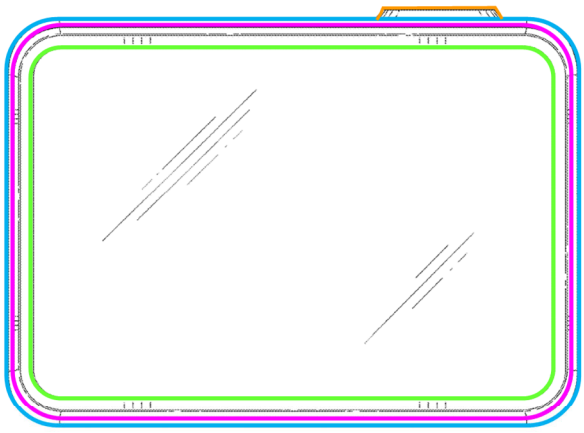
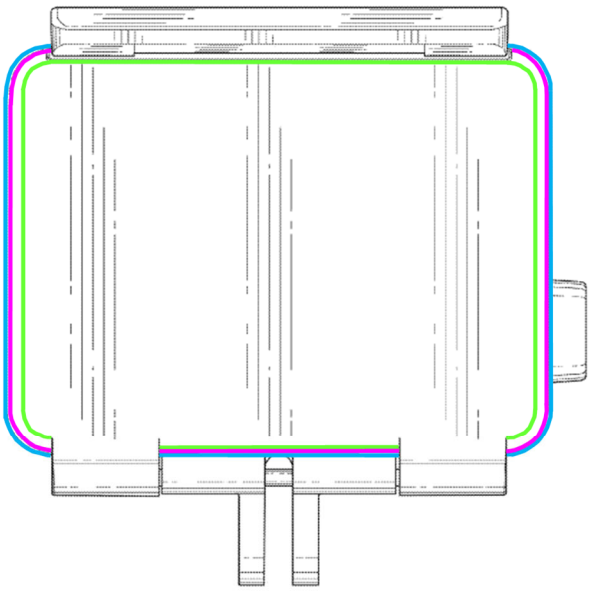
1. Front View

Figure 5's front views (D'435 (below left) and Gioscia (below right)) show a ***rectangular body*** with flat faces, a ***rectangle for a display*** that is flush with the front face, a ***top button protrusion***, and a ***rectangular lens cover*** having an ***inner rectangle*** within. (EX1013, Fig. 5; EX1002, ¶86.) And although Gioscia has a slightly taller button protrusion and slightly smaller front rectangle for the display, these differences are insubstantial/slight/insignificant. (EX1002, ¶87.)

D'435	Gioscia
 FIG. 5	 FIG. 5

2. Rear View

The rear view shows that each of Gioscia (below right) and the D'435 (below left) includes a ***rectangular body*** with flat faces and two inner (***pink*** and ***green***) rectangles. (EX1001, Fig. 6; EX1013, Fig. 6; EX1002, ¶88.) The (***blue***, ***pink***, and ***green***) rectangles of Gioscia have partial sections at the bottom/top, but an ordinary designer would have viewed this as insubstantial/slight/insignificant. (EX1002, ¶89.) The rectangles still occupy a large part of the back, and the body is still rectangular. (*Id.*) An ordinary designer would have been motivated to modify Gioscia to have a rectangle for a display at the back, like Heo (below), because then the picture captured or to be captured by the camera may be displayed and viewed by the photographer. (EX1002, ¶89.)

D'435	Gioscia
 FIG. 6	 FIG. 6

Heo Rear View
rear view 

The front, top, and right side view (below) shows the ***top button protrusion*** as part of Gioscia's design. (EX1013, Fig. 1; EX1002, ¶90.) The ***top button protrusion*** is visible in the front, top, and left side view (Figure 2), and the back, top, and left side view (Figure 3). (EX1013, Figs. 2, 3; EX1002, ¶90.)

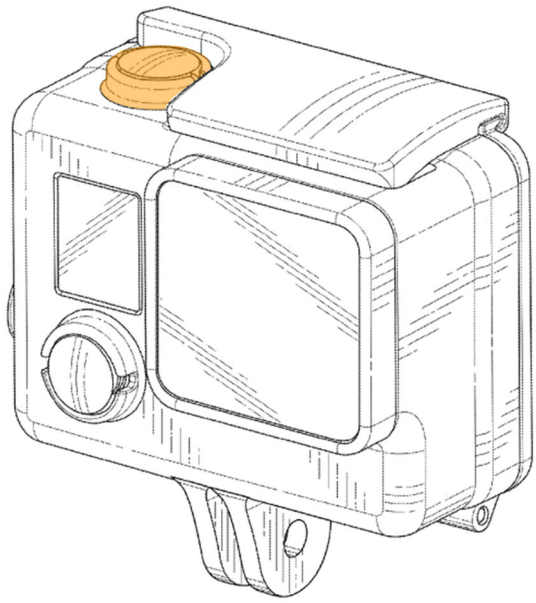
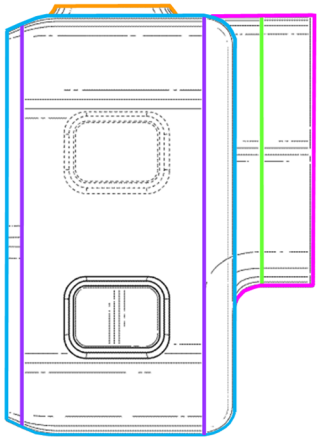
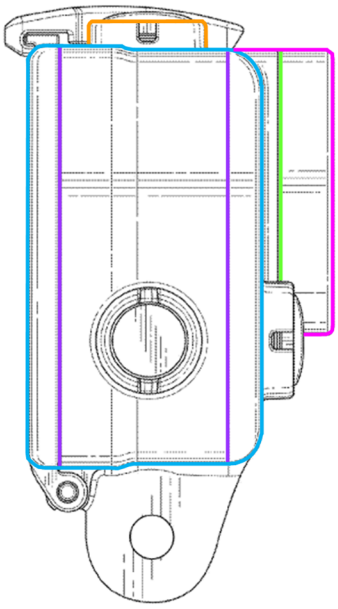


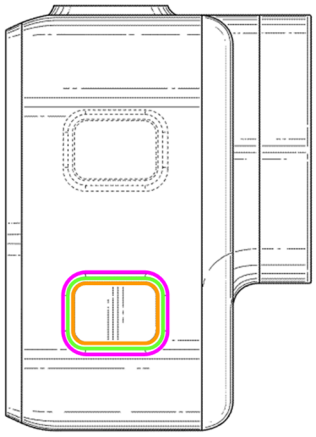
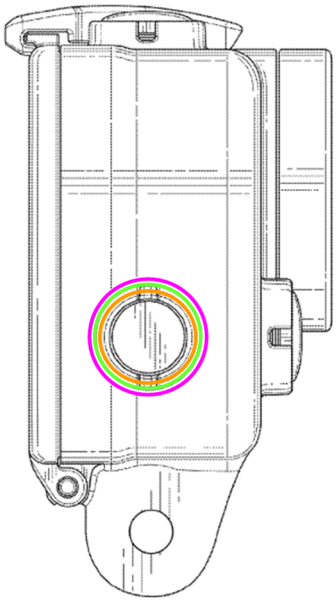
FIG. 1

3. Left Side View

The left side view shows the overall appearance of Gioscia (below right) as visually similar to the D'435 (below left). (EX1001, Fig. 7; EX1013, Fig. 7; EX1002, ¶91.) The left side view shows Gioscia's ***rectangular body*** and ***vertical lines***. (*Id.*) Figure 7 shows the ***top button protrusion***, a ***rectangular lens cover*** extending outward from the body and showing a ***vertical line***. (*Id.*) Although Gioscia's button protrusion is slightly taller, this difference is insubstantial/slight/insignificant. (EX1002, ¶92.)

D'435	Gioscia
 FIG. 7	 FIG. 7

The left side view of the D'435 (below left) further shows three (***pink***, ***green***, and ***orange***) rectangles for a button/access element near the bottom. (EX1001, Fig. 7; EX1002, ¶93.) Gioscia's Figure 7 (below right) similarly shows three (***pink***, ***green***, and ***orange***) circles for a button/access element, near the bottom. (EX1001, Fig. 7; EX1013, Fig. 7; EX1002, ¶93.)

D'435	Gioscia
 FIG. 7	 FIG. 7

An ordinary designer would have known at the time of the D'435 purported invention of designs that had rectangular buttons/access elements. (EX1002, ¶94.) For example, Huang (below) discloses a design that includes rectangular buttons. (EX1021, Left view; EX1002, ¶94.)

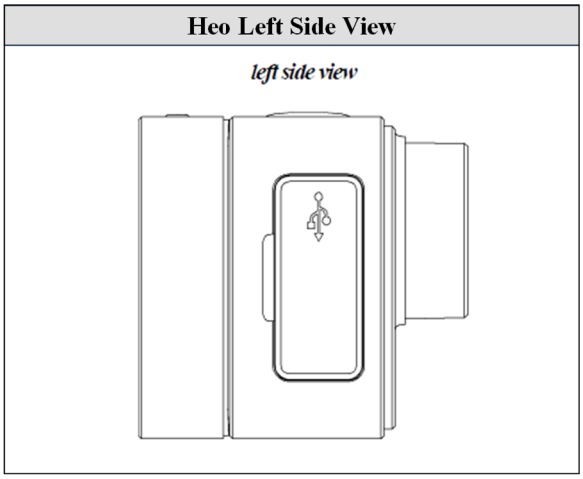
Huang Left View



Left view

Heo (below) similarly shows a rectangle for a button/access element on the left side of its design. (EX1024, left side view; EX1002, ¶94.)

Heo Left Side View

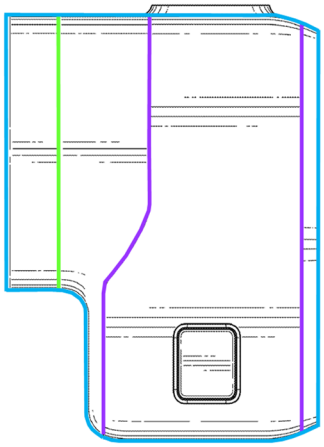
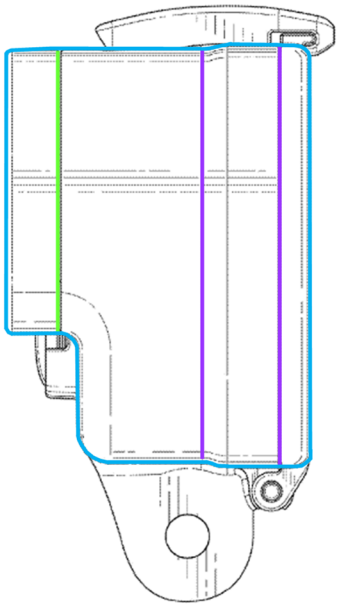


An ordinary designer would have been motivated to modify Gioscia's buttons/access elements to be rectangular because then doing so would have created an overall visual impression of a rectangular design and its features (*e.g.*, rectangular body, rectangular lens cover, rectangular buttons/access elements,

rectangle for a display). (EX1002, ¶94.)

4. Right Side View

The right side views show the visual similarities between the D'435 (below left) and Gioscia (below right). (EX1001, Fig. 8; EX1013, Fig. 8; EX1002, ¶95.) Each design shows a ***rectangular body***, ***rectangular lens cover*** extending outward from the body, and vertical lines (***purple*** and ***green***). (EX1001, Fig. 8; EX1013, Fig. 8; EX1002, ¶95.) Although one of Gioscia's ***vertical lines*** is straight, this difference is insubstantial/slight/insignificant, and an ordinary designer would have still found the designs are visually similar. (EX1013, Fig. 8; EX1002, ¶96.)

D'435	Gioscia
 FIG. 8	 FIG. 8

Gioscia shows a top button protrusion shown in the front, top, and right side view (Figure 1), the front, bottom, and left side view (Figure 2), and the back,

bottom, and left side view (Figure 3). (Section V.C.2; EX1013, Figs. 1-3; EX1002, ¶97.)

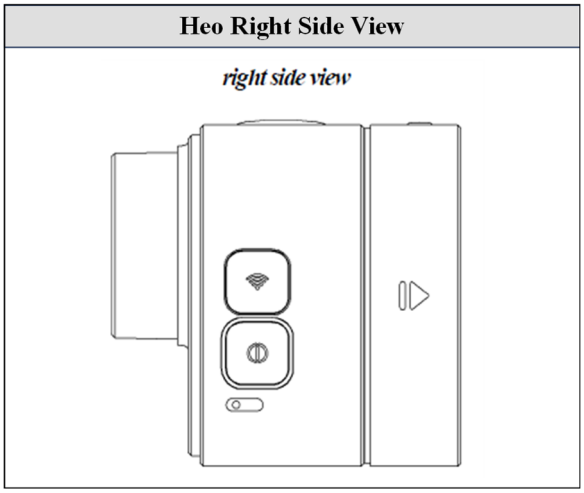
The D'435 shows a rectangle in the right side view. (EX1001, Fig. 8; EX1002, ¶98.) As demonstrated by Huang/Heo (below), prior art designs show a rectangular button/access element in the right side view. (EX1021, Right view; EX1024, right side view; EX1002, ¶98.) It would have been obvious to combine Gioscia with Huang/Heo to include a rectangular button/access element at the right side. (EX1002, ¶98.) An ordinary designer would have been motivated because then the design would have an overall visual impression of a rectangular design. (Section V.C.3.)

Huang Right View



Right view

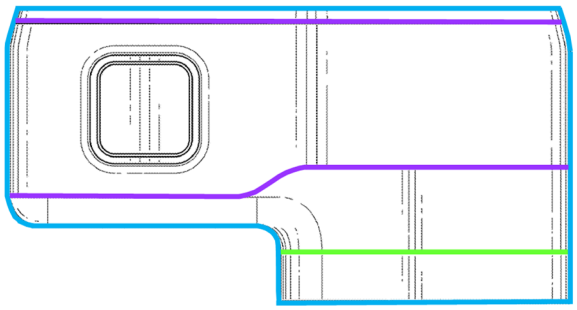
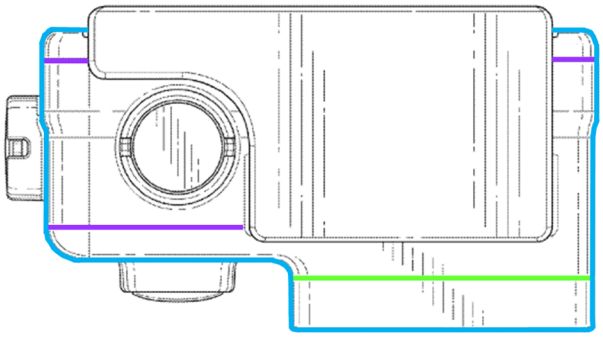
Heo Right Side View



5. Top View

The top views show the visual similarities between the D'435 (below left)

and Gioscia (below right): a ***rectangular body*** with flat faces showing ***horizontal lines***, and a ***rectangular lens cover*** (extending outward from the body) showing a ***horizontal line***. (EX1001, Fig. 9; EX1013, Fig. 9; EX1002, ¶99.)

D'435	Gioscia
 FIG. 9	 FIG. 9

And the horizontal lines in Gioscia are still visible (below) even with an extra piece at the top. As a whole, an ordinary designer would have recognized the visual similarities between the designs of the D'435 and Gioscia. (EX1013, Fig. 1; EX1002, ¶100.)

