

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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

Appeal No. 97-0649
Application 29/031,122¹

ON BRIEF

Before CALVERT, LYDDANE and MEISTER, Administrative Patent Judges.

CALVERT, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of the claim in the instant design application.

¹ Application for patent filed November 18, 1994.

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The claim reads:

The ornamental design for a SEAT as shown and described.

The references² on which the final rejection is based are:

Natuzzi Model No. 474 sofa, love seat and chair (Natuzzi 474)

Natuzzi Model No. 1030 sofa (Natuzzi 1030)

The claim stands finally rejected as unpatentable over Natuzzi 474 in view of Natuzzi 1030, under 35 U.S.C. § 103.

The basis of the rejection is that (examiner's answer, page 3):

The article disclosed and claimed herein is strikingly similar to the Natuzzi 474 sofa, love seat and chair, the essential difference being in the addition of a stitched vertical strip of trim on the outer corners, or "shoulders", of the backrest.

The reference to the Natuzzi 1030 sofa shows a sofa with a similar strip of trim at the outer corners or "shoulders" of the backrest.

Thus it is held that at the time the article was made it would have been obvious to an ordinary worker in the art³ to add the stitched vertical strip of trim to the outer corners of the instant article as taught and shown by the Natuzzi 1030 sofa.

² These references consist of photographs submitted with the CITATION UNDER 37 C.F.R. 1.97(b)" filed by appellants on November 18, 1994. The accompanying Form PTO-1449 indicates that the two models were at the International Home Furnishings Market in High Point, North Carolina in November 1988 and March 1993, respectively.

³ That is, to a designer of ordinary skill who designs articles of the type involved. In re Borden, 90 F.3d 1570, 1574, 39 USPQ2d 1524, 1526 (Fed. Cir. 1996).

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Moreover, the result would be an appearance over which the claimed seat possesses no patentable difference.

The examiner further states that rounding the corners of the shoulder area "is not a patentable distinction but an obvious expedient," citing In re Peet, 211 F.2d 602, 603, 101 USPQ 203, 204 (CCPA 1954), and noting rounded corners or shoulders on the Natuzzi 1030 sofa.

Appellants argue that Natuzzi 474 does not have design characteristics which are basically the same as the claimed design (i.e., is not a so-called "Rosen⁴ reference") citing In re Harvey, 12 F.3d 1061, 1063, 29 USPQ2D 1206, 1208 (Fed. Cir. 1993). They contend, for reasons stated on pages 3-5 of their brief, that the claimed design presents a "rectilinear" or "upright" overall frontal appearance, while the Natuzzi 474 sofa's appearance is more "open." Contributing to this difference in appearance, appellants assert, is the difference in arrangement of the two seam lines at each end of the backrest cushions of the claimed and reference designs. The examiner does not agree.

After fully considering the record in light of the arguments presented in appellants' brief and the examiner's answer, we find

⁴ In re Rosen, 673 F.2d 388, 391, 213 USPQ 347, 349 (CCPA 1982).

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that the Natuzzi 474 sofa⁵ does create basically the same visual impression as the claimed sofa design, and therefore constitutes a basic ("Rosen") design reference. While there are differences between the two designs, as appellants point out, we do not consider that they are such as to affect the basic design characteristics of the Natuzzi 474 sofa. Both create the same basic visual impression, notwithstanding the fact that the claimed design may be more "rectilinear" than Natuzzi 474.

Nevertheless, we will not sustain the rejection, for even if the Natuzzi 474 sofa were modified as suggested by Natuzzi 1030, it would not result in the claimed invention. In both references, the two seam lines at the ends of the backrest cushions flare upwardly and outwardly from the seat cushion, rather than beginning at the armrest and progressing vertically upward, with a lesser outward turn at their upper ends. We find no suggestion in Natuzzi 1030 that would lead an ordinary designer to modify the seam lines of Natuzzi 474 so that they originate at the armrest and extend in a vertical direction (when seen from the front) for a considerable portion of their height, as shown in Figure 2 of the application.

⁵ The application drawings and Natuzzi 474 each show three kinds of seats, namely, a sofa, a love seat, and a chair. For convenience, we will limit our discussion to the sofa.

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At pages 6-7 of the answer, the examiner argues that the stitching (seams) is a de minimis feature of the overall design, in part because it could not be seen in the photograph of the Natuzzi 474 sofa. However, it does not follow that just because a feature is not visible on a reference design, it is a de minimis feature of the claimed design. In the present case, if we were to assume arguendo that the seams of the Natuzzi 474 sofa are not visible or difficult to see, that would increase the difference in overall appearance between Natuzzi 474 and the claimed design, since the application drawings, by which the claimed invention is defined, show the seams quite plainly.

Accordingly, the examiner's decision to reject the claim is reversed.

REVERSED

IAN A. CALVERT)	
Administrative Patent Judge)	
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WILLIAM E. LYDDANE)	BOARD OF PATENT
Administrative Patent Judge)	APPEALS AND
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