

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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. 20

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte VITTORIO GRAZIOLI

Appeal No. 2001-2294
Application 29/097,935

HEARD: November 13, 2001

Before GARRIS, FRANKFORT, and KRATZ, Administrative Patent Judges.

FRANKFORT, 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 chair as shown and described.

As noted in appellant's brief (page 2), the invention is a chair as shown and described, particularly with reference to Figures 1 through 5 of the originally filed "drawings," i.e.,

Appeal No. 2001-2294
Application 29/097,935

the elected embodiment. The "drawings" of this application are in the form of photographs filed with the application on December 17, 1998. Those photographs, as filed, showed three chair embodiments (i.e., Figures 1-5, Figures 6-10 and Figures 11-15) described as showing appellant's new design and one table (Figures 16-19) showing the new design. Figures 6-19 of the application were subsequently canceled (see Paper No. 4) "without prejudice to Applicant's right to file divisional applications" covering such designs.

The appealed design claim stands rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the enablement requirement of this portion of the Statute. More particularly, it is the examiner's position that the claimed design is not described in such full, clear, concise and exact terms as to enable any person skilled in the art (i.e., a designer of the claimed type of article) to make and use the same. In the examiner's opinion,

[t]he claim is non-enabling because one cannot understand the exact configuration of the seat of the chair in Figures 1 through 5. Specifically, Figures 4 and 5 are not clear enough to distinguish the exact

Appeal No. 2001-2294
Application 29/097,935

configuration of the chair seat. One cannot tell if there are horizontal ribs or grooves and if the sides of the seat have been slightly raised or even have a groove to distinguish the edges and front portions(answer, page 3).

Reference is made to the examiner's answer (Paper No. 13, mailed May 4, 2001) for the reasoning in support of the above-noted rejection. Attention is directed to appellant's brief (Paper No. 12, filed February 26, 2001) and reply brief (Paper No. 14, filed July 3, 2001) for an exposition of appellant's arguments thereagainst.

OPINION

Having carefully considered the enablement issue raised in this appeal in light of the examiner's remarks and appellant's arguments in the brief and reply brief, it is our conclusion that the examiner's rejection of the present design claim under 35 U.S.C. § 112, first paragraph, is not well founded and thus will not be sustained. Our reasons for this determination follow.

Looking at the photographs labeled as Figures 1 through 5, and particularly the seat portion of the chair design depicted therein from the perspective of the designer of articles of the type claimed, and with insights provided by the photographs as a whole as filed with the application on December 17, 1998, it is our determination that such designer would have reasonably concluded that the slightly curved, generally horizontal segments on the upper surface of the chair seat seen in Figures 2, 4 and 5 of the application are each formed by a slightly raised area between depressed areas or subtle grooves formed in the surface of the seat portion, as appellant has specifically argued in the reply brief (Paper No. 14). Similarly, we are of the opinion that such designer would have also perceived that the sides and front area defining the outer peripheral part of the seat portion in the elected embodiment are slightly raised areas, with the outer peripheral part of the seat portion merging into and melding with the outer peripheral part of the back portion of the chair as clearly seen in Figures 4 and 5.

As for the examiner's position that one cannot see the lateral sections or segments of the seat portion through the opening of the back of the chair in Figure 2 of the application (answer, page 5), we are in agreement with appellant that such segments can be easily seen in Figure 2, and that such showing, considered along with that in Figures 4 and 5, is sufficiently clear so as to provide a designer of chairs of the type claimed with adequate details of the configuration of the chair seat sufficient to allow such designer to reproduce the chair shown in the application drawings (photographs). Regarding the examiner's position that one cannot tell if the five segments of the chair seat seen in Figures 4 and 5 of the claimed design are separated or defined by horizontal ribs or grooves, we share appellant's view that the chair design as a whole can be appreciated by the designer of chairs of the type shown from the disclosure as a whole and that no feature of the chair is so confusing or unclear as to create a situation that runs afoul of the enablement requirement of 35 U.S.C. § 112, first paragraph. Contrary to the examiner's view, we do not consider that a

Appeal No. 2001-2294
Application 29/097,935

designer of chairs of the type claimed would have understood the showing in Figures 2, 4 and 5 of the "drawings" of the present application to depict upstanding ribs on the seat portion of the chair therein, a configuration that such a designer would have readily understood to be disadvantageous from a comfort perspective when sitting on the chair for any length of time.

Like appellant, in reaching the above conclusions we have relied upon the knowledge and critical eye of the person skilled in the art (i.e., a designer of chairs of the type claimed) in interpreting what is reasonably shown in the "drawings" of the present application. In addition, we have viewed all of the photographs filed with the application in our attempt to understand exactly what appellant's claimed subject matter encompasses, as we believe a designer of such chairs would have done, especially with regard to common design features, like the subtle segments of the chair seats in each of the chair embodiments and in the table top of Figures 16-19.

Appeal No. 2001-2294
Application 29/097,935

In light of the foregoing, we will not sustain the examiner's rejection of the design claim before us on appeal under 35 U.S.C. § 112, first paragraph, based on lack of enablement.

REVERSED

BRADLEY R. GARRIS)	
Administrative Patent Judge)	
)	
)	
)	BOARD OF PATENT
CHARLES E. FRANKFORT)	
Administrative Patent Judge)	APPEALS AND
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Appeal No. 2001-2294
Application 29/097,935