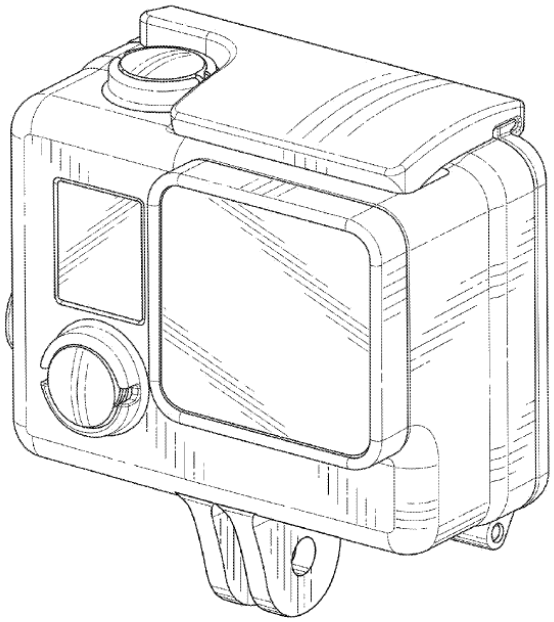
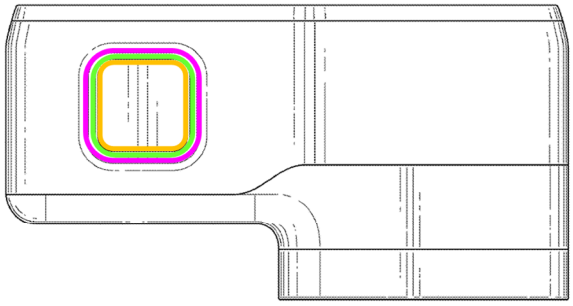
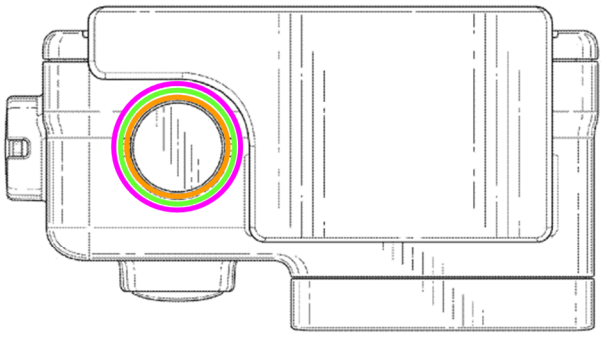


FIG. 1

The top views of the D'435 (below left) and Gioscia (below right) show a button/access element with different shapes (***pink***, ***green***, and ***orange*** rectangles in the D'435 and ***pink***, ***green***, and ***orange*** circles in Gioscia). (EX1001, Fig. 9; EX1013, Fig. 9; EX1002, ¶101.)

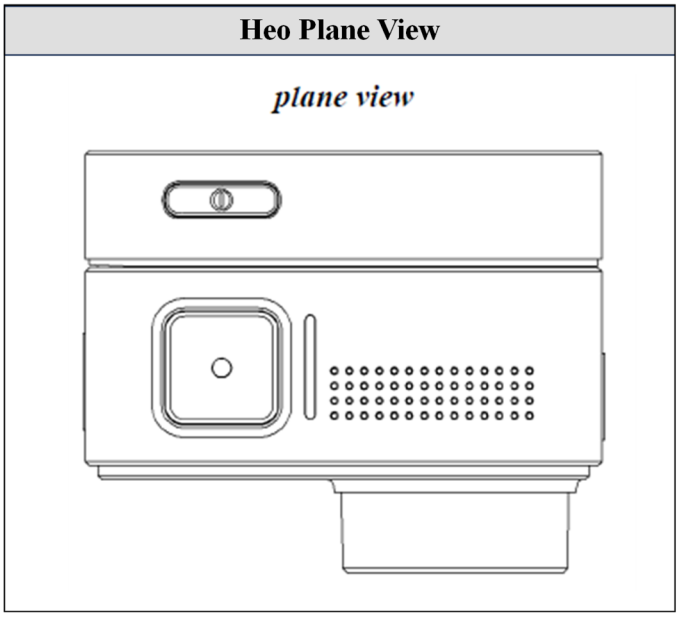
D'435	Gioscia
 FIG. 9	 FIG. 9

An ordinary designer would have been motivated to modify Gioscia to have rectangular-shaped buttons/access elements, as taught by the prior art. (EX1002, ¶102; Section V.C.3.) For example, Huang (below) includes rectangular buttons. (EX1021, Top view; EX1002, ¶102.)

Huang Top View
 Top view

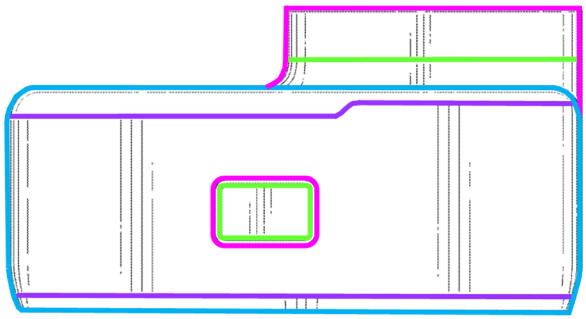
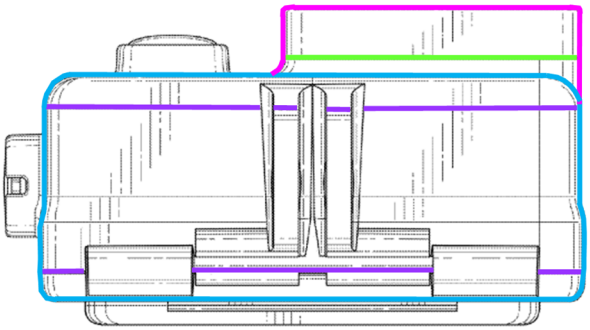
Heo (below) shows a rectangular-shaped button at the top. (EX1024, plan view; EX1002, ¶102.) An ordinary designer would have understood that it was easy to

modify the shape of a button, and doing so would have created more consistent rectangular features, contributing to an overall rectangular design. (EX1002, ¶102.)



6. Bottom View

In the bottom views, each of the D'435 (below left) and Gioscia (below right) shows: a ***rectangular body*** with flat faces showing ***horizontal lines***, and a ***rectangular lens cover*** extending from the body and showing a ***horizontal line***. (EX1001, Fig. 10; EX1013, Fig. 10; EX1002, ¶103.) An ordinary designer would have found the ***horizontal line*** being straight, instead of slightly curved, as insubstantial/slight/insignificant, and nevertheless would have found that the designs are visually similar. (EX1002, ¶104.)

D'435	Gioscia
 FIG. 10	 FIG. 10

Gioscia includes an extra piece at the bottom (below). (EX1013, Fig. 2; EX1002, ¶105.) An ordinary designer would have been able to view the ***horizontal lines*** even with this extra piece, and as a whole, Gioscia still provides an overall visual impression of a rectangular design. (EX1002, ¶105.)

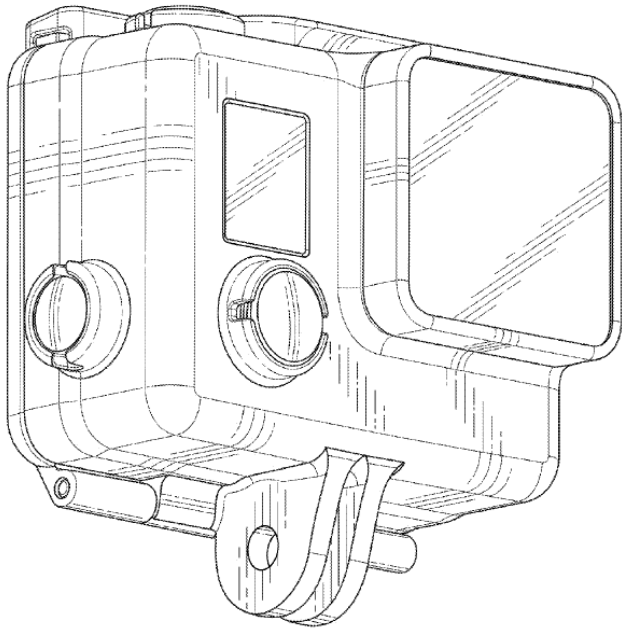


FIG. 2

It would have been obvious to combine Gioscia with Huang/Heo (below) to include rectangular buttons/access elements, including at the bottom. (Section V.C.3; EX1021, Bottom view; EX1024, bottom view; EX1002, ¶106.) An ordinary designer would have understood that prior art designs included rectangles on the bottom for, *e.g.*, buttons, access to ports, etc. and would have been motivated to combine. (EX1002, ¶106.)

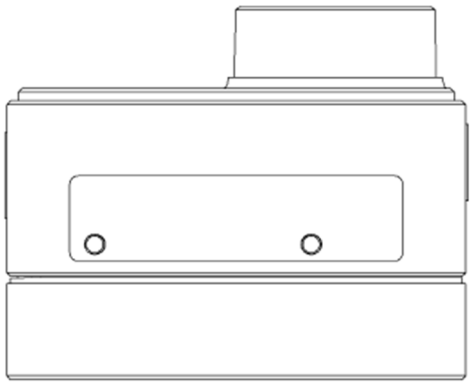
Huang Bottom View



Bottom view

Heo Bottom View

bottom view



To the extent that Gioscia is not considered a "camera" design, it would have been obvious to combine teachings from a "camera housing" design (*e.g.*, Gioscia) and a "camera" design (*e.g.*, Huang, Heo). An ordinary designer would have been motivated to look to and combine the designs of cameras and camera housings since both have similar outer appearances and design elements, and since both are for protecting internal components. (EX1002, ¶106.) For example, cameras and camera housings typically include a body and design elements for the

outer components of the body (*e.g.*, buttons/access elements, lens cover, rectangle(s) for display(s)). (*Id.*) An ordinary designer would have desired the same design features for a camera design as would have been desired for a camera housing design. (*Id.*) For example, an ordinary designer would have desired that the cameras and camera housings be compact and lightweight, where the "camera fits the housing like a glove." (*Id.*; EX1041, 1.)

Accordingly, the combination of Gioscia with Huang/Heo results in a design that has the same overall visual appearance as the D'435. (EX1002, ¶107.)

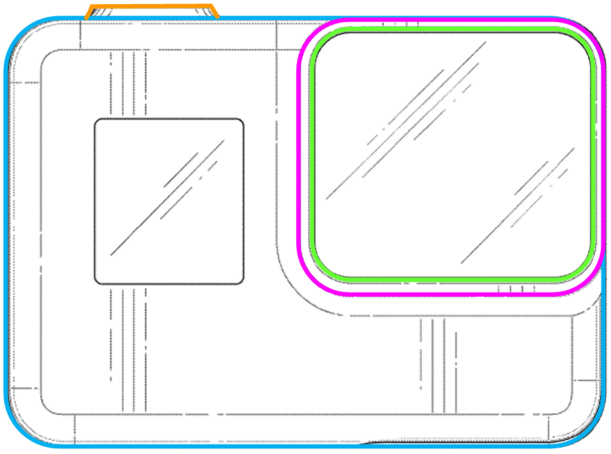
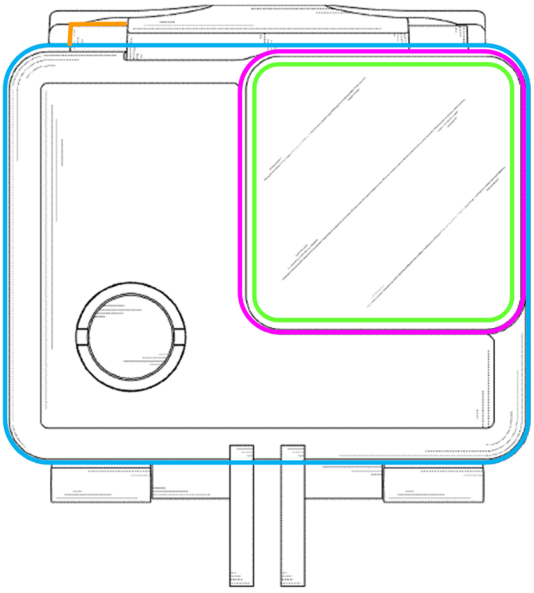
D. Ground 3: The D'435 Patent is Obvious Over Chen680 and Huang; Chen680 and Heo; Chen680, Huang, and Li; Chen680, Huang, and McVicker; Chen680, Heo, and Li; or Chen680, Heo, and McVicker

Chen680 is "something in existence," and alone or in combination with Huang/Heo, is "visually similar" to the D'435. *LKQ*, 102 F.4th at 1298; (EX1002, ¶¶108-109.)

1. Front View

A comparison of the front views of the D'435 (below left) and Chen680 (below right) is provided below. (EX1001, Fig. 5; EX1014, Fig. 2; EX1002, ¶110.) Chen680 has a ***rectangular body*** with flat faces, a ***top button protrusion***, and a ***rectangular lens cover***. (EX1014, Fig. 2; EX1002, ¶110.) Near the top right is an ***inner rectangle*** within the ***outer rectangle***. (*Id.*) Although Chen680's button protrusion is slightly taller, this difference is insubstantial/slight/insignificant.

(EX1002, ¶111.)

D'435	Chen '680
 FIG. 5	 FIG. 2

Chen680's ***top button protrusion*** is visible in the front, top, and left side view (below). (EX1014, Figs. 2, 8; EX1002, ¶112.)

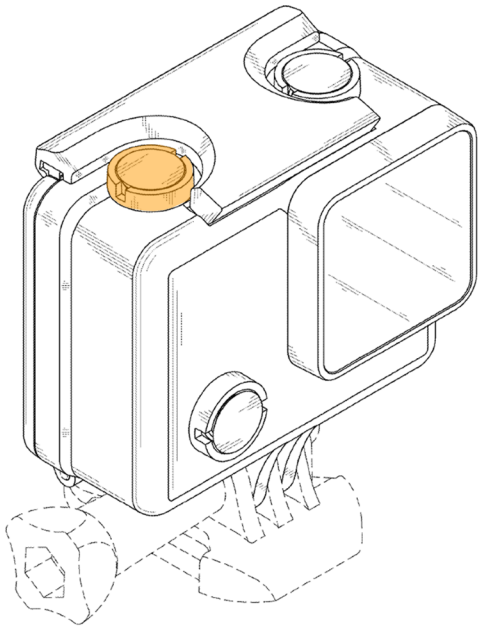


FIG. 8

An ordinary designer would have understood that there were designs at the time of the D'435 purported invention that included multiple displays including a rectangle for a display at the front, such as, Huang, Li, and McVicker (below). (EX1021, Front view; EX1027, Front view; EX1029, Fig. 2; EX1002, ¶113.) The designs of Huang, Li, and/or McVicker improve Chen680's design with their teachings of including a small rectangle for a display at the front that is flush with the front face. (EX1002, ¶113.) An ordinary designer would have been motivated to include a small rectangle for a display like the prior art because then information may be displayed to the photographer when viewing the front, and the rectangular shape of the display enhances the overall visual impression of a rectangular design.

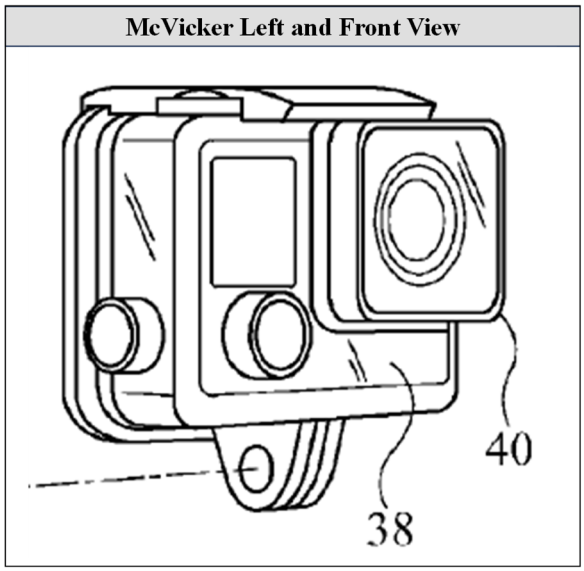
(EX1002, ¶113.)

