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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
29/547,547	12/04/2015	Luis F. Salas	15-CWD-832DES	8779
101730	7590	10/01/2019	EXAMINER	
ECKERT SEAMANS CHERIN & MELLOTT, LLC			SHIELDS, RHEA M	
EATON CORPORATION				
600 GRANT STREET			ART UNIT	
44TH FLOOR			PAPER NUMBER	
PITTSBURGH, PA 15219			2915	
			NOTIFICATION DATE	
			DELIVERY MODE	
			10/01/2019	
			ELECTRONIC	

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte LUIS F. SALAS, OSCAR L. NEUNDORFER,
and SAIVARAPRASAD MURAHARI

Appeal 2019-001546
Application 29/547,547
Technology Center 2900

Before JOHN C. KERINS, JILL D. HILL, and GEORGE R. HOSKINS,
Administrative Patent Judges.

KERINS, *Administrative Patent Judge.*

DECISION ON APPEAL

Pursuant to 35 U.S.C. § 134(a), Appellant¹ appeals from the Examiner's decision to reject the sole claim in this application. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

¹ The term "Appellant" is used herein to refer to "applicant" as defined in 37 C.F.R. § 1.42. Appellant identifies the real party in interest as Eaton Corporation. Appeal Br. 1.

THE INVENTION

Appellant's claimed invention is to an ornamental design for an electrical outlet. Spec. 1. Figures 5 and 6 of Appellant's drawings, as filed on March 16, 2017, are reproduced below:

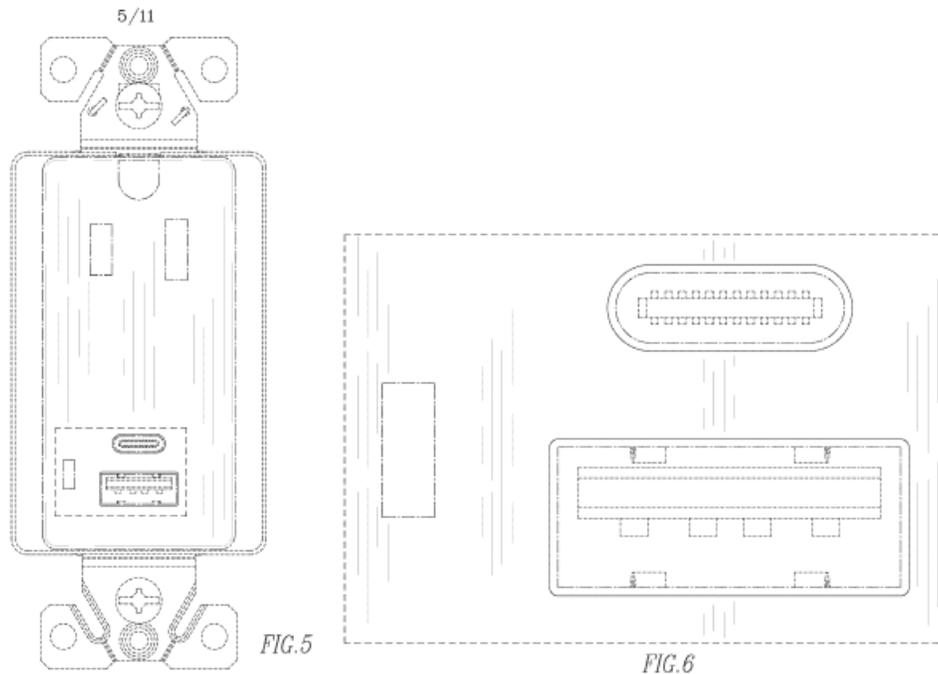


Figure 5 above is a front elevation view, and Figure 6 above is an enlargement of the indicated portion of Figure 5, of the claimed electrical outlet.

