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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
29/494,441	06/20/2014	Robertus Christianus Elisabeth Mariet	12437.0099-00000	1063
120423	7590	09/19/2019	EXAMINER	
Google LLC/Finnegan 901 New York Ave., NW Washington, DC 20001			VOORHIES, RACHEL A.	
			ART UNIT	PAPER NUMBER
			2923	
			NOTIFICATION DATE	DELIVERY MODE
			09/19/2019	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte ROBERTUS CHRISTIANUS ELISABETH MARIET
and PATRICK HOFMANN¹

Appeal 2019-001901
Application 29/494,441
Technology Center 2900

Before CHARLES N. GREENHUT, JILL D. HILL, and FREDERICK C.
LANEY, *Administrative Patent Judges*.

HILL, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant appeals under 35 U.S.C. § 134(a) from the Examiner's decision rejecting the single design claim pending in this appeal. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

¹ The briefing identifies Applicant Google Inc. as the real party in interest. Appeal Br. 3.

BACKGROUND

Appellant's invention relates to a display screen for an animated user interface. The claim on appeal is "[t]he ornamental design for a display screen with animated graphical user interface, as shown and described."

REJECTIONS

The claim stands rejected under 35 U.S.C. § 103 as unpatentable over the animation beginning at 34:26 in Genral Graphic's YouTube Tutorial "iOS 7 SDK Tutorial: Expanding Table View Cell Part 1: The Cell," posted November 27, 2013 ("Genral Graphic"), in view of WP Vids' YouTube video "Free WordPress Accordion Menu Plugins," posted March 17, 2014 ("WP Vids"). Final Act. 2.

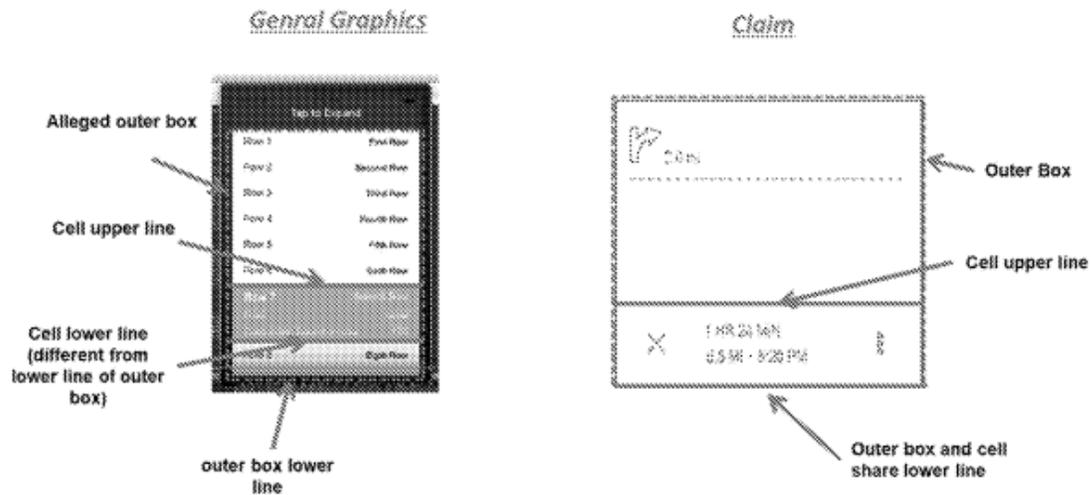
OPINION

The Examiner finds that Genral Graphic has design characteristics that are "basically the same as the claimed design," including a new cell that expands out of a preexisting row in stages and extends upward. Final Act. 2. The Examiner finds that Genral Graphic differs from the claimed design because "[t]he animation beginning at 34:26 starts with eight rows," and "[t]here is no outline around the borders of the table or between the cells." *Id.* at 4. The Examiner finds, however, that WP Vids discloses "[l]imiting the number of rows in a table to two, then adding a third cell between the original two," and "[p]lacing an outline around the borders of the table and between the cells." *Id.* According to the Examiner, Genral Graphic's outer box is "formed by the edge of the display screen." *Id.* at 6.

According to Appellant, "[t]he claimed design includes an outer box . . . and a first cell within the outer box, . . . the bottom line of the first cell

coincid[ing] with the bottom line of the outer box.” Appeal Br. 15.

Appellant contends, *inter alia*, that “*Genral Graphics* shows a user interface for a mobile device consisting of 8 rows in a table” that “occupies the entirety of a simulated mobile device screen and additional cells appear below a selected row.” Appeal Br. 10. According to Appellant, “[t]he Examiner appears to equate ‘row 7’ of *Genral Graphics* [to] the claimed first cell,” but “‘row 7’ is defined independently from the outer box,” such that the bottom of row 7 “does not coincide with the lower line of [its] outer box.” Appeal Br. 16 (citing Final Act. 3). Appellant provides an annotated comparison of *Genral Graphics* and the claimed design, which fairly represents the Examiner’s selected screen shot of *Genral Graphics*’ animated graphical user interface.



Portion of *Genral Graphics*, annotated (left) ; Claimed design Fig. 1, annotated (right)

Id.

To support a holding of non-obviousness, “[t]hus there must be a reference, a something in existence, the design characteristics of which are

basically the same as the claimed design.” *In re Rosen*, 673 F2d 388, 391 (CCPA 1982).

Appellant’s claim can be properly construed as a display screen with an animated graphical user interface defined by an outer rectangular box with the bottom and top walls of the outer box appearing to have slightly greater length than the side walls of the box (creating a square to very slightly landscape orientation impression), and a line running parallel to the bottom wall of the box to define an expandable cell between the line and the bottom wall of the box. The line is present, and retains the same spacing from the bottom wall, before and after expansion,

We agree with the Examiner that Genral Graphic’s outer box is “formed by the edge of the display screen.” Final Act. 6. So defining Genral Graphic’s outer box, Genral Graphic discloses as a display screen with an animated graphical user interface defined by an outer rectangular box with the bottom and top walls of the outer box appearing to have visibly differing length than the side walls of the box, creating a portrait orientation impression. A line runs parallel to the bottom wall of the box only after expansion of a cell that is not defined prior to expansion. After expansion, Genral Graphic’s cell is not defined by the bottom of its outer box. Thus, at no point does Genral Graphics’ user interface include a cell at the bottom of the outer box that has a bottom defined by a bottom wall of the box.

Given these visual differences, we disagree with the Examiner’s finding that Genral Graphic has design characteristics that are “basically the same as the claimed design” (Final Act. 2). Considering Appellant’s annotated side-by-side comparison of the designs, and the differences between Appellant’s claimed design and Genral Graphic’s design that we

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enumerate above, Genral Graphic does not support a holding of obviousness, because it is not “a something in existence, the design characteristics of which are basically the same as the claimed design.” *In re Rosen*, 673 F2d 388, 391 (CCPA 1982).

DECISION

We REVERSE the obviousness rejection of the claim.

REVERSED