

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 14

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ANTHONY L. SCHRANK
and WALTER L. BOHL, JR.

Appeal No. 96-3210
Application 29/025,638¹

ON BRIEF

Before ABRAMS, GARRIS and FLEMING, *Administrative Patent Judges*.
ABRAMS, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal from the final rejection of the following design claim:

¹ Application for patent filed July 7, 1994.

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The ornamental design for a KITCHEN RANGE HOOD as shown and described.

The invention is depicted in the drawings in nine views.

As evidence of the obviousness of the appellants' design the examiner has cited the following references:

Weaver et al. (Weaver)	2,836,114	May 27, 1958
Winton	3,125,869	Mar. 24, 1964

The claim stands rejected under 35 U.S.C. § 103 as being unpatentable over Weaver in view of Winton.

The rejection is explained in the Examiner's Answer.

The opposing viewpoints of the appellants are expressed in the Brief on Appeal.

OPINION

Our reviewing court has provided the following guidance for deciding the issue of the obviousness of a design claim in view of prior art references:

In rejections of design claims predicated upon 35 U.S.C. § 103, the proper standard is whether a design would have been obvious to a designer of ordinary skill in the articles involved. See *In re Nalbandian*, 661 F.2d 1214, 1216, 211 USPQ 782, 784 (CCPA 1981). To support a holding of obviousness there must be a reference, a something in existence, the design characteristics

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of which are basically the same as the claimed design. Once a reference meets the test of a basic design, reference features may reasonably be interchanged with or added from those in other pertinent references. See *In re Rosen*, 673 F.2d 388, 391, 213 USPQ 347, 350 (CCPA 1982). A proper obviousness rejection based upon a combination of references requires that the visual ornamental design features of the claimed design appear in the prior art in a manner which suggests the application of them as used in the claimed design. See *In re Cho*, 813 F.2d 378, 382, 1 USPQ2d 1662, 1663 (Fed. Cir. 1987); *In re Glavas*, 230 F.2d 447, 450, 109 USPQ 50, 52 (CCPA 1956). It is distinctiveness in overall appearance of an object when compared with the prior art, rather than minute details or small variations in configuration, that constitutes the test of design patentability. See *In re Lapworth*, 451 F.2d 1094, 1096, 172 USPQ 129, 131 (CCPA 1971).

The claimed design has inwardly tapered side panels which meet the downwardly tapered top panel and front panel at rounded edges and corners. In the Weaver design, the side panels do not taper inwardly, and all of the joints are sharp edges. Winston discloses inwardly tapered curved side panels 38, which mate at a sharp edge 47 with a downwardly curved top panel 29. As stated

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in the final rejection (Paper No. 5, page 2), it is the examiner's position that

[i]t would have been obvious to one of ordinary skill in the art . . . to modify the kitchen hood, 21, of Weaver et al. so as to have sides that angle inward as they go toward the front and so as to have a rounded top front edge as taught by Winton. Said modification would meet the appearance of the claimed design.

In justifying this position in the Answer the examiner has added that the design shown in Weaver is "strikingly similar to the claimed design" (page 3), and if any differences remain after the teachings of the two references are combined, they are "seen to be minor and do not render the claimed design unobvious" (page 4).

The appellants argue first that Weaver does not constitute a *Rosen* reference and, second, that even if it does, the combined teachings of the two references still fail to render the claimed design obvious. The differences to which the appellants point are the rounded edges and corners, and they urge that since these are not shown in the references, the overall appearance of the claimed design cannot be suggested thereby.

We share the appellants' belief that even assuming, *arguendo*, that Weaver constitutes a *Rosen* reference, the two references fail to establish a *prima facie* case of obviousness

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with regard to the claimed design. The reasons we have reached this conclusion coincide, in essence, with those set forth by the appellants on pages 5 through 8 of the Brief. In particular, it is our opinion that the mere fact that some curves and a rounded corner are present in the Winston hood would not, in our view, have suggested to a designer of ordinary skill in the articles involved that the basic design of Weaver be altered in the manner proposed by the examiner.

This being the case, we will not sustain the rejection, and the decision of the examiner is reversed.

REVERSED

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NEAL E. ABRAMS)	
Administrative Patent Judge)	
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)	
)	BOARD OF PATENT
BRADLEY R. GARRIS)	
Administrative Patent Judge)	APPEALS AND
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)	INTERFERENCES
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MICHAEL R. FLEMING)	
Administrative Patent Judge)	

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