Huang Front View

Front view

Li Front View

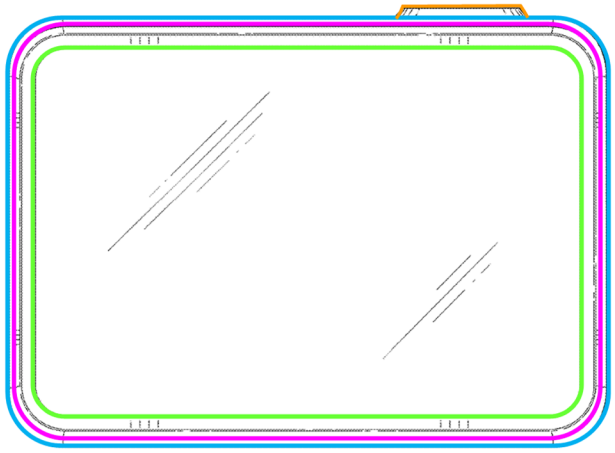
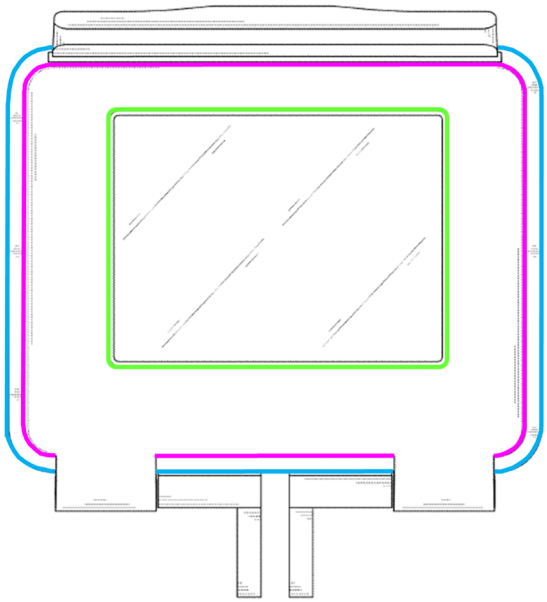
Front view



2. Rear View

The rear view of Chen680 (below right), appears similar to the rear view of the D'435 (below left). (EX1001, Fig. 6; EX1014, Fig. 3; EX1002, ¶114.) Each of Chen680 and the D'435 shows a ***rectangular body*** with flat faces and two (***pink*** and ***green***) rectangles that occupy a large part of the back. (EX1001, Fig. 6; EX1014, Fig. 3; EX1002, ¶114.) Chen680's (***blue*** and ***pink***) rectangles have partial sections at the bottom, but an ordinary designer would have viewed this as insubstantial/slight/insignificant. (EX1014, Fig. 3; EX1002, ¶115.) Part of the ***rectangle*** at the top is partially visible due to an extra piece at the top, but Chen680's body is still rectangular even with the presence of these extra pieces. (*Id.*) Chen680's ***rectangle*** is slightly smaller than the D'435 rectangle, but an ordinary designer would have viewed this difference as being insubstantial/slight/insignificant because Chen680's ***rectangle*** still occupies a large

part of the back. (*Id.*, ¶116.)

D'435	Chen '680
 FIG. 6	 FIG. 3

Chen680's ***top button protrusion*** is part of its design and is visible in the front, top, and right side view (below). (Section V.D.1; EX1014, Fig. 8; EX1002, ¶117.)

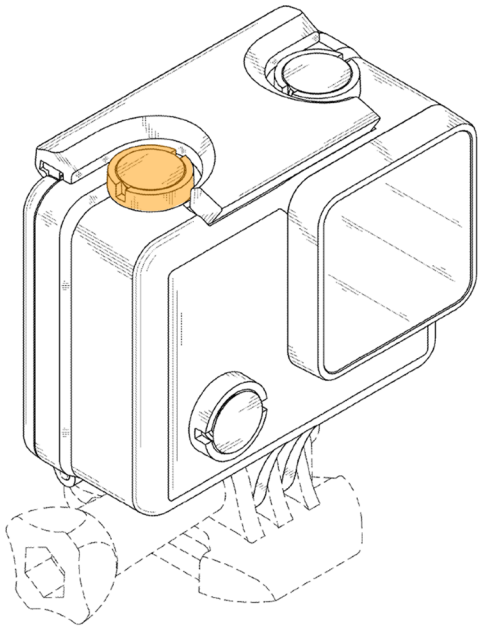
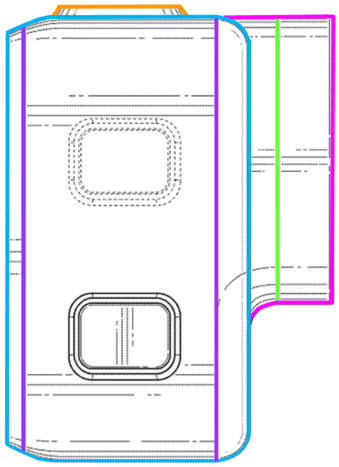
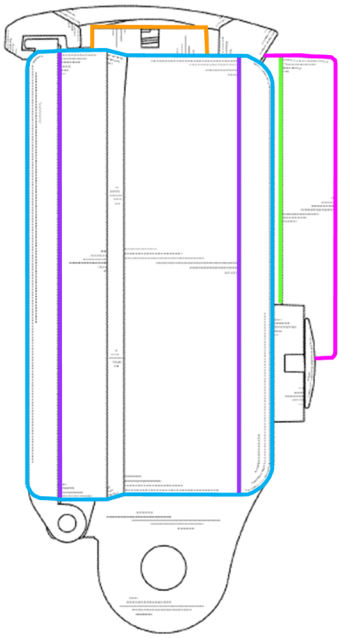


FIG. 8

3. Left Side View

The left side views of the D'435 (below left) and Chen680 (below right) show the visual similarities between the two designs. (EX1001, Fig. 7; EX1014, Fig. 4; EX1002, ¶118.) Like the D'435, Chen680 discloses a ***rectangular body*** with flat faces showing ***vertical lines***. (EX1014; Fig. 4; EX1002, ¶118.) For each design, the figures show the ***top button protrusion***, and the ***rectangular lens cover*** extending outward from the body and showing a ***vertical line***. (EX1001, Fig. 7; EX1014, Fig. 4; EX1002, ¶118.) Although Chen680's button protrusion is slightly taller, this difference is insubstantial/slight/insignificant. (EX1002, ¶119.)

D'435	Chen '680
 FIG. 7	 FIG. 4

There is a slight but insignificant difference in the left side views: the D'435 (above left) shows three rectangles for a button/access element near the bottom of the left side. (EX1001, Fig. 7; EX1002, ¶120.) Huang (below) teaches a design that includes a rectangle for a button/access element at the left side. (EX1021, Left view; EX1002, ¶120.) Heo (below) similarly teaches a design that includes a rectangular button/access element shown in the left side view. (EX1024, left side view; EX1002, ¶120.) An ordinary designer would have understood that prior art designs included rectangles on the sides including the left side for, *e.g.*, buttons, access to ports, etc. (EX1002, ¶120.) And it would have been obvious to combine

Chen680 with Huang/Heo to include a rectangle for a button/access element at the left side because it was known and helps enhance the overall visual impression of a rectangular design. (*Id.*)

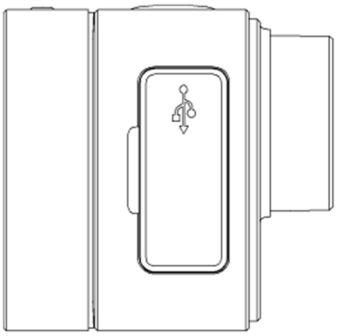
Huang Left View



Left view

Heo Left Side View

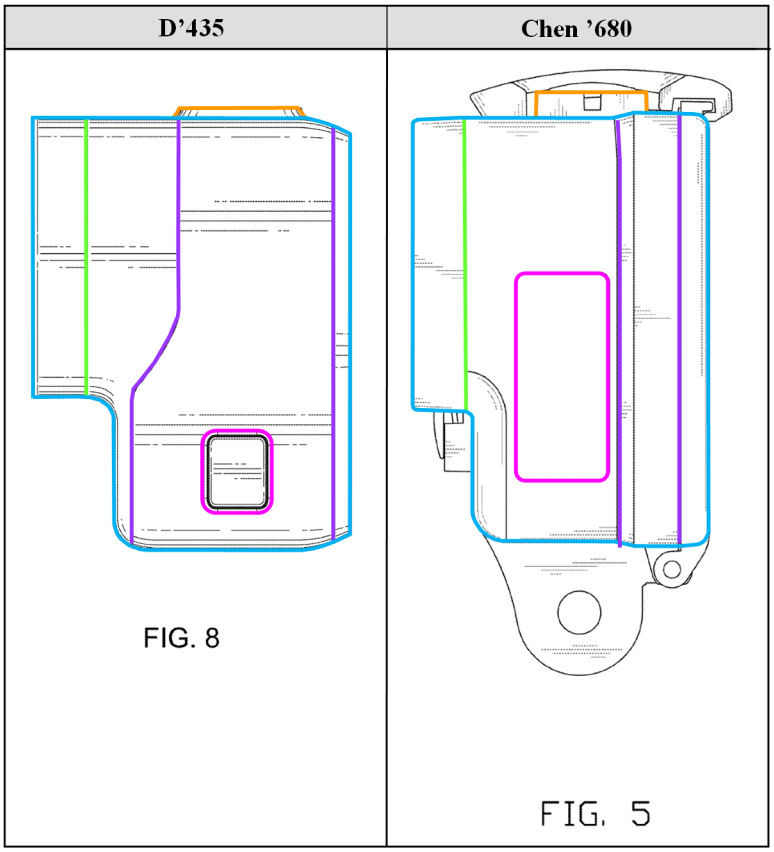
left side view



4. Right Side View

The right side views of the D'435 (below left) and Chen680 (below right) show the ***rectangular body*** with flat faces and ***vertical lines***. (EX1001, Fig. 8;

EX1014, Fig. 5; EX1002, ¶121.) The ***rectangular lens cover*** extends outward from the body and shows a ***vertical line***. (EX1014, Fig. 5; EX1002, ¶121.) Although Chen680 shows a ***top button protrusion*** that is slightly taller and a vertical line that is straight, this difference is insubstantial/slight/insignificant. (EX1002, ¶¶122-123.)

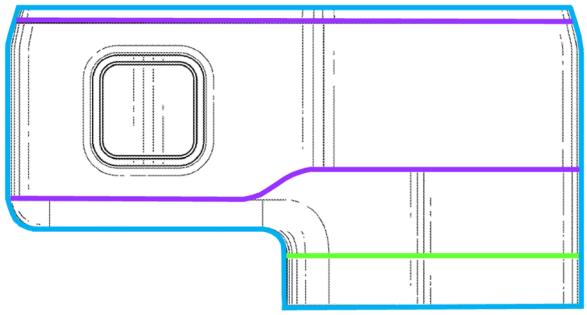
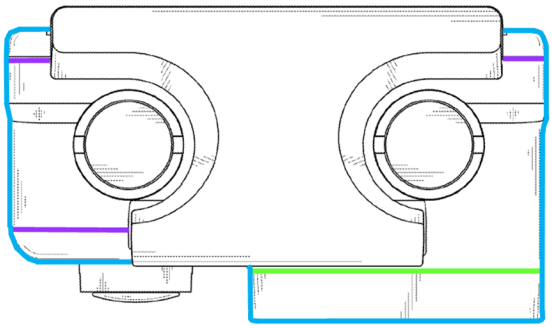


The D'435 (above left) and Chen680 (above right) each includes a ***rectangular button/access element*** on the right side. (EX1001, Fig. 8; EX1014, Fig. 5; EX1002, ¶121.) Chen680's ***rectangular button/access element*** is slightly larger than the D'435's ***rectangular button/access element***, but an ordinary designer would have viewed this difference in size as being insignificant.

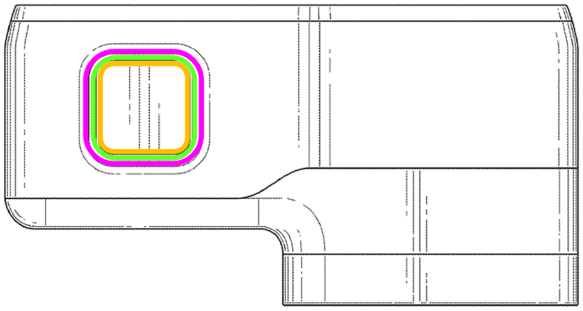
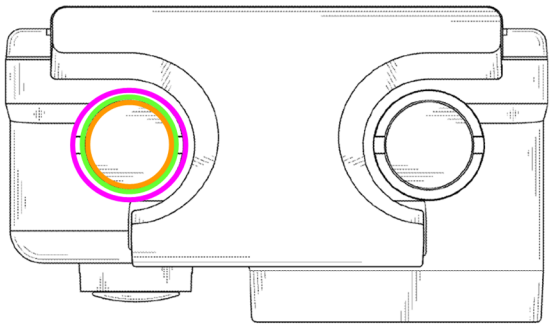
(EX1001, Fig. 8; EX1014, Fig. 5; EX1002, ¶124.) Albeit a single one, Chen680 shows a ***rectangle***, and the overall appearance, including the rectangular body with flat faces and the rectangular lens cover, make the two designs appear visually similar to an ordinary designer. (EX1002, ¶124.)

5. Top View

The top views of the D'435 (below left) and Chen680 (below right) show: a ***rectangular body*** with the ***rectangular lens cover*** extending outward from the body, showing (***purple*** and ***green***) horizontal lines. (EX1001, Fig. 9; EX1014, Fig. 6; EX1002, ¶125.) The ***horizontal lines*** in Chen680 are still visible even with the extra piece at the top. (Section V.D.1; EX1002, ¶126.) As whole, an ordinary designer would have recognized the visual similarities between the D'435 and Chen680 (even if a ***horizontal line*** in Chen680 is partially visible). (EX1002, ¶126.)

D'435	Chen '680
 FIG. 9	 FIG. 6

The top view of the D'435 (below left) shows three (***pink***, ***green***, and ***orange***) rectangles for a button/access element, near the left side of the top. (EX1001, Fig. 9; EX1002, ¶127.) Chen680 (below right) discloses three shapes for a button/access element, similarly near the left side of the top. (EX1014, Fig. 6; EX1002, ¶127.)

D'435	Chen '680
 FIG. 9	 FIG. 6

An ordinary designer would have been motivated to combine Chen680 with Huang/Heo. (EX1002, ¶128.) The designs of Huang/Heo (below) each have rectangular buttons at the top. (EX1021, Top view; EX1024, plan view; EX1002, ¶128.) In view of Huang/Heo, an ordinary designer would have been motivated to modify the circle-shaped button in Chen680 to be a rectangular-shaped button. (EX1002, ¶128.) An ordinary designer would have known at the time of the D'435 purported invention of designs that had rectangular buttons, and would have been motivated to modify Chen680. (*Id.*) Rectangular buttons would have created an overall visual impression of a rectangular design, including a design having rectangular features (*e.g.*, rectangular body, rectangular lens cover, rectangles for displays, rectangular buttons/access elements). (*Id.*) An ordinary designer would

have understood that changing the shape of the button would have been an easy modification with a reasonable expectation of success. (*Id.*)

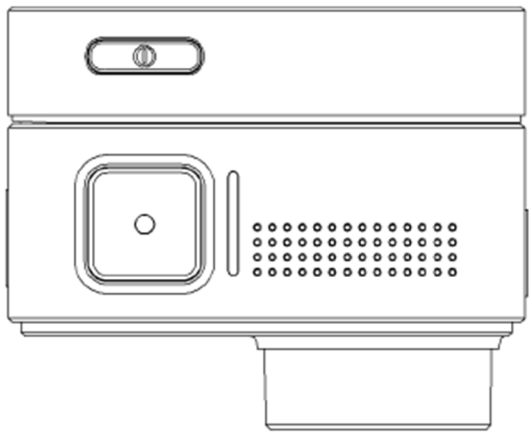
Huang Top View



Top view

Heo Plane View

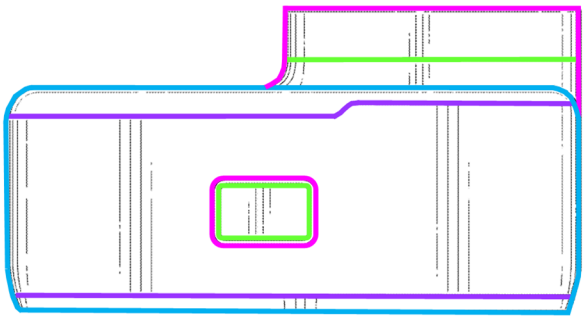
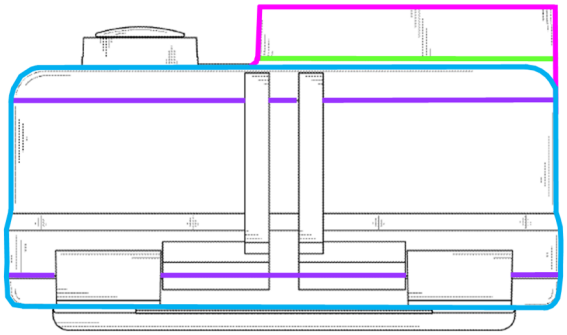
plane view



6. Bottom View

The bottom view of the D'435 (below left) shows the D'435's ***rectangular body*** with flat faces, and the bottom view of Chen680 (below right) shows the same. (EX1001, Fig. 10; EX1014, Fig. 7; EX1002, ¶129.) The ***rectangular lens cover*** extends outwards (near the top of the figure) from the body and shows a

horizontal line. (EX1014, Fig. 7; EX1002, ¶129.)