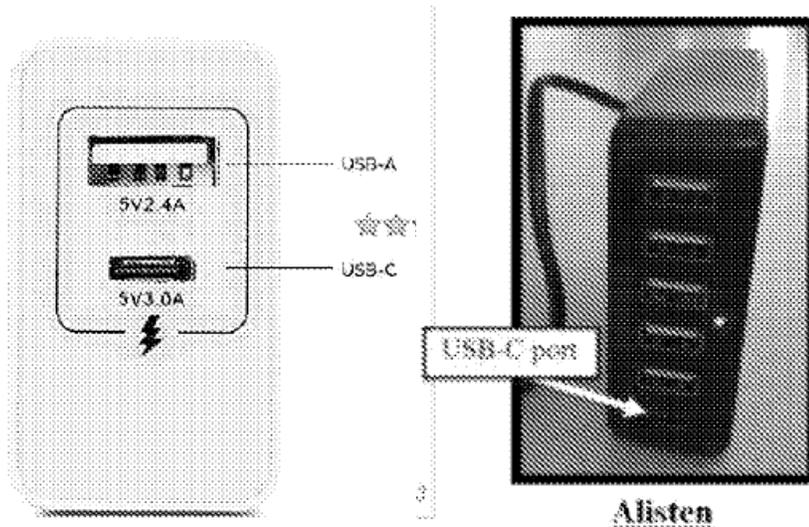
THE REJECTION²

The Examiner rejects the sole claim of the application under 35 U.S.C. § 103 as being unpatentable over GMYLE (“USB-C Charger, GMYLE 20W USB Dual Ports Type C & A Power Adapter AC Wall Charger,” appearing on amazon.com, paper copy of record dated 12/1/2016)

² A rejection of the claim under 35 U.S.C. § 102(a)(1) was withdrawn on appeal. Ans. 3.

in view of Alisten (“*Alisten 6 Port High Speed USB-C USB Wall Charger Hub Station*,” appearing on amazon.com, paper copy of record dated 12/6/2016). Final Act. 7.

GMYLE is reproduced on the left below, and Alisten on the right:



Illustrated above, on the left, is a front elevation view of the GMYLE device, and, on the right, is a front perspective view of the Alisten device.

ANALYSIS

The Examiner’s position is that GMYLE operates as a *Rosen*³ reference, i.e., a something in existence, the design characteristics of which are basically the same as the claimed design. Final Act. 8. Appellant disagrees, arguing that the claimed design is “manifestly and noticeably different in appearance” from the cited references. Appeal Br. 21–22.

³ *In re Rosen*, 673 F.2d 388 (CCPA 1982).

Appellant has the better position. Although the Examiner lists several design characteristics alleged to be common between GMYLE and the claimed appearance, the Examiner downplays, to too great of an extent, noticeable differences between the two that render the claimed design noticeably different in appearance. Final Act. 8–9.

The Examiner takes the position, apparently in reference to GMYLE, that “[t]he difference of the placement of the smaller port below the rectangular shaped port,” as compared with the claimed design having the smaller opening with semicircular ends positioned above the larger rectangular opening, “is not significant enough to warrant a patent for the overall appearance of the claimed design.” *Id.* at 9–10. In our view, this different placement or location indeed contributes to the different overall appearance. In addition, the Examiner’s position ignores another significant difference — the different vertical positions of the openings on the faces of the claimed design and the GYMLE design.

The Examiner cites to *In re Lapworth*⁴ as support for the position that what the Examiner regards as only subtle or *de minimis* differences between the claimed appearance and the GMYLE appearance are not sufficient to result in the claimed appearance being patentably distinct. *Id.* at 10. Appellant points out that, in *Lapworth*, two boat hull designs were nearly indistinguishable from one another until they were superimposed on one another. Reply Br. 6. We agree with Appellant that, unlike the designs at issue in *Lapworth*, “the claimed design is immediately visually distinct from the cited art and there is no need to superimpose anything with anything

⁴ 451 F.2d 1094 (CCPA 1971).

else” to appreciate the different overall appearance of the claimed design from GMYLE. *Id.*

In view of the foregoing, we conclude that GMYLE is not a *Rosen* reference because its design characteristics are not basically the same as the claimed design, so we do not sustain the rejection of the claim on appeal as being unpatentable over GMYLE and Alisten.

CONCLUSION

In summary:

Claims Rejected	Basis	Affirmed	Reversed
1	§ 103		1
Overall Outcome			1

DECISION

The Examiner’s rejection of the claim under 35 U.S.C. § 103 is reversed.

REVERSED