

The opinion in support of the decision being entered today was **not** written for publication and is **not** binding precedent of the Board.

Paper No. 17

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte ALBERTO BERTANI

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Appeal No. 2001-0467  
Application No. 29/100,490

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ON BRIEF

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Before HAIRSTON, WALTZ and BAHR, Administrative Patent Judges.  
BAHR, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of the following design claim:

The ornamental design for a handle, as shown and described.

In rejecting the appealed claim under 35 U.S.C. § 103, the examiner relies upon the following two references:

Simpson	Des. 199,839	Dec. 22, 1964
Decursu et al. (Decursu)	Des. 370,617	Jun. 11, 1996

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The appealed claim stands rejected under 35 U.S.C. § 103 as being unpatentable over Decursu in view of Simpson.

Reference is made to the brief and reply brief (Paper Nos. 13 and 15) and the answer (Paper No. 14) for the respective positions of the appellant and the examiner with regard to the merits of this rejection.

Appellant's claimed design

Appellant's handle design includes a central elongate cylindrical stalk section having a softly curving right-angle elbow extending from each end of the stalk, with a circumferential seam defining each end of the stalk and the beginning of each elbow. Each elbow starts with a cylindrical section extending co-axially from the stalk section and transitioning into a leg section extending radially outward from the cylindrical section. The leg sections have flat side faces, partial cylindrical inner faces (facing one another) and outer faces which are curved in two directions (seen in the side views and front and rear views). While the outer faces of the leg sections are softly and continuously curved from the junctions with the cylindrical sections of the elbows to the end faces of the leg sections, there is an abrupt and

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distinct edge marking the junction between the cylindrical section of the elbow and the curved outer face of each leg section.

The applied prior art

The Decursu handle design includes a central elongate cylindrical stalk having an elbow extending from each end of the stalk, with a circumferential seam defining each end of the stalk and the beginning of each elbow. The outer faces of the elbows are generally flat and inclined, with respect to the axial direction of the stalk, at an acute angle, rather than a right angle as in appellant's design. Consequently, the overall aesthetic impression of the Decursu design is of a handle having a central cylindrical stalk with inclined, rather than right-angle, elbows having flat outer faces.

The Simpson handle design gives the overall impression of a C-shape, in that it includes an elongate cylindrical stalk having a quarter-pie shaped end cap portion extending from each end, each end cap portion having a U-shaped flange portion at the end thereof. The inner faces of the end cap portions are flat and extend outward from the stalk at the

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locations of the seams abruptly at right angles to the axial direction of the stalk.

Opinion

The test for determining obviousness of a claimed design under 35 U.S.C. § 103 is whether the design would have been obvious to a designer of ordinary skill who designs articles of the type involved. See In re Carter, 673 F.2d 1378, 1380, 213 USPQ 625, 626 (CCPA 1982) and In re Nalbandian, 661 F.2d 1214, 1216, 211 USPQ 782, 784 (CCPA 1981). Furthermore, in order to support a holding of obviousness under § 103, there must be a reference, a something in existence, the design characteristics of which are basically the same as the claimed design. See In re Rosen, 673 F.2d 388, 391, 213 USPQ 347, 350 (CCPA 1982).

As regards the combination of references in design cases, the question is not whether the references sought to be combined are in analogous arts in the mechanical sense, but whether they are so related that the appearance of certain ornamental features in one would suggest the application of those features to the other. In re Glavas, 230 F.2d 447, 450-451, 109 USPQ 50, 52-53 (CCPA 1956).

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As discussed above, appellant's design has an overall appearance which would make a different visual impression to the eye of a handle designer of ordinary skill as compared with the Decursu design. In particular, appellant's design has the appearance of softly curving elongate elbows extending from a cylindrical stalk, while Decursu's design has the appearance of flat inclined elbows extending from a cylindrical stalk.

It is the examiner's position (answer, page 4) that Simpson's design would have suggested to a designer of ordinary skill modification of the Decursu design by curving the inclined flat surfaces (designated herein as the outer faces).

Even assuming that Decursu does have the same basic design characteristics as appellant's design so as to constitute a proper Rosen type reference and that the Decursu and Simpson designs are so related that the appearance of certain ornamental features, such as the curved outer faces, in Simpson would suggest the application of those features to the Decursu design, we share appellant's view, as expressed on page 6 of the brief, that combination of the applied prior art

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references would not result in appellant's claimed design.

Our reasons for this conclusion follow.

As the court in In re Harvey, 12 F.3d 1061, 1063, 29 USPQ2d 1206, 1208 (Fed. Cir. 1993) stated,

[i]n ornamental design cases, a proper obviousness rejection based on a combination of references requires that the visual ornamental features (design characteristics) of the claimed design appear in the prior art in a manner which suggests such features as used in the claimed design. If, however, the combined teachings suggest only components of a claimed design, but not its overall appearance, an obviousness rejection is inappropriate [citations omitted].

Here, as we noted above, the Decursu and Simpson designs present two aesthetically different end cap alternatives, the Decursu end caps having the appearance of inclined elbows and the Simpson end caps having the appearance of quarter-pies. Absent appellant's own design, we are at a loss to know why the ordinary designer would have singled out only the curved outer faces, and not the flat inner faces, overall quarter-pie shape and enlarged end flanges of the end caps, for incorporation into the Decursu design as the examiner proposes. In any event, while Simpson does show a handle having end caps with curved outer faces, those curved outer

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faces run continuously from the circumferential seams defining the ends of the stalk to the end flanges of the end caps. As such, Simpson would not have suggested provision of curved outer faces on the Decursu design extending from locations removed from the circumferential seams as in appellant's design. In our view, the examiner has improperly compared the visual impressions of selected, separate features of the prior art designs, rather than the visual impressions of the designs as a whole in arriving at a conclusion of obviousness. It follows then that we cannot sustain the examiner's rejection.

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CONCLUSION

To summarize, the decision of the examiner to reject appellant's design claim under 35 U.S.C. § 103 is reversed.

REVERSED

KENNETH W. HAIRSTON	)	
Administrative Patent Judge	)	
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	)	
	)	
	)	BOARD OF PATENT
THOMAS A. WALTZ	)	APPEALS
Administrative Patent Judge	)	AND
	)	INTERFERENCES
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	)	
JENNIFER D. BAHR	)	
Administrative Patent Judge	)	

JDB/ki

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