D'435	Chen '680
 FIG. 10	 FIG. 7

Each body shows ***horizontal lines*** (D'435 (above left), Chen680 (above right)). (EX1001, Fig. 10; EX1014, Fig. 7; EX1002, ¶129.) An ordinary designer would have found the ***horizontal line*** being straight, instead of slightly curved, as insubstantial/slight/insignificant, and would still have found that the designs are visually similar. (EX1002, ¶130.) Figure 8 of Chen680 (below) shows an optional extra piece (dashed lines) that attaches to the bottom. (EX1014, Fig. 8; EX1002, ¶131.) Even with this extra piece, the design still shows a rectangular body, a rectangular lens cover, and horizontal lines. (*Id.*)

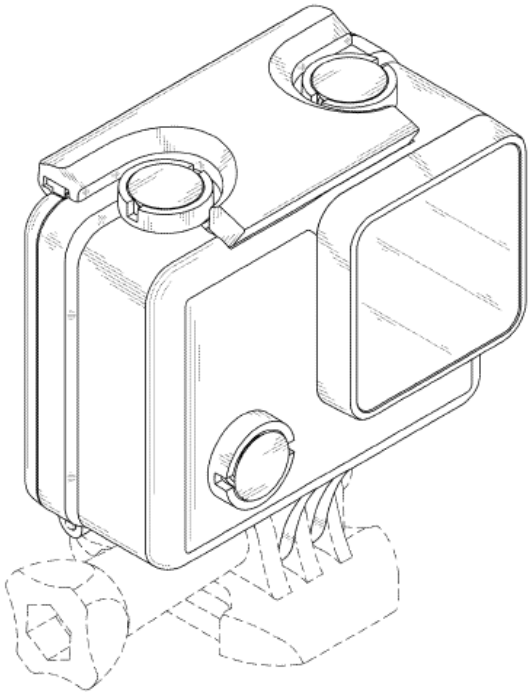


FIG. 8

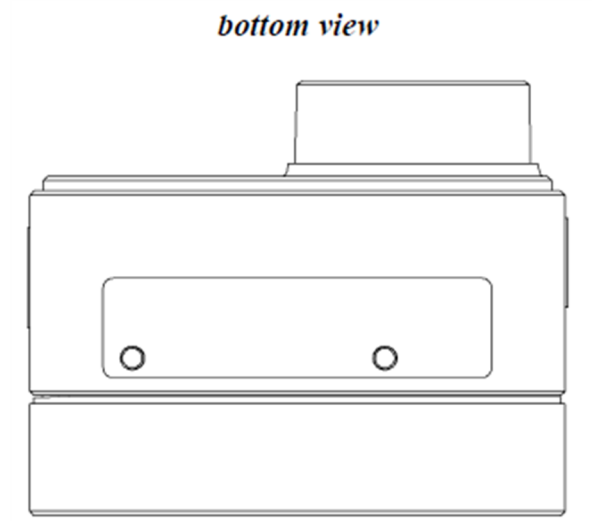
It would have been obvious to combine Chen680 with Huang/Heo (below) to include a rectangular button/access element at the bottom. (Section V.D.3; EX1021, Bottom view; EX1024, bottom view; EX1002, ¶132.) An ordinary designer would have understood that prior art designs included rectangles on the bottom for, *e.g.*, buttons, access to ports, etc. and would have been motivated to include a rectangle at the bottom for the benefits that buttons and access elements provide (enhanced overall visual impression of a rectangular design, etc.). (EX1002, ¶132.)

Huang Bottom View



Bottom view

Heo Bottom View



To the extent that Chen680 is not considered a "camera" design, it would have been obvious to combine teachings from a "camera housing" design (*e.g.*, Chen680, McVicker) and a "camera" design (*e.g.*, Huang, Heo, Li). An ordinary designer would have been motivated to look to and combine the designs of cameras and camera housings since both have similar outer appearances and design elements, and since both are for protecting internal components. (EX1002, ¶132.)

For example, cameras and camera housings typically include a body and design elements for the outer components of the body (*e.g.*, buttons/access elements, lens cover, rectangle(s) for display(s)). (*Id.*) An ordinary designer would have had desired the same design features for a camera design as would have been desired for a camera housing design. (*Id.*) For example, an ordinary designer would have desired for the cameras and camera housings to be compact and lightweight, where the "camera fits the housing like a glove." (*Id.*; EX1041, 1.)

Accordingly, the combination of Chen680 with Huang, Heo, Li, and/or McVicker results in a design that has the same overall visual appearance as the D'435. (EX1002, ¶133.)

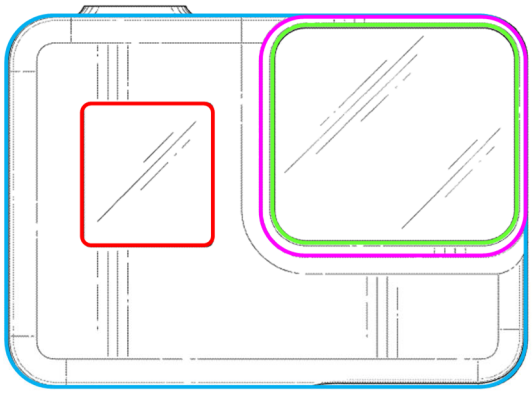
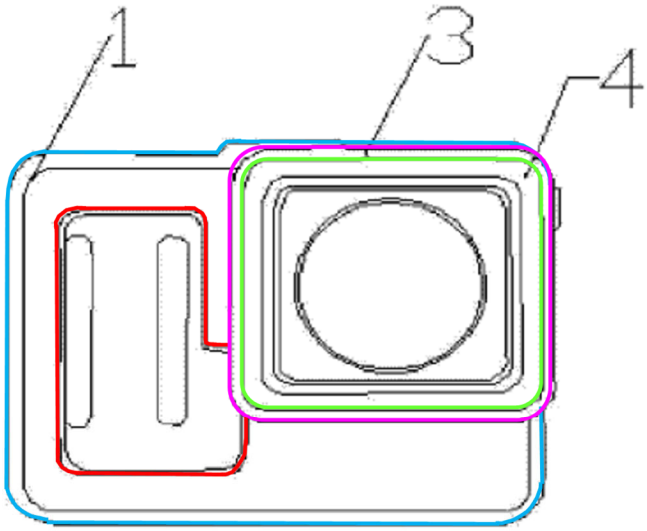
E. Ground 4: The D'435 Patent is Obvious Over Wang and Huang; Wang and Heo; Wang, Huang, and Li; Wang, Heo, and Li; Wang, Huang, and McVicker; or Wang, Heo, and McVicker

Wang is "something in existence," and alone or in combination with Huang/Heo, is "visually similar" to the D'435. *LKQ*, 102 F.4th at 1298; (EX1002, ¶¶134-135.)

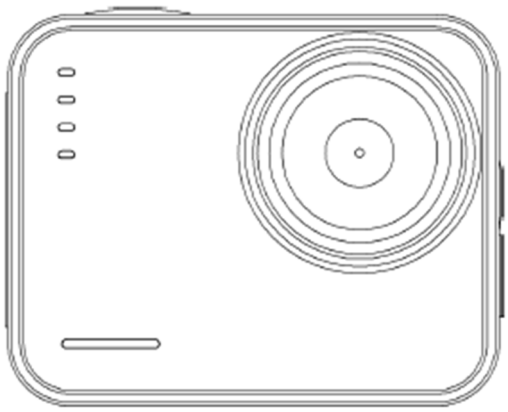
1. Front View

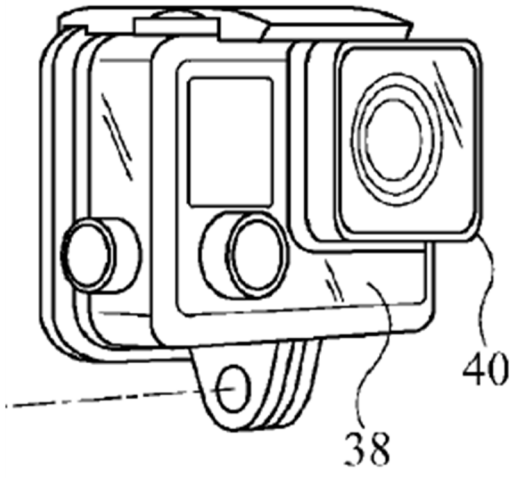
Below is a comparison showing the front views of the D'435 (left) and Wang (right). (EX1001, Fig. 5; EX1016, Fig. 2; EX1002, ¶136.) Wang shows a ***rectangular body*** with flat faces and two (***pink*** and ***green***) rectangles for the lens covers. (EX1016, Fig. 2; EX1002, ¶136.) Wang shows a ***rectangle-like shape*** at

the front of its design that is flush with the front face. (*Id.*)

D'435	Wang
 FIG. 5	 **FIG. 2**

An ordinary designer would have been motivated to modify Wang to have a top button protrusion, as taught by the prior art such as Huang, Heo, and/or McVicker (below). An ordinary designer would have known that it was known for designs to include a top button protrusion because it allowed a photographer to take a picture, and thus, would be motivated to combine Wang with Huang, Heo, and/or McVicker. (EX1002, ¶137.)

Huang Front View	Heo Front View
 Front view	 *front side view*

McVicker Left and Front View


Although Wang includes a rectangle-like shape, an ordinary designer would have viewed this difference as insignificant, as the shape is still "box-like." (EX1002, ¶138.) To the extent that a rectangle-like shape is not viewed as insignificant, an ordinary designer would have been motivated to modify Wang's rectangle-like shape to be rectangular for a display. (EX1002, ¶139.) An ordinary designer would have known at the time of the D'435 purported invention of

designs that had rectangles for a front display. For example, the designs of Huang, Li, and McVicker (below) include rectangles for front displays to provide information to the photographer. (EX1021, Front view; EX1027, Front view; EX1029, Fig. 2; EX1002, ¶139.) An ordinary designer would have been motivated because it was known and there were added benefits such as having the extra display information and enhanced/consistent rectangular features. (EX1002, ¶139.)

Huang Front View

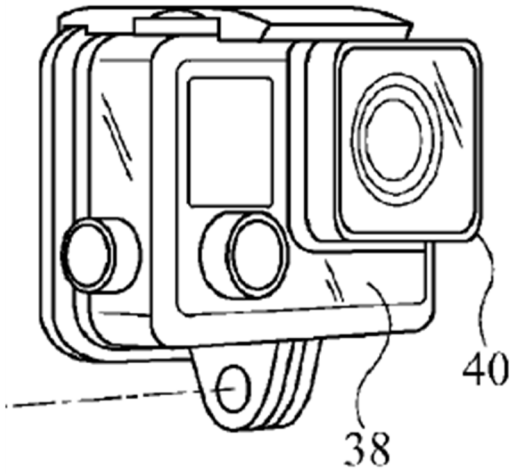


Front view

Li Front View

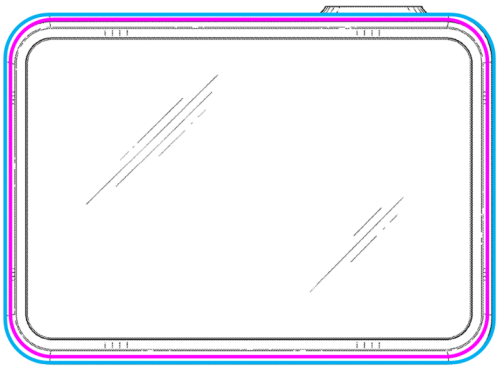
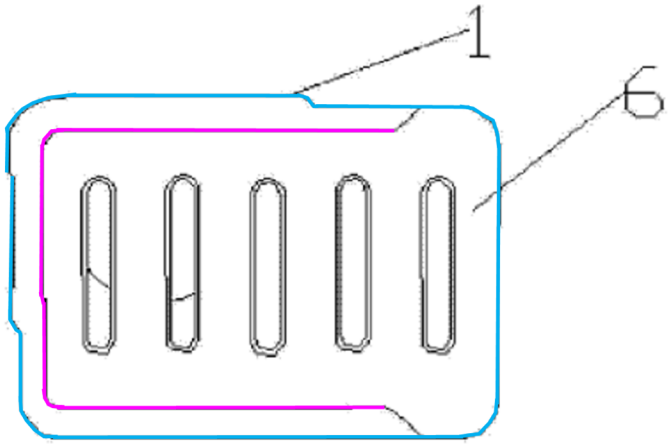


Front view

McVicker Left and Front View


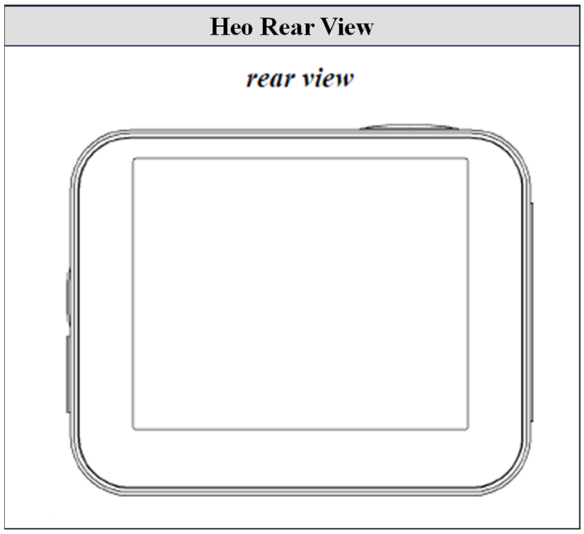
2. Rear View

Below is a comparison showing the rear views of the D'435 (left) and Wang (right). (EX1001, Fig. 6; EX1016, Fig. 7; EX1002, ¶140.) Wang shows a ***rectangular body*** with flat faces and an ***inner rectangle-like shape*** that occupies a large part of the back. (EX1002, ¶140.)

D'435	Wang
 FIG. 6	 **FIG. 7**

An ordinary designer would have been motivated to modify Wang to have a rectangle for a display at the back, such as the designs of Heo/Li (below), because then the picture captured or to be captured by the camera may be displayed and viewed by the photographer. (EX1002, ¶¶141-142.) An ordinary designer would have known about designs that have a rectangle for a display at the back, and would have been motivated to include one due to the benefits (being able to display the picture captured or to be captured, and adding to consistent rectangular features). (*Id.*)

Heo Rear View



Li Back View



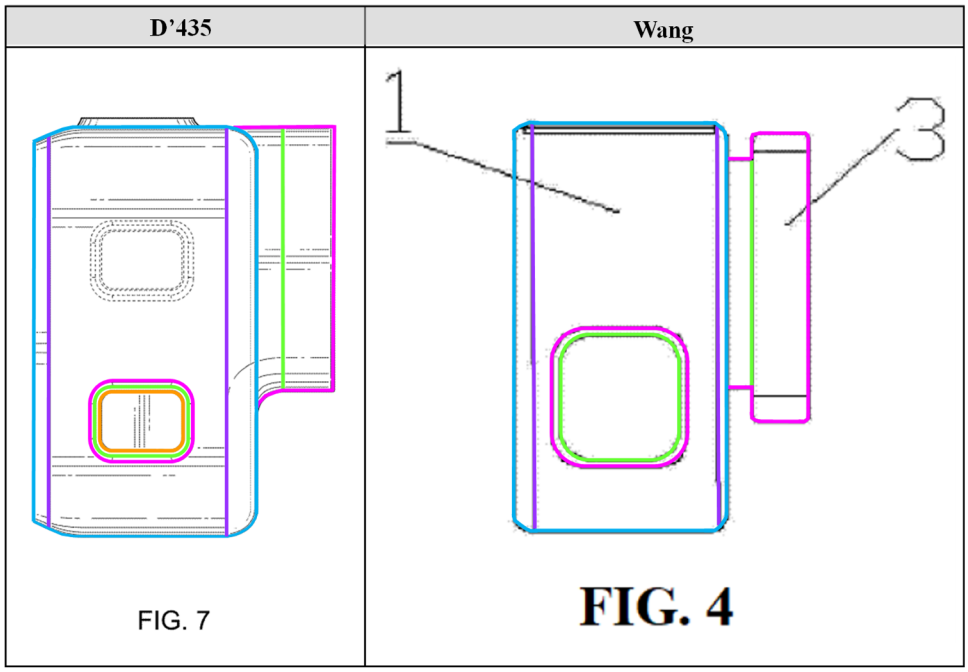
Back view

It would have been obvious to combine Wang with Huang, Heo, and/or McVicker to include a top button protrusion. (Section V.E.1; EX1002, ¶143.)

