

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(2) is not binding precedent of the Board.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. 21

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte GIORGIO DECURSU
AND
ALBERTO BERTANI

Appeal No. 97-3411
Application 29/029,284¹

HEARD: February 3, 1998

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

¹ Application for a design patent filed October 3, 1994.

Appeal No. 97-3411
Application No. 29/029,284

DECISION ON APPEAL

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

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

According to appellants (Brief, page 2), the ornamental design for the pull handle includes barrel-shaped circular legs joined by a gently arcing gripping portion. The bottom of the gripping portion is described as having a very slight arc, and the width of the gripping portion is described as being uniform.

The references relied on by the examiner are:

Amerock pull handle 937-CW2, Amerock Hardware Catalog C-2094, August 1984, page 18.

Pull handle HD9852, Forms + Surfaces Catalog 83, 1989, page 36.

The design claim on appeal stands rejected under 35 U.S.C. § 103 as obvious. As evidence of obviousness, the examiner relies on the Amerock pull handle 937-CW2 in view of the Forms + Surfaces pull handle HD9852. According to the examiner (Answer, page 4):

The Amerock pull has a configuration which is substantially identical to that of the claimed design except for the peak under the gripping portion, the inclusion of a floral pattern on the upper surface which has slightly curved edges, and the shape of the legs.

The Forms + Surfaces pull has a flat surface under

Appeal No. 97-3411
Application No. 29/029,284

the gripping portion, a plain upper surface of even width, and round legs.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Amerock pull by making the surface under the gripping portion flat, the upper surface plain and of even width as taught by the Forms + Surfaces pull as well as rounding the legs.

This modification of the basic reference in light of the secondary prior art is proper because the applied references are so related that the appearance of features shown in one would suggest the application of those features to the other. In re Rosen, 213 USPQ 347 (CCPA 1982). . . .

Appellants note that "[b]ecause Amerock shows only one view (which is not very clear), a sample of the product has been made a part of the record² of this application" (Brief, page 3). As a result of the lack of other views (e.g., a bottom view) of the Amerock pull, appellants argue (Brief, page 5) that "[r]ejection of a claim based on something that is *not shown* in a reference is improper." Based upon the single view of the Amerock 937-CW2 pull reference and the sample of the same, appellants conclude (Brief, pages 4 and 5) that the gripping portion of the Amerock pull has a substantially thick, triangular cross-section, is wider at the ends than at the middle, and includes a short oblong leg at each end thereof. Appellants argue (Brief, pages 4 and 5)

² A sample of the Amerock pull 937-CW2 is attached to the Examiner Interview Summary Record (paper number 12).

Appeal No. 97-3411
Application No. 29/029,284

that the claimed pull design shows a gripping portion of uniform width with a nearly flat top, and a rounded bottom, that includes a tall circular leg at each end thereof.

Appellants have not challenged the examiner's conclusion that the Amerock 937-CW2 pull is a Rosen³ reference (i.e., "a something in existence, the design characteristics of which are basically the same as the claimed design"), but they have questioned the propriety of modifying the Amerock pull design with the Forms + Surfaces HD9852 pull design. Appellants argue (Brief, pages 6 and 7) that:

F+S is cited for showing a plain upper surface and legs that meet the bottom surface of the gripping portion at right angles. There is no suggestion to modify Amerock to include these features of F+S. Amerock is a traditional design, as evidenced by the flower print, soft curves, and porcelain finish. F+S is modern design, as evidenced by the plain surfaces, sharp corners, and stainless finish. Thus, there is no suggestion to combine such different styles of handles conveying different impressions. Moreover, the triangular cross-section of the Amerock gripping portion does not suggest using the same right angle intersection as shown in F+S. As discussed above, even when the modifications stated by the examiner are made, they do not result in the present invention. The examiner has not identified how the references suggest combination to result in the present invention. Thus, the examiner has not made a *prima facie* case of obviousness.

³ In re Rosen, 673 F.2d 388, 391, 213 USPQ 347, 350 (CCPA 1982).

Appeal No. 97-3411
Application No. 29/029,284

Appellants conclude that the obviousness rejection is improper because the combined designs would have suggested only components of the claimed design, and not its overall appearance (Brief, page 6 and Reply Brief, page 3).

Reference is made to the briefs and the answers for further detailed positions of the appellants and the examiner.

OPINION

We have carefully considered the entire record before us, and we will reverse the obviousness rejection.

An initial inspection of the perspective view of the Amerock 937-CW2 pull design reveals a pull that is substantially similar in appearance to the claimed design. In this perspective view the top of the gripping surface appears to be of uniform width, and slightly angled towards the ends of the pull. The legs of the pull also appear to have a round shape. Without the benefit of other views, we are not able to determine the bottom nor the side appearances of the Amerock pull. In the absence of such views, we will turn to the sample Amerock pull for a determination of the appearance of the pull from other views.

Appeal No. 97-3411
Application No. 29/029,284

After inspection of the sample pull, we agree with the appellants that the Amerock pull has a substantially thick triangular cross section because of the V-shaped area on the bottom side of the gripping portion, and has a wider profile at the ends than in the middle. We also agree with the appellants that the Amerock pull has two short oblong legs.

We agree with the examiner that the top, side and perspective views of the Forms + Surfaces drawing show a pull with a flat upper surface, a flat lower surface, and rounded corners. We do not, however, agree with the examiner (Answer, page 5) that the limited views of the Forms + Surfaces pull show round legs. The "circular tubes" referred to in the Forms + Surfaces description could be limited to the clearly illustrated rounded corners of the pull. In the side view, the other side of each of the two legs could just as easily be straight edges. Only a bottom view of the Forms + Surfaces pull would reveal whether the legs are completely round.

As indicated supra, the examiner has reached the conclusion that modification of the Amerock reference pull design in light of the Forms + Surfaces reference pull design is proper because "the appearance of features shown in one would suggest the application of those features to the other" (Answer, page 4). We

Appeal No. 97-3411
Application No. 29/029,284

disagree. The only thing the two reference designs have in common is their end use. Any modification of the Amerock pull design with the features of the Forms + Surfaces pull design to arrive at the claimed design would only occur after observing the overall design features of the claimed design. It is classic hindsight to pick and choose only those features from the two disparate designs that are needed to arrive at the claimed design. Even if the Amerock pull is modified as directed by the examiner (Answer, page 4), the final Amerock design would have a flat upper surface, as opposed to an angled upper surface. The formerly oblong legs of Amerock's pull would have rounded outer edges, but the inner edges of the legs would have an unknown shape because the views of the Forms + Surfaces pull design do not show enough views to determine the complete shape of the legs.

In view of the foregoing, we agree with appellants that the obviousness rejection is improper because the combined designs would have suggested only components of the claimed design, and not its overall appearance (Brief, page 6 and Reply Brief, page 3). The obviousness rejection is reversed.

Appeal No. 97-3411
Application No. 29/029,284

DECISION

The decision of the examiner rejecting the claimed design under 35 U.S.C. § 103 is reversed.

REVERSED

KENNETH W. HAIRSTON)	
Administrative Patent Judge)	
)	
)	
LAWRENCE J. STAAB)	BOARD OF PATENT
Administrative Patent Judge)	APPEALS AND
)	INTERFERENCES
)	
)	
THOMAS A. WALTZ)	
Administrative Patent Judge)	

Appeal No. 97-3411
Application No. 29/029,284

PEARNE GORDON MCCOY & GRANGER
1200 Leader Building
Cleveland, OH 44114-1401