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Table with 5 columns: APPLICATION NO., FILING DATE, FIRST NAMED INVENTOR, ATTORNEY DOCKET NO., CONFIRMATION NO. Includes application details for 29/547,557 filed 12/04/2015 by Luis F. Salas, attorney 15-CWD-1166DES, confirmation 4406. Also includes examiner SHIELDS, RHEA M, art unit 2915, and notification date 10/01/2019 via ELECTRONIC mode.

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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 2019-001548
Application 29/547,557
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:

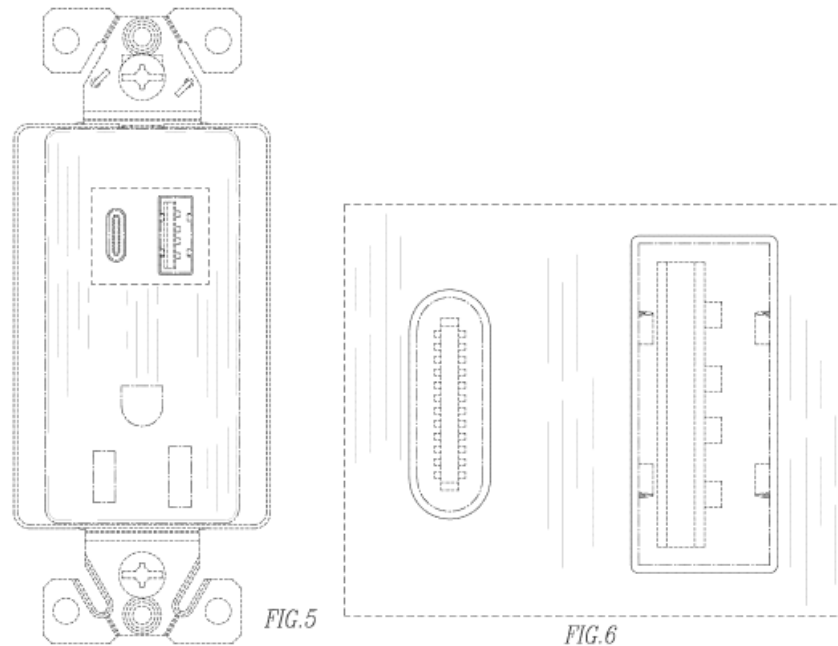


Figure 5 above is a front elevation view, and Figure 6 above is an enlargement of the indicated portion of Figure 5, of the claimed electrical outlet.

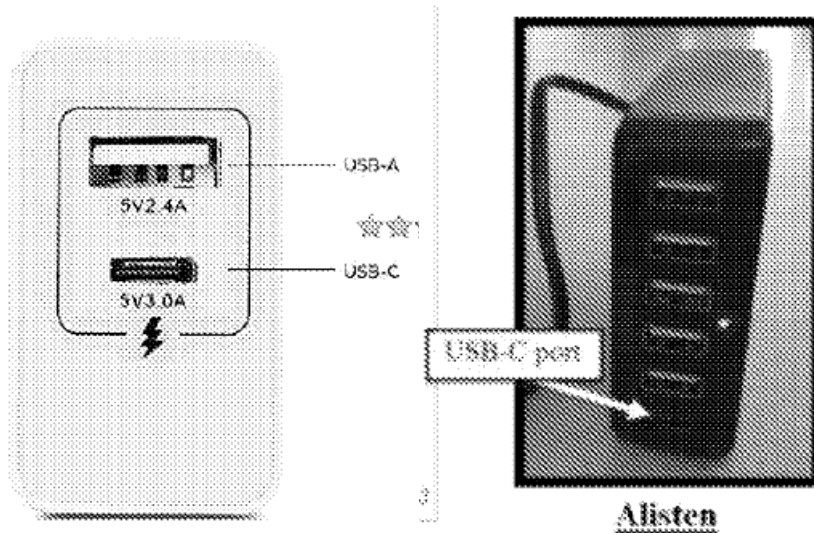
THE REJECTION²

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² A rejection of the claim under 35 U.S.C. § 102(a)(1) was withdrawn on appeal.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. 8.

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. 8–9. Appellant disagrees, arguing that the claimed design is “manifestly and noticeably different in appearance” from the cited references. Appeal Br. 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 which renders the claimed design noticeably different in appearance at the outset. Final Act. 8–9.

The Examiner takes the position that the vertically parallel orientation of the smaller opening with semicircular ends and the larger rectangular shaped opening in the claimed design, versus the horizontally parallel orientation in GMYLE (i.e., a 90° rotational difference), “is not significant enough to warrant a patent for the overall appearance of the claimed design.” *Id.* at 10. In our view, this different orientation and placement or location indeed contributes to the different overall appearance.

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

⁴ 451 F.2d 1094 (CCPA 1971).

Further concerning the difference in appearance that the openings in the claimed design are oriented vertically, whereas the corresponding openings in GMYLE are oriented horizontally, the Examiner takes the position that this difference “is immaterial and an obvious change in the arrangement of well-known features.” Final Act. 10. The Examiner invokes *In re Stevens*⁵ seemingly as standing for the proposition that “[o]bvious changes in arrangement and proportioning are no more patentable in one case than in the other.” *Id.* Appellant counters that the Examiner’s characterization of this difference as “immaterial and an obvious change” amounts to a concession that GMYLE cannot serve as a basic design, i.e., *Rosen*, reference. Appeal Br. 18.

We do not view the *Stevens* decision as announcing a hard and fast rule that all changes in arrangement and proportion between claimed designs and cited references are per se unpatentable advances. *Accord, ATAS International, Inc. v. Centria*, 2013 WL 6114992 (PTAB 2013). Instead, the *Stevens* decision made clear that the differences present there did not result in an overall appearance that was substantially different, and then characterized the changes in proportion as being obvious. *Stevens*, 173 F.2d at 1019. Furthermore, there are no portions of a design which are “immaterial” or “not important.” *In re Blum*, 374 F.2d 904, 907 (CCPA 1967).

In view of the foregoing, we conclude GMYLE is not a *Rosen* reference because its design characteristics are not basically the same as the

⁵ 173 F.2d 1015 (CCPA 1949).

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claimed design, so we do not sustain the rejection of the claim on appeal as being unpatentable over GMYLE and Alisten.

CONCLUSION

In Summary:

Claim(s) 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