3. Left Side View

The left side views (D'435 (below left), Wang (below right)) show the ***rectangular body*** with flat faces (showing ***vertical lines***) and a ***rectangular lens***

cover (showing a ***vertical line***). (EX1001, Fig. 7; EX1016, Fig. 4; EX1002, ¶144.)



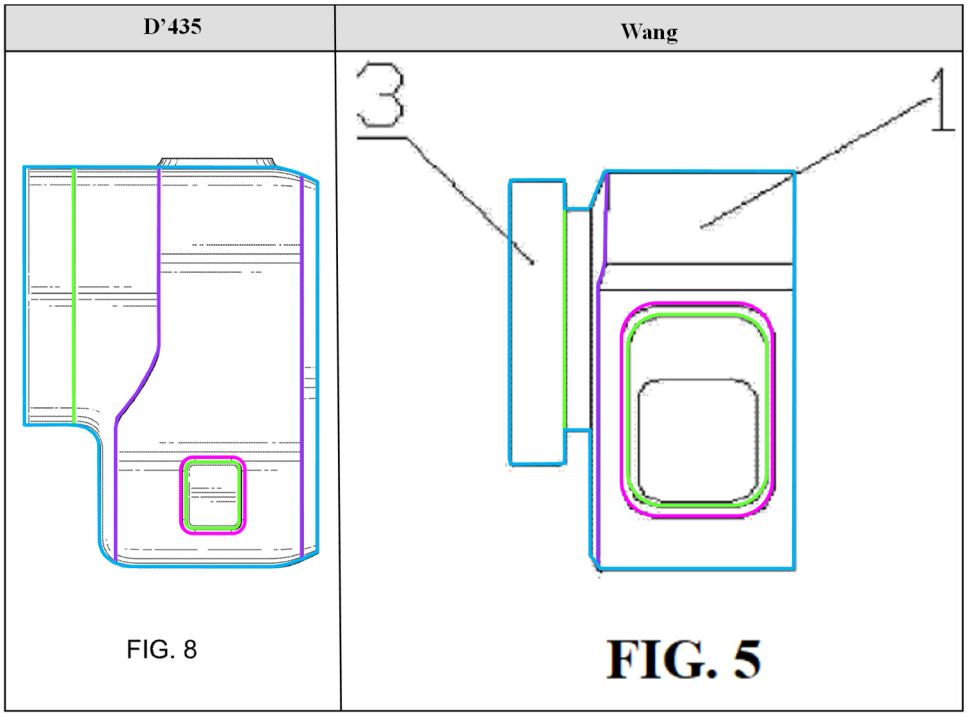
The left side view of the D'435 (above left) shows (***pink***, ***green***, and ***orange***) rectangles for a button/access element near the bottom of the left side. (EX1001, Fig. 7; EX1002, ¶145.) Similarly, the left side view of Wang (above right) shows (***pink*** and ***green***) rectangles for a button/access element near the bottom of the left side. (EX1016, Fig. 4; EX1002, ¶145.) Wang's left side rectangular button/access element has a different number and size, but an ordinary designer would have viewed this difference in the number and size as insignificant. (*Id.*) Wang's rectangular lens cover has small recesses, which are insignificant. (*Id.*) The overall appearance is still an overall impression of a rectangular design. (EX1002, ¶146.)

It would have been obvious to combine Wang with Huang, Heo, and/or

McVicker to include a top button protrusion. (Section V.E.1; EX1002, ¶147.)

4. Right Side View

The right side views of the D'435 (below left) and Wang (below right) show that the D'435 is visually similar to Wang's claimed design. (EX1001, Fig. 8; EX1016, Fig. 5; EX1002, ¶148.) Wang shows a ***rectangular body*** and a ***rectangular lens cover***, showing (***purple*** and ***green***) vertical lines. (EX1016, Fig. 5; EX1002, ¶148.) Wang has right side rectangular buttons/access elements that are slightly larger, small recesses in the rectangular lens cover, and a slight difference in the number of the ***vertical line(s)***. (EX1002, ¶¶149-151.) But these differences are insubstantial/slight/insignificant, and an ordinary designer would still find that the designs are visually similar. (EX1002, ¶¶149-151.)

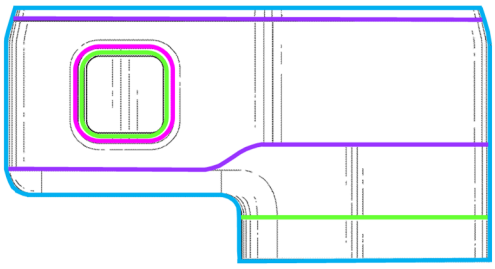
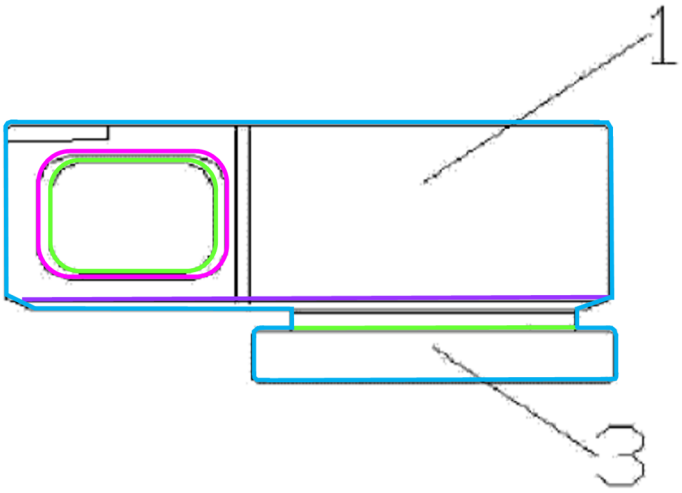


It would have been obvious to combine Wang with Huang, Heo, and/or McVicker to include a top button protrusion. (Section V.E.1; EX1002, ¶152.)

5. Top View

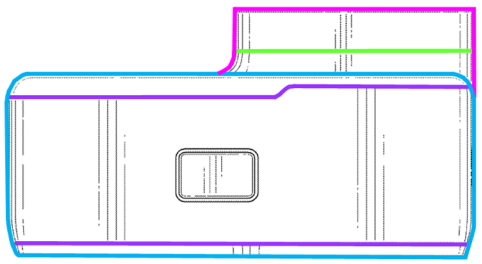
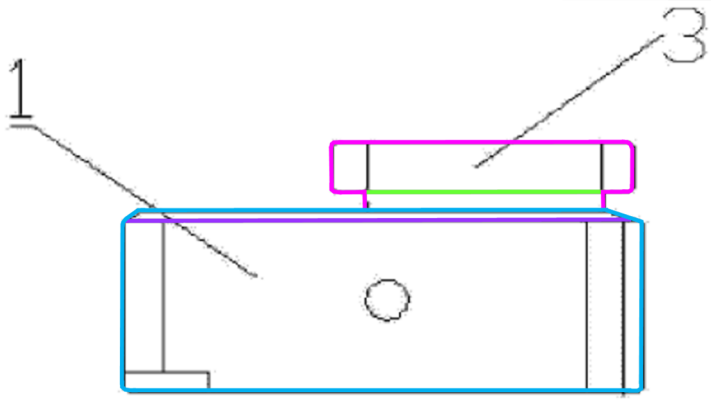
The top views (D'435 (below left) and Wang (below right)) show that the designs of the D'435 and Wang appear visually similar. (EX1001, Fig. 9; EX1016, Fig. 3; EX1002, ¶153.) Each of the figures shows the ***rectangular body*** with the ***rectangular lens cover*** extending outward from the body. (*Id.*) Each of the figures shows (***purple*** and ***green***) horizontal lines and rectangles at the top. (*Id.*) Although Wang shows slightly larger rectangular buttons/access elements, small recesses in the rectangular lens cover, and a different number for the ***horizontal line***, an ordinary designer would have found this difference as

insubstantial/slight/insignificant. (EX1002, ¶¶154-156.)

D'435	Wang
 FIG. 9	 FIG. 3

6. Bottom View

The bottom view of the D'435 (below left) shows its ***rectangular body*** with flat faces, and the bottom view of Wang (below right) shows the same. (EX1001, Fig. 10; EX1016, Fig. 6; EX1002, ¶157.) Like the D'435, Wang's ***rectangular lens cover*** extends outward from the body and shows a ***horizontal line***. (EX1016, Fig. 6; EX1002, ¶157.) An ordinary designer would have found that the number of ***horizontal line(s)*** being different and presence of the small recesses as insubstantial/slight/insignificant. (EX1002, ¶¶158-159.)

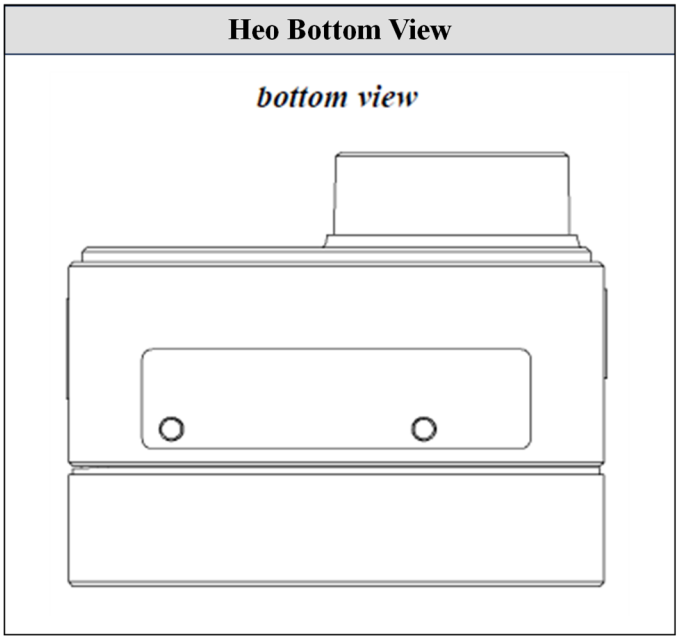
D'435	Wang
 FIG. 10	 FIG. 6

It would have been obvious to combine Wang with Huang (below) to include a rectangular button/access element at the bottom of a design. (EX1021, Bottom view; EX1002, ¶160.) An ordinary designer would have understood that designs included rectangles on the bottom for, *e.g.*, buttons, access to ports, etc. (EX1002, ¶160.) Making the buttons/access elements rectangular enhances the overall visual impression of a rectangular design. (*Id.*)

Huang Bottom View
 Bottom view

It would have been obvious to combine Wang with Heo (below) to include a

rectangular button/access element at the bottom of a design. (EX1024, bottom view; EX1002, ¶160.)



To the extent that Wang is not considered a "camera" design, it would have been obvious to combine teachings from a "camera housing" design (*e.g.*, Wang, McVicker) and a "camera" design (*e.g.*, Huang, Heo, Li). An ordinary designer would have been motivated to look to and combine the designs of cameras and camera housings since both have similar outer appearances and design elements, and since both are for protecting internal components. (EX1002, ¶161.) For example, cameras and camera housings typically include a body and design elements for the outer components of the body (*e.g.*, buttons/access elements, lens cover, rectangle(s) for display(s)). (*Id.*) An ordinary designer would have had desired the same design features for a camera design as would have been desired

for a camera housing design. (*Id.*) For example, an ordinary designer would have desired that the cameras and camera housings be compact and lightweight, where the "camera fits the housing like a glove." (*Id.*; EX1041, 1.)

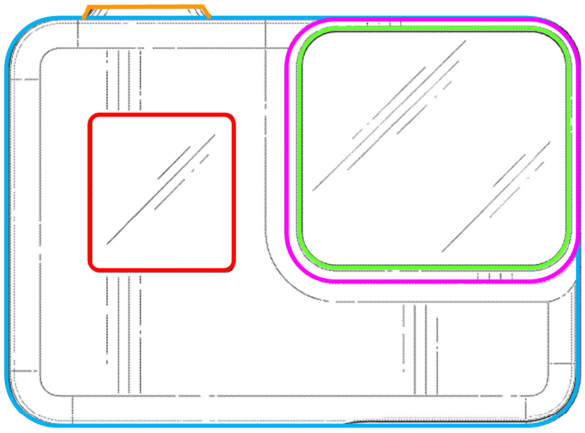
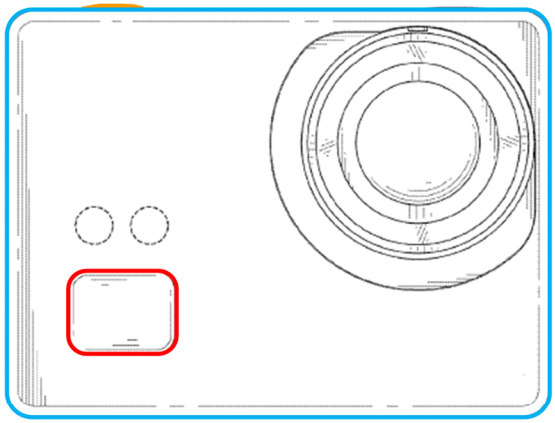
Accordingly, the combination of Wang with Huang, Heo, Li, and/or McVicker results in a design that has the same overall visual appearance as the D'435. (EX1002, ¶161.)

F. Ground 5: The D'435 Patent is Obvious Over Chen686 and Huang; Chen686 and Heo; Chen686, Huang, and Li; Chen686, Heo, and Li; Chen686, Huang, and McVicker; or Chen686, Heo, and McVicker

Chen686 is "something in existence," and alone or in combination with Huang, Heo, and/or McVicker is "visually similar to the D'435. *LKQ*, 102 F.4th at 1298; (EX1002, ¶¶162-163).

1. Front View

Figure 5 of the D'435 (below left) and Figure 2 of Chen686 (below right) show visually similar designs showing a ***rectangular body*** with flat faces, a ***small rectangle*** near the left side that is flush with the front face, and a ***top button protrusion***. (EX1001, Fig. 5; EX1018, Fig. 2; EX1002, ¶164.)

D'435	Chen '686
 FIG. 5	 FIG. 2

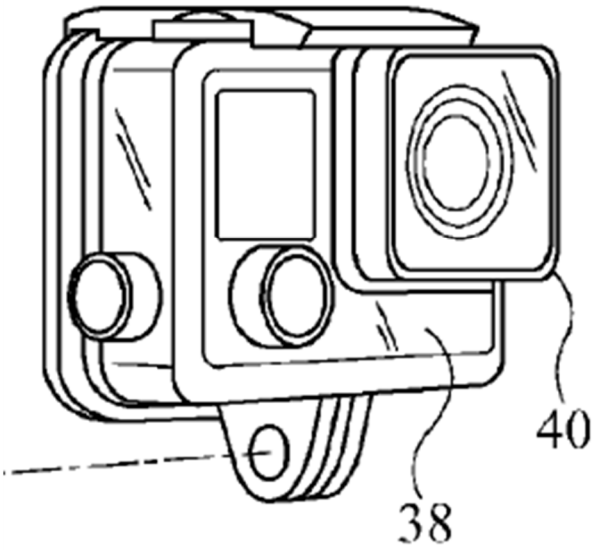
At the time of the purported invention of the D'435, several prior art references showed designs that had a rectangular lens cover. (EX1002, ¶165.) For example, Huang's/McVicker's designs (below) show a rectangular body with flat faces and a rectangular lens cover extending outward from the body. (EX1021, Front view; EX1029, Fig. 2; EX1002, ¶165.)

