

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. 22

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte KEVIN DEWALD

Appeal No. 2003-0007
Application No. 29/092,219

ON BRIEF

Before GROSS, BAHR, and TIMM, *Administrative Patent Judges*.
TIMM, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant appeals the decision of the Primary Examiner finally rejecting the claim in this design application. We have jurisdiction under 35 U.S.C. § 134.

THE INVENTION

Appellant claims the ornamental design for a pull (see Figs. 1-4). Such a pull is a knob ordinarily placed on cabinets.

THE EVIDENCE

As evidence of unpatentability, the Examiner relies upon the following prior art references:

Allison Cabinet Hardware Catalog; page 6, Knob 244 FWB; received August 15, 1996

Phylrich Sales Co. Catalog, page 39-C; knob (bottom row, far right) (1965).

THE REJECTION

The claim stands rejected under 35 U.S.C. § 103(a) as being unpatentable over the Allison knob 244FWB in view of the Phylrich knob (bottom row, far right). We reverse.

OPINION

The Examiner finds that Phylrich shows a mosaic-like pattern on a knob and that it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the surface decoration of the Allison knob as suggested by the Phylrich knob (Answer at 4). The problem is that, even if it were obvious for one of ordinary skill in the art to make the combination, the result would not suggest a knob of Appellant's design.

The Examiner does not dispute Appellant's observation (Brief at 5-6) that the Phylrich knob includes a patterned central portion that appears to be polished granite or a simulated polished granite surface. Instead, the Examiner argues that Appellant has merely taken the old mosaic-like appearance shown in the Phylrich knob and merely roughened and raised the surface. We do not agree. The hills and valleys of the claimed knob design present a different visual effect than the smooth granite-like appearance of the patterned portion of the Phylrich knob.

This is not a case in which the difference between the prior art design and the claimed design is limited to the formation of a design feature by either lowering or raising it. *See In re Cornwall*, 230 F.2d 457, 459, 109 USPQ 57, 58 (CCPA 1956)(Whether any particular design is embossed on or impressed in the surface to which it is applied is merely a matter of choice). Here, the mosaic-like nature of the prior art design is not due to a difference in elevation, but due to the color and light effects of the granite or simulated-granite. We agree with Appellant that the bumpy nature of the central portion gives the claimed knob design an overall appearance which is significantly different from the smooth polished granite-like look of the Phylrich knob.

We conclude that the Examiner has failed to establish a *prima facie* case of obviousness with respect to the subject matter of the claim.

CONCLUSION

To summarize, the decision of the Examiner to reject the claim under 35 U.S.C. § 103(a) is reversed.

REVERSED

ANITA PELLMAN GROSS
Administrative Patent Judge

JENNIFER D. BAHR
Administrative Patent Judge

CATHERINE TIMM
Administrative Patent Judge

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Appeal No. 2003-0007
Application No. 29/092,219

Page 5

RADER, FISHMAN & GRAUER, PLLC
39533 Woodward Avenue
Suite 140
Bloomfield Hills, MI 48304-0610