Huang Front View



Front view

McVicker Left and Front View

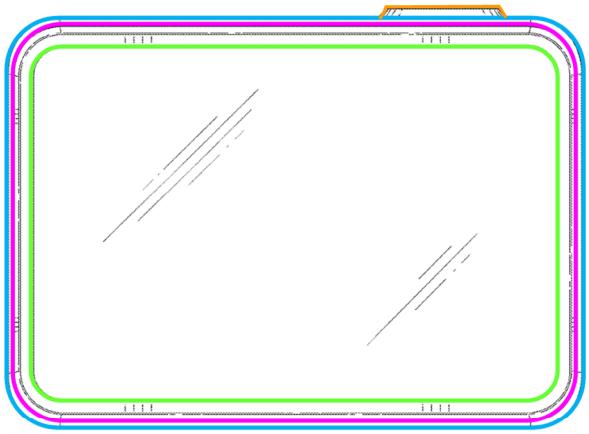
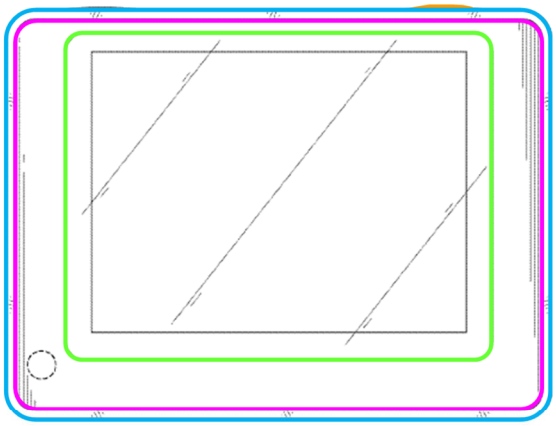


An ordinary designer would have been motivated to modify Chen686 to include a rectangular lens cover because it was known that a rectangular lens cover improves image quality by "cut[ting] glare and lower[ing] the chance of vignetting at wide angles," and preventing "blocking [of] the angle of view . . . ." (EX1002,

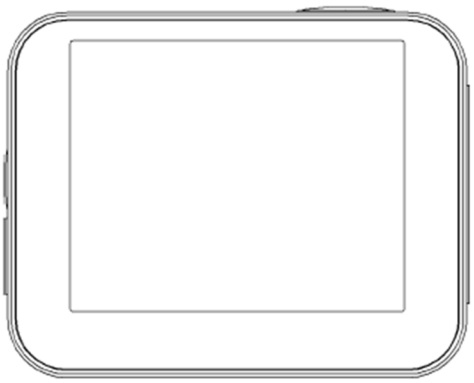
¶165; EX1030, 1; EX1031, 6.) Thus, it would have been obvious to include a rectangular lens cover in Chen686 because of market demands—photographers want better image quality. (EX1002, ¶165 (describing rectangular lens hoods as cutting glare and lowering the chance of vignetting at wide angles).) It would have been desirable for the design to have a consistent shape throughout, and a rectangular lens cover would have created an overall rectangular appearance for the design and its features. (EX1002, ¶165.) An overall consistent appearance would mean, for example, a rectangular body (already present in most cameras), a rectangular lens cover (already known in the art), rectangles for displays (already present in most cameras), rectangular/rectangle buttons (already known in the art), etc. (EX1002, ¶165.)

2. Rear View

Like the D'435 (below left), Chen686 (below right) includes a ***rectangular body*** with flat faces and two inner (***pink*** and ***green***) rectangles that occupy a large part of the back. (EX1001, Fig. 6; EX1018, Fig. 3; EX1002, ¶166.) The rear view shows the ***top button protrusion***. (EX1018, Fig. 3; EX1002, ¶166.) The ***rectangle*** is slightly smaller in Chen686, but an ordinary designer would view this difference in size as insignificant because it is still rectangular and still occupies a large part of the back. (EX1002, ¶167.)

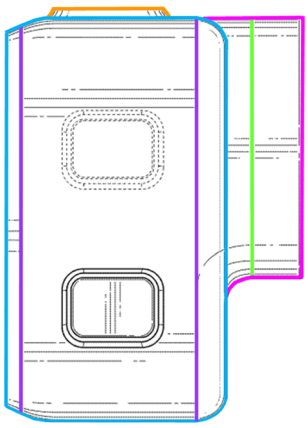
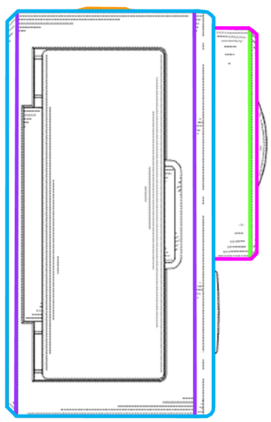
D'435	Chen '686
 FIG. 6	 FIG. 3

To the extent that a slightly smaller rectangle is not insubstantial, slight, or insignificant, it would have been obvious to combine Chen686 with Heo/Li. Heo/Li (below) disclose full-sized rectangles for rear displays that allow the photographer to see a large version of the picture captured or to be captured by the camera on the display. (EX1024, rear view; EX1027, Back view; EX1002, ¶168.)

Heo Rear View	Li Back View
rear view 	 Back view

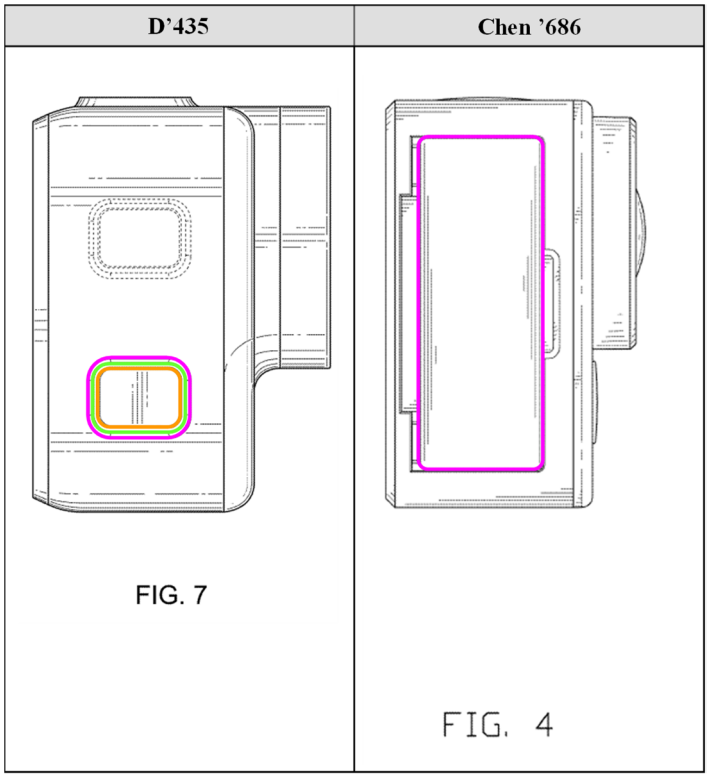
3. Left Side View

The left side view of Chen686 (below right) shows that the overall appearance of Chen686 is visually similar to the D'435 (below left). (EX1001, Fig. 7; EX1018, Fig. 4; EX1002, ¶169.) The left side view shows that Chen686's ***rectangular body*** shows flat faces and ***vertical lines***. (EX1018, Fig. 4; EX1002, ¶169.) Figure 4 shows the ***top button protrusion***, and the ***lens*** (showing a ***vertical line***) extending outward from the body. (*Id.*) While Chen686's top button protrusion is slightly smaller, this difference is insubstantial/slight/insignificant. (EX1002, ¶170.)

D'435	Chen '686
 FIG. 7	 FIG. 4

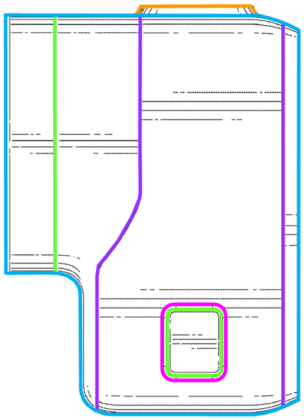
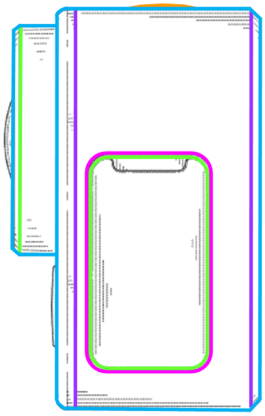
Each design shows a rectangle in the left side views (D'435 (below left), Chen686 (below right)). The D'435 shows three rectangles for a button/access element (***pink***, ***green***, and ***orange*** rectangles) near the bottom. (EX1001, Fig. 7; EX1002, ¶169.) Chen686 shows a ***rectangular button/access element*** that is slightly larger and depicted using one rectangle, and a slightly smaller top button protrusion, but an ordinary designer would have viewed this difference in size and number as insignificant. (EX1001, Fig. 7; EX1018, Fig. 4; EX1002, ¶¶170-172.) The overall rectangular appearance, including the rectangular body with flat faces, rectangles in the back, and rectangular button/access element in the left side would make the two designs have the same visual appearance to an ordinary designer.

(EX1002, ¶¶171-172.)



4. Right Side View

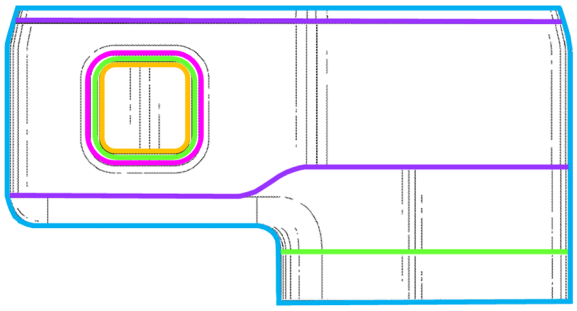
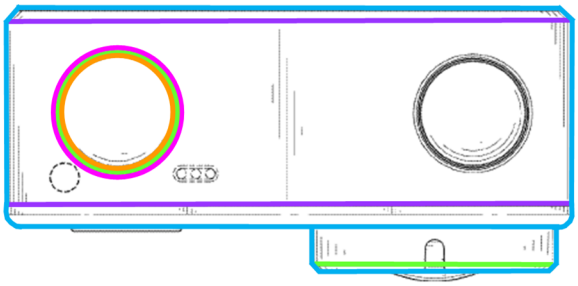
The D'435 (below left) and Chen686 (below right) show right side views. (EX1001, Fig. 8; EX1018, Fig. 5; EX1002, ¶173.) Each design shows the ***rectangular body*** with flat faces and showing ***vertical lines***. (EX1001, Fig. 8; EX1018, Fig. 5; EX1002, ¶173.) As viewed in the right side view, the ***lens*** extends outward from the body and shows a ***vertical line***. (EX1018, Fig. 5; EX1002, ¶173.) A ***top button protrusion*** is visible in the right side view, but Chen686's slightly different top button protrusion is an insignificant difference. (EX1001, Fig. 8; EX1018, Fig. 5; EX1002, ¶174.)

D'435	Chen '686
 FIG. 8	 FIG. 5

Like the similarities in the left side views, the designs of the D'435 and Chen686 each includes a ***rectangular button/access element*** (depicted as two rectangles) on the right side (D'435 (above left), Chen686 (above right)). (EX1001, Fig. 8; EX1018, Fig. 5; EX1002, ¶¶174-175.) In the right side view, Chen686's rectangular button/access element is slightly larger, and the ***vertical line*** is slightly different, but an ordinary designer would view these differences as insignificant. (EX1001, Fig. 8; EX1018, Fig. 5; EX1002, ¶¶174-175.) The overall appearances of the designs show a rectangular design including rectangular features, such as the rectangular body and rectangular buttons/access elements. (EX1002, ¶¶174-175.)

5. Top View

The D'435 (below left) and Chen686 (below right) have designs that have similar appearances. (EX1001, Fig. 9; EX1018, Fig. 6; EX1002, ¶176.) Each design shows: a ***rectangular body*** with flat faces, the ***lens*** extending outward from the body, and (***purple*** and ***green***) horizontal lines. (*Id.*) (EX1002, ¶176.) Whether a horizontal line is straight or slightly curved, an ordinary designer would have nevertheless viewed the two designs as visually similar, given this insignificant difference. (EX1002, ¶177.)

D'435	Chen '686
 FIG. 9	 FIG. 6

The top view of the D'435 (above left) further shows three (***pink***, ***green***, and ***orange***) rectangles for a button/access element). (EX1001, Fig. 9; EX1002, ¶178.) The top view of Chen686 (above right) shows three (***pink***, ***green***, and ***orange***) circles for a button/access element. (EX1018, Fig. 6; EX1002, ¶178.)

An ordinary designer would have been motivated to modify Chen686's buttons/access elements to have rectangular shapes. (EX1002, ¶179.) An ordinary designer would have known at the time of the D'435 purported invention of designs that had rectangular buttons. (*Id*.) For example, the designs of Huang/Heo (below) each have rectangular buttons at the top. (EX1021, Top view; EX1024, plan view; EX1002, ¶179.)

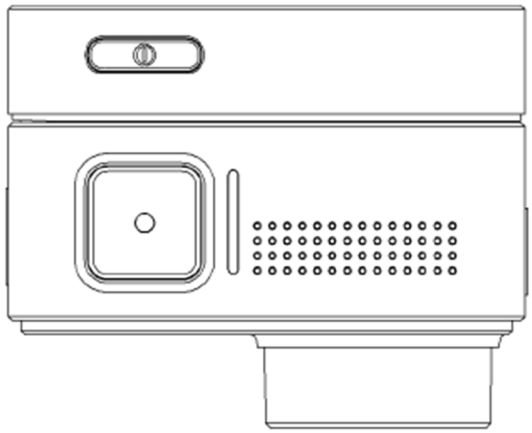
Huang Top View



Top view

Heo Plane View

plane view

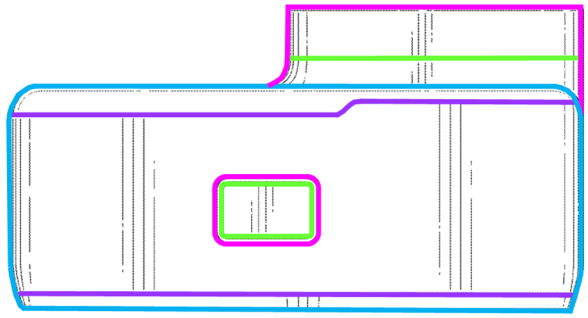
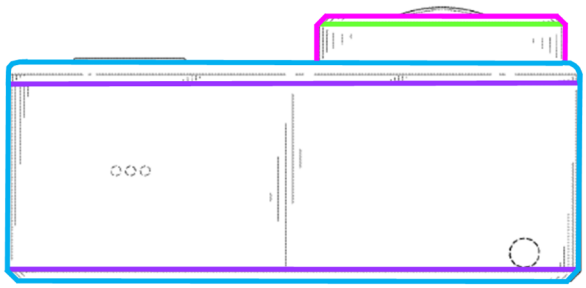


In view of Huang/Heo, an ordinary designer would have been motivated to

modify the buttons in Chen686 to be rectangular to create an overall consistent rectangular look for the design and its features. (EX1002, ¶179.) The result would be a design having a rectangular body, a rectangular lens cover, a rectangle for a display, rectangular buttons/access elements, etc. (*Id.*)

6. Bottom View

Figure 10 of the D'435 (below left) shows the bottom view of its design, and Figure 7 of Chen686 (below right) shows the bottom view. (EX1001, Fig. 10; EX1014, Fig. 7; EX1002, ¶180.) The bottom view for each design shows a ***rectangular body*** with flat faces showing ***horizontal lines***, and a ***rectangular lens cover*** showing a ***horizontal line***. (*Id.*) Although one of the ***horizontal lines*** in the D'435 is slightly curved and another is slightly shifted, an ordinary designer would have found that the ***line*** being straight and slightly shifted as an insubstantial/slight/insignificant difference. (EX1002, ¶¶180-181.)

D'435	Chen '686
 FIG. 10	 FIG. 7

It would have been desirable to an ordinary designer for the design to have a consistent shape and look throughout. (EX1002, ¶182.) There are several features in cameras and camera housings that are already rectangular, such as the camera body, displays, lens cover, etc., and an ordinary designer would have wanted an overall design to have consistent features. (*Id.*) Making the buttons rectangular would add to the already rectangular features of the design. (*Id.*) For example, an ordinary designer would have wanted an overall rectangular appearance for the design and its features (*e.g.*, rectangular body, rectangular lens cover, rectangles for displays, rectangular buttons/access elements). (*Id.*) It would have been obvious to combine Chen686 with Huang/Heo (below) to include a rectangular button/access element at the bottom of a design. (EX1021, Bottom view; EX1024,

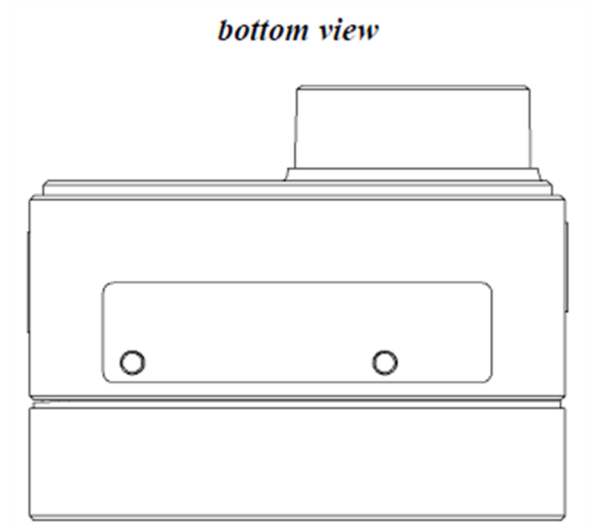
bottom view; EX1002, ¶182.) An ordinary designer would have understood that prior art designs included rectangles on the bottom for, *e.g.*, buttons, access to ports, etc. (EX1002, ¶182.)

Huang Bottom View



Bottom view

Heo Bottom View



Chen686 discloses a "camera" design, but as discussed above, may be combined with McVicker. To the extent that the McVicker is not considered a "camera" design, it would have been obvious to combine teachings from a "camera

housing" design (*e.g.*, McVicker) and a "camera" design (*e.g.*, Chen686, Huang, Heo, Li). An ordinary designer would have been motivated to look to and combine the designs of cameras and camera housings since both have similar outer appearances and design elements, and since both are for protecting internal components. (EX1002, ¶183.) For example, cameras and camera housings typically include a body and design elements for the outer components of the body (*e.g.*, buttons/access elements, lens cover, rectangle(s) for display(s)). (*Id.*) An ordinary designer would have had desired the same design features for a camera design as would have been desired for a camera housing design. (*Id.*) For example, an ordinary designer would have desired for the cameras and camera housings to be compact and lightweight, where the "camera fits the housing like a glove." (*Id.*; EX1041, 1.)

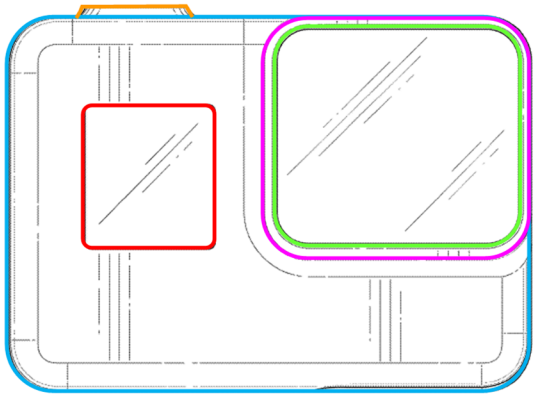
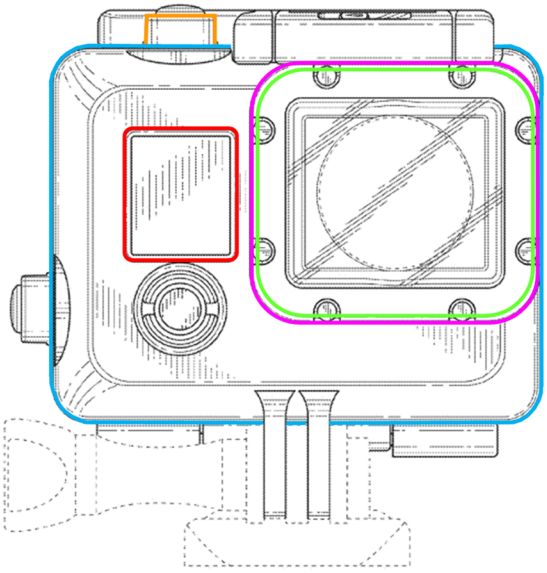
Accordingly, the combination of Chen686 with Huang, Heo, Li, and/or McVicker results in a design that has the same overall visual appearance as the D'435. (EX1002, ¶183.)

G. Ground 6: The D'435 Patent is Obvious Over Woodman and Huang; or Woodman and Heo

Woodman is "something in existence," and alone or in combination with Huang/Heo is "visually similar" to the D'435. *LKQ*, 102 F.4th at 1298; (EX1002, ¶¶184-185).

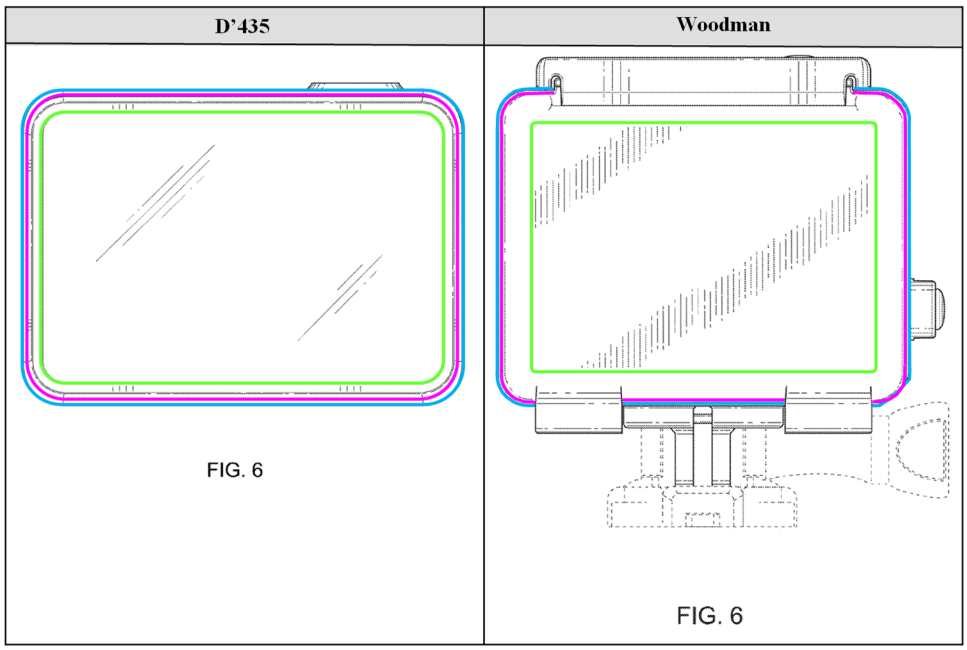
1. Front View

The front views of the D'435 (left) and Woodman (right) are shown below. (EX1001, Fig. 5; EX1019, Fig. 5; EX1002, ¶186.) The front view shows a roughly ***rectangular body*** and a ***top button protrusion*** (near the left of the figure). (EX1019, Fig. 5; EX1002, ¶186.) The front view shows a ***rectangular lens cover*** near the top right, and an ***inner rectangle*** within it. (EX1002, ¶186.) The front of the D'435 and Woodman include a ***small rectangle*** that is flush with the front face. (EX1001, Fig. 5; EX1019, Fig. 5; EX1002, ¶186.) Although Woodman has a slightly different button protrusion and its rectangles have slightly different dimensions or positions, these differences are insubstantial/slight/insignificant. (EX1002, ¶187.)

D'435	Woodman
 FIG. 5	 FIG. 5

2. Rear View

Figure 6 from each design of the D'435 (below left) and Woodman (below right) show a roughly ***rectangular body*** and two inner (***pink*** and ***green***) rectangles that occupy a large part of the back. (EX1001, Fig. 6; EX1019, Fig. 6; EX1002, ¶188.) The (***blue*** and ***pink***) rectangles of Woodman have partial sections at the top and bottom, but an ordinary designer would have viewed these partial sections as insubstantial/slight/insignificant because the rectangles still occupy a large part of the back, and the body still has a rectangular shape. (EX1001, Fig. 6; EX1019, Fig. 6; EX1002, ¶189.)



Further, Woodman shows a ***top button protrusion***, as viewed from the front, top, and right side view (below). (EX1019, Fig. 1; EX1002, ¶190.)

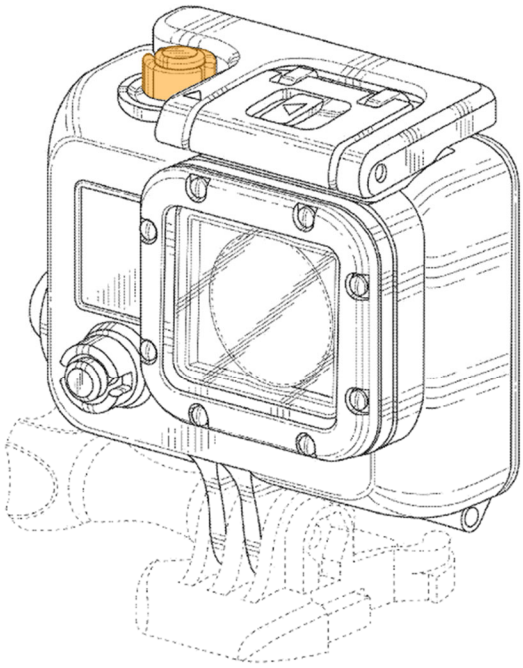
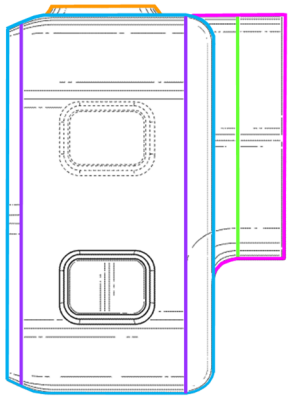
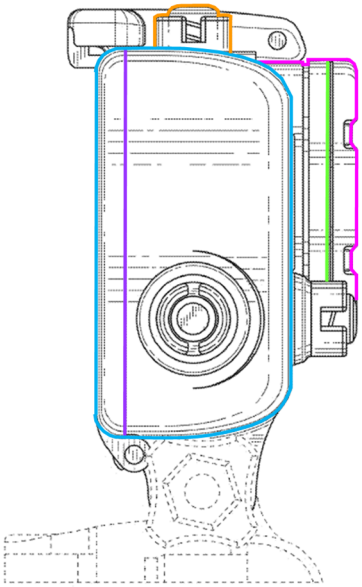


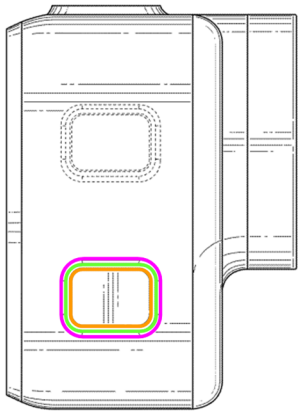
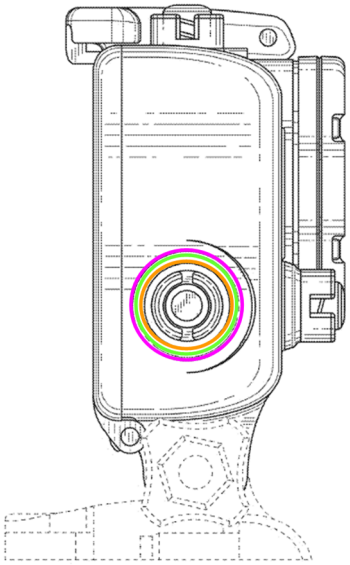
FIG. 1

3. Left Side View

The left side views show that the overall appearance of Woodman (below right) is visually similar to the overall appearance of the D'435 (below left). (EX1001, Fig. 7; EX1019, Fig. 7; EX1002, ¶191.) The left side views show a roughly ***rectangular body*** showing ***vertical line(s)***. (EX1001, Fig. 7; EX1019, Fig. 7; EX1002, ¶191.) Figure 7 of Woodman shows a ***top button protrusion***, and a ***rectangular lens cover*** extending outward from the body (towards the right) and showing a ***vertical line***. (EX1019, Fig. 7; EX1002, ¶191.) Woodman's button protrusion is slightly larger, but this difference in size is insignificant. (EX1002, ¶192.)

D'435	Woodman
 FIG. 7	 FIG. 7

The left side view of the D'435 (below left) further shows three (***pink***, ***green***, and ***orange***) rectangles for a button/access element near the bottom of the left side. (EX1001, Fig. 7; EX1002, ¶193.) Similarly, the left side view of Woodman (below right) shows three (***pink***, ***green***, and ***orange***) circles for a button/access element near the bottom of the left side. (EX1019, Fig. 7; EX1002, ¶193.)

D'435	Woodman
 FIG. 7	 FIG. 7

An ordinary designer would have been motivated to modify Woodman's buttons to be rectangular. (EX1002, ¶194.) An ordinary designer would have known at the time of the D'435 purported invention of designs that had rectangular buttons. (*Id.*) For example, Huang (below) discloses, at the time of the D'435 purported invention, a design that included rectangular buttons. (EX1021, Left view; EX1002, ¶194.)

Huang Left View

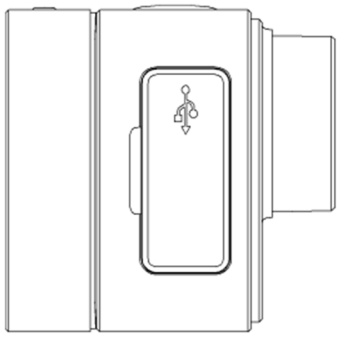


Left view

Heo similarly discloses a rectangle for a button/access element on the left side of its design (below). (EX1024, left side view; EX1002, ¶194.)

Heo Left Side View

left side view

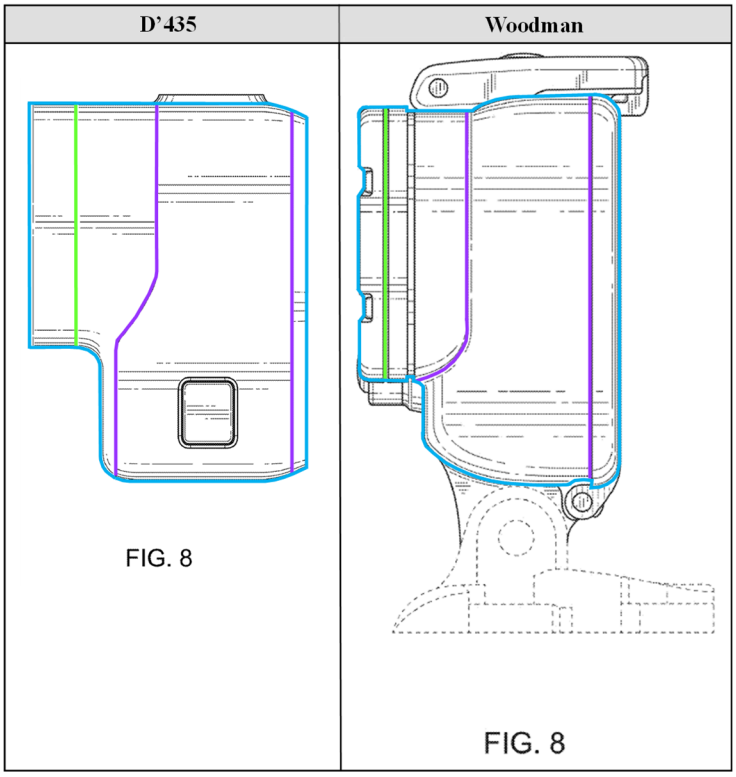


An ordinary designer would have been motivated to modify Woodman's buttons/access elements to be rectangular. (EX1002, ¶194.) A rectangular shape for the buttons/access elements would have created an overall appearance for the design and its features that are consistently rectangular. (*Id.*) For example, a

consistently rectangular design may show a rectangular body, a rectangular lens cover, rectangles for displays, rectangular buttons/access elements, etc.

4. Right Side View

Figure 8 of the D'435 (below left) and Figure 8 of Woodman (below right) show right side views demonstrating that the D'435 is visually similar to Woodman. (EX1001, Fig. 8; EX1019, Fig. 8; EX1002, ¶195.) Woodman has a roughly ***rectangular body*** showing ***vertical lines***. (EX1019, Fig. 8; EX1002, ¶195.) The right side views below both show the ***rectangular lens cover*** extending outward from the body. (EX1019, Fig. 8; EX1002, ¶195.) Like the D'435, in Woodman, the rectangular lens cover shows a ***vertical line***. (*Id.*)



Additionally, Woodman includes a ***top button protrusion*** shown in the front,

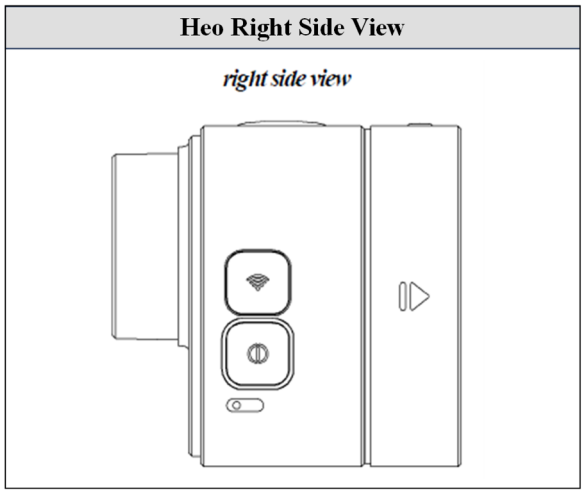
top, and right side view (Figure 1). (Section V.G.2; EX1019, Fig. 1; EX1002, ¶196.)

The D'435 shows a rectangle in the right side view. (EX1001, Fig. 8; EX1002, ¶197.) Huang and Heo (below) each teach a rectangle for a button/access element at the right side. (EX1021, Right view; EX1024, right side view; EX1002, ¶197.) It would have been obvious to combine Woodman and Huang/Heo to include a rectangle for a button/access element at the right side. (EX1002, ¶197.) An ordinary designer would have understood that prior art designs included rectangles on the sides, including the right side, for, *e.g.*, buttons, access to ports, etc. (*Id.*) It was known to add buttons/access elements on the sides, including the right side, of the design. (*Id.*)

Huang Right View



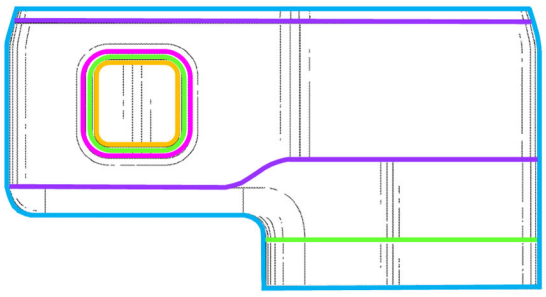
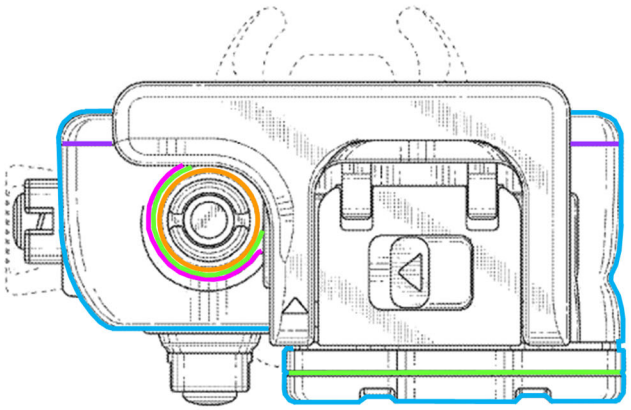
Right view



5. Top View

The top views (D'435 (below left), Woodman (below right)) show that the D'435 and Woodman appear visually similar. (EX1001, Fig. 9; EX1019, Fig. 9; EX1002, ¶198.) Each of the figures shows a roughly ***rectangular body*** with the ***rectangular lens cover*** extending outward from the body. (EX1001, Fig. 9; EX1019, Fig. 9; EX1002, ¶198.) Each of the figures shows (***purple*** and ***green***) horizontal lines. (EX1001, Fig. 9; EX1019, Fig. 9; EX1002, ¶198.)

Woodman (below) includes an extra piece at the top. (EX1019, Fig. 1; EX1002, ¶199.) Even with this extra piece, the (***purple*** and ***green***) horizontal lines (of the rectangular body and of the rectangular lens cover) are visible, thereby a slight difference in the number of horizontal lines is insubstantial. (EX1002, ¶199.)

D'435	Woodman
 FIG. 9	 FIG. 9

An ordinary designer would have been motivated to combine Woodman with Huang/Heo. (Section V.G.3; EX1002, ¶¶200-201.) The designs of Huang and Heo (below) each have rectangular buttons at the top. (EX1021, Top view; EX1024, plan view; EX1002, ¶¶200-201.) In view of Huang/Heo, an ordinary designer would have been motivated to modify the circle-shaped button in Woodman to be a rectangular-shaped button. (EX1002, ¶201.) An ordinary designer would have known at the time of the D'435 purported invention of designs that had rectangular buttons, such as Huang and Heo. (*Id.*) An ordinary designer would have been motivated to modify the buttons in Woodman to have a rectangular shape because then doing so would have created an overall rectangular appearance for the design and its features (*e.g.*, a rectangular body, a rectangular lens cover, rectangles for displays, rectangular buttons). (*Id.*)

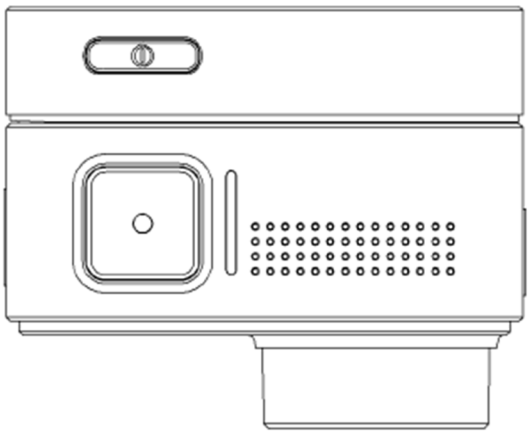
Huang Top View



Top view

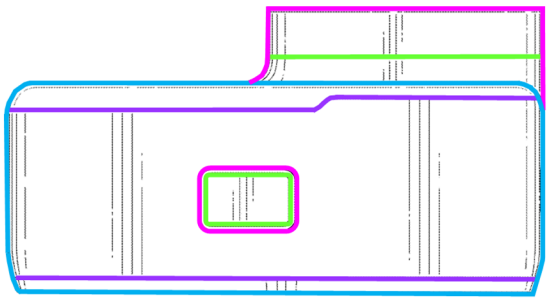
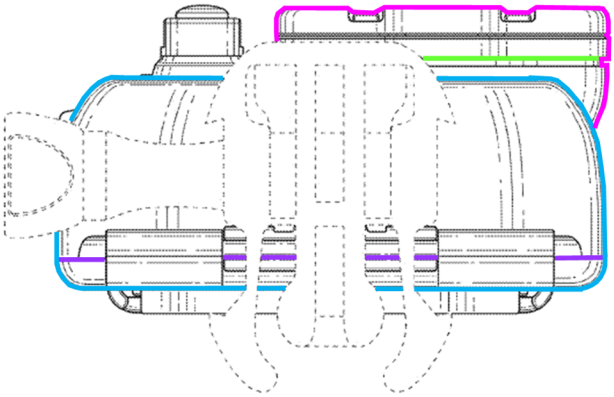
Heo Plane View

plane view



6. Bottom View

Figure 10 of the D'435 (below left) shows the bottom view of the D'435 ***rectangular body***, and Figure 10 of Woodman (below right) shows the bottom view of Woodman's ***rectangular body***. (EX1001, Fig. 10; EX1019, Fig. 10; EX1002, ¶202.) Like D'435, Woodman (below) shows the ***rectangular lens cover*** extending outward from the body (near the top of the figure) and showing a ***horizontal line***. (EX1019, Fig. 10; EX1002, ¶202.)

D'435	Woodman
 FIG. 10	 FIG. 10

Woodman includes an extra piece at the bottom (front, bottom, and left side view of Figure 2). (EX1019, Fig. 2; EX1002, ¶203.) An ordinary designer would have been able to view the horizontal lines even with this extra piece, and as a whole, Woodman still provides an overall visual impression of a rectangular design. (EX1002, ¶203.)

It would have been obvious to combine Woodman with Huang (below) to include a rectangular button/access element at the bottom of a design. (Section V.G.3; EX1021, Bottom view; EX1002, ¶204.) An ordinary designer would have understood that, at the time of the D'435, designs included rectangles at the bottom for, *e.g.*, buttons, access elements, etc. (EX1002, ¶204.)

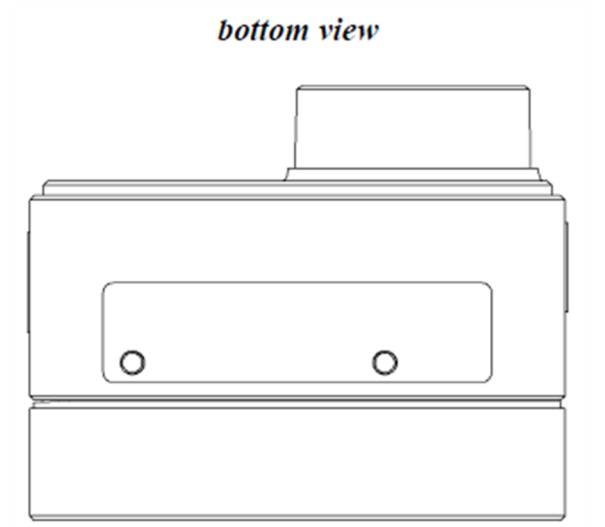
Huang Bottom View



Bottom view

It would have been obvious to combine Woodman with Heo (below) to include a rectangular button/access element at the bottom. (EX1024, bottom view; EX1002, ¶204.)

Heo Bottom View



To the extent that Woodman is not considered a "camera" design, it would have been obvious to combine teachings from a "camera housing" design (*e.g.*, Woodman) and a "camera" design (*e.g.*, Huang, Heo). An ordinary designer

would have been motivated to look to and combine the designs of cameras and camera housings since both have similar outer appearances and design elements, and since both are for protecting internal components. (EX1002, ¶204.) For example, cameras and camera housings typically include a body and design elements for the outer components of the body (*e.g.*, buttons/access elements, lens cover, rectangle(s) for display(s)). (*Id.*) An ordinary designer would have had desired the same design features for a camera design as would have been desired for a camera housing design. (*Id.*) For example, an ordinary designer would have desired for the cameras and camera housings to be compact and lightweight, where the "camera fits the housing like a glove." (*Id.*; EX1041, 1.)

Accordingly, the combination of Woodman with Huang/Heo results in a design that has the same overall visual appearance as the D'435. (EX1002, ¶205.)

VI. THE BOARD SHOULD NOT DENY INSTITUTION UNDER *FINTIV*

As the USPTO Interim Procedure for Discretionary Denials stated, "[t]he plain language of the *Fintiv* factors is directed to district court litigation and does not apply to parallel U.S. International Trade Commission (ITC) proceedings, as the ITC lacks authority to invalidate a patent and the ITC's invalidity rulings are not binding on the Office or on the district courts." (USPTO Interim Procedure for Discretionary Denials at 2-3 (June 21, 2022).) The Board should not exercise its discretion to deny institution.

VII. THE BOARD SHOULD NOT DENY INSTUTITION UNDER § 325(D)

The Board should not deny institution under 35 U.S.C. § 325(d) on the basis of the prosecution of the D'435 patent. Section 325(d) is inapplicable to this proceeding, because the Petition does not raise substantially the same art or arguments in the same way as the examination of the D'435 patent; and, to the extent the Petition does, the Office erred in a material manner. *Advanced Bionics, LLC v. MED-EL Elektromedizinische Geräte GmbH*, IPR2019-01469, Paper 6 at 8 (P.T.A.B. Feb. 13, 2020) (precedential). Further, examination of the D'435 patent concluded in 2017, before the obviousness inquiry changed in 2024 according to *LKQ Corp. v. GM Glob. Tech. Operations LLC*.

The Board applies a two-part framework for determining whether to deny institution under § 325(d) in view of prosecution of the original patent application and any subsequent reexamination: "(1) whether the same or substantially the same art previously was presented to the Office or whether the same or substantially the same arguments previously were presented to the Office; and (2) if either condition of first part of the framework is satisfied, whether the petitioner has demonstrated that the Office erred in a manner material to the patentability of challenged claims." (*Id.* at 8.)

Here, the Board need not reach the second part of the test, because the first part fails: neither the same (or substantially the same) art or arguments were

previously presented to the Office. While some of the references were disclosed during prosecution of the D'435 patent[5], these references were not substantively discussed or applied against the claimed design. *See Amazon Inc. v. M2M Sols. LLC*, IPR2019-01204, Paper 14 at 16 (P.T.A.B. Jan. 23, 2020) ("reference that 'was neither applied against the claims nor discussed by the Examiner'" weighs against denying institution under section 325(d) (citation omitted)). Thus, the inquiry should end there.

Even if the Board were to conclude otherwise, the second step of the *Advanced Bionics* inquiry—whether the examiner erred in a manner material to patentability—would still preclude discretionary denial. The Examiner allowed the claims directly without raising any rejections. Where the examination record is not well developed, as here, it may indicate that the Examiner erred by "overlooking something persuasive." *Advanced Bionics*, IPR2019-01469, Paper 6 at 10. The Office erred to the extent that it failed to fully consider the significance of the art or arguments as set forth in this Petition. Even if the first part of the test is satisfied, the Board further should not deny institution based on the second part of the test.

[5] Chen680 and Chen686 were listed in an information disclosure statement, provided by the Applicant. (EX1003, 31.)

The Board should not exercise its discretion to deny institution under § 325(d).

VIII. NOTICES AND STATEMENTS

Pursuant to 37 C.F.R. § 42.8(b)(1), Arashi Vision Inc. (d/b/a Insta360) is the real party-in-interest for Petitioner.

Pursuant to 37 C.F.R. § 42.8(b)(2), Petitioner identifies the following related matters:

- *In the Matter of Certain Cameras, Camera Systems, and Accessories Used Therewith*, Inv. No. 337-TA-1400 (USITC, filed Mar. 29, 2024)
- *GoPro, Inc. v. Arashi Vision Inc. et al.*, No. 8:24-cv-00681-HDE-JCV (C.D. Cal., filed Mar. 29, 2024)

Pursuant to 37 C.F.R. § 42.8(b)(3), Petitioner identifies the following counsel (and a power of attorney accompanies this Petition).

Lead Counsel	First Backup Counsel
Alex S. Yap Registration No.: 60,609 MORRISON & FOERSTER LLP 707 Wilshire Blvd., Suite 6000 Los Angeles, CA 90017 Email: AYap@mofo.com Tel: 213-892-5200 Fax: 213-892-5454	Mehran Arjomand Registration No.: 48,231 MORRISON & FOERSTER LLP 707 Wilshire Blvd., Suite 6000 Los Angeles, CA 90017 Email: MArjomand@mofo.com Tel: 213-892-5200 Fax: 213-892-5454
	Second Backup Counsel
	Jean Nguyen Registration No.: 71,051 MORRISON & FOERSTER LLP 707 Wilshire Blvd., Suite 6000 Los Angeles, CA 90017 Email: JNguyen@mofo.com Tel: 213-892-5200 Fax: 213-892-5454

Pursuant to 37 C.F.R. § 42.8(b)(4), service information for lead and back-up counsel is provided above. Petitioner consents to electronic service by email to MoFo_Insta360-IPRs@mofo.com.

Pursuant to 37 C.F.R. § 42.104(a), Petitioner certifies that the D'435 patent is available for *inter partes* review and that Petitioner is not barred or estopped from requesting an *inter partes* review challenging the patent claims on the grounds identified in this Petition.

The USPTO is authorized to charge any required fees, including the fee as

set forth in 37 C.F.R. § 42.15(a) and any excess claim fees, to Deposit Account No. **03-1952** referencing Docket No. **33316-00000.02.**

Dated: September 26, 2024

Respectfully submitted,

By */s/ Alex S. Yap*

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Counsel for Petitioner

Certification of Word Count (37 C.F.R. § 42.24)

I hereby certify that this Petition for *Inter Partes* Review has 13,904 words (as counted by the "Word Count" feature of the Microsoft Word™ word-processing system), exclusive of "a table of contents, a table of authorities, mandatory notices under § 42.8, a certificate of service or word count, or appendix of exhibits or claim listing."

Dated: September 26, 2024

By */s/ Alex S. Yap*
Alex S. Yap

Certificate of Service (37 C.F.R. § 42.6(e)(4) and 42.205(a))

I hereby certify that the attached Petition for *Inter Partes* Review and supporting materials were served as of the below date by UPS, which is a means at least as fast and reliable as U.S. Express Mail, on the Patent Owner at the correspondence address indicated for U.S. Patent No. D789,435.

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Suite 624
Troy, Michigan 48084

Dated: September 26, 2024

/s/ Alex S. Yap
Alex S. Yap