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EXAMINER

SHIELDS, RHEA M

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte ANASTASSIADES MICHAEL

Appeal 2019–002407
Application 35/500,409
Technology Center 2900

Before KEN B. BARRETT, JILL D. HILL, and CYNTHIA L. MURPHY,
Administrative Patent Judges.

HILL, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant appeals from the Examiner’s decision to reject the single design claim pending in this appeal.¹ We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

¹ We use the word Appellant to refer to “applicant” as defined in 37 C.F.R. § 1.42. Appellant identifies FLOS S.p.A. as the real party in interest. Appeal Br. 3.

BACKGROUND

The claim on appeal is “[t]he ornamental design for a table lamp as shown and described.” Spec. 2.

REFERENCES

The prior art relied upon by the Examiner is:

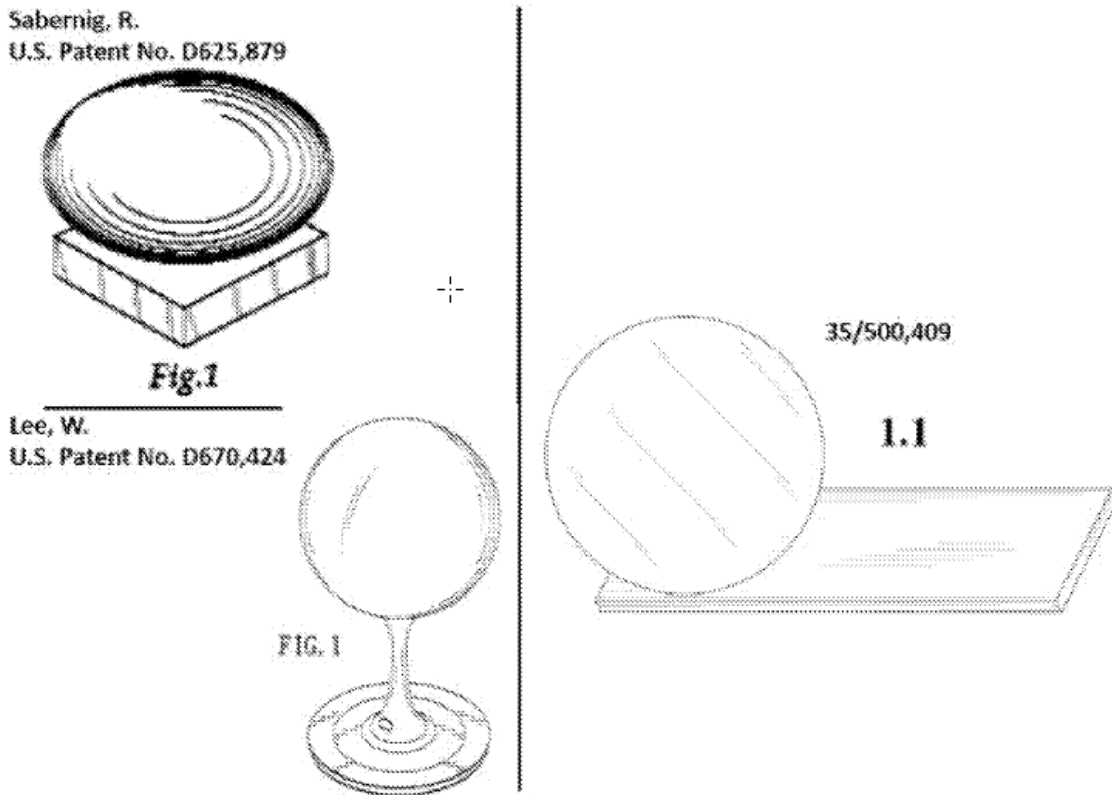
Name	Reference	Date
Sabernig	US D625,879 S	Oct. 19, 2010
Lee	US D670,424 S	Nov. 6, 2012

REJECTION

The claim stands rejected under 35 U.S.C. § 103(a) as obvious over Sabernig and Lee.

OPINION

The Examiner provides the following annotated illustration that affords a visual comparison of figures from the claimed design (right), Sabernig (top left), and Lee (bottom left).



Final Act. 3.

The Examiner construes the claimed design as “a light sphere or ball placed off center on top of a short rectangle platform.” Final Act. 3. The Examiner then finds that “Sabernig Fig. 1 shows a slightly elongated ball placed off center on top of a slightly taller square platform; having a design characteristic which is basically the same as that of the claimed design.” *Id.* According to the Examiner, “[t]he claimed design differs from Fig. 1 of Sabernig in that the claimed design discloses a *sphere* placed off center on top of a shorter *rectangle* platform.” *Id.* The Examiner finds, however, that Lee discloses a spherical light, and concludes that it would have been obvious to replace Sabernig’s elongated ball with Lee’s spherical ball “because the mere difference in geometric shape cannot add novelty to a new design nor detract from the teaching of the prior art.” *Id.* at 3–4

(citation omitted). The Examiner further concludes that it would have been obvious to modify the combined teachings of Sabernig and Lee to have “a shorter rectangle platform for the off center placed sphere because the mere difference in dimension cannot add novelty to a new design nor detract from the teaching of the prior art.” *Id.* at 4 (citation omitted). The Examiner continues that “[d]e minimis differences are not a matter of skill. They are insignificant in determining patentable distinction.” *Id.*

Appellant construes the claimed design as “a table lamp having a vertically disposed elongated, rectangular, support element on which a spherical light element is off-centered within the four edges of the support element, the light element being off-centered on a vertical side of the support element.” Appeal Br. 14. Appellant argues, *inter alia*, that Sabernig’s light fixture includes “a distinctive centered squat, elliptical light fixture supported on top of a . . . square base,” such that Sabernig’s light element is not “positioned on an edge of the base as in the present claim.” *Id.* Thus, Appellant argues, Sabernig’s centered ball cannot be considered “off center” as found by the Examiner. *Id.*; Final Act. 3². Further, according to Appellant, “the lamp of Lee is also centered on its base.” *Id.* at 15.

Appellant then argues that the Examiner’s reasoning, that a difference in dimension or geometric shape is obvious (Final Act. 3–4), “fails to provide any reasoning or rationale as to why one skilled in the art would change the design as shown in Sabernig (or Lee) of a centered base to an off-center base.” *Id.* at 16. According to Appellant, the Examiner fails to explain why a designer would modify Sabernig, Lee, or the combination

² The Examiner appears to agree that Sabernig’s ball is centered on its base. Ans. 5 (“centered (revised) on a taller square platform”).

thereof to make the ball off center on the base, “which is related to the orientation of the light in relation to the base, not a mere difference in dimension.” *Id.*

Appellant has the better argument. The ball of Sabernig is centered on its square base. Likewise, the ball of Lee is centered on its base. It would seem to us, then, that the result of combining Sabernig and Lee would be a ball centered on Sabernig’s square base. Even if it were true, in this case, that a mere difference in geometric shape, such as the base being square versus rectangular, cannot add novelty to the design, the difference between the Examiner’s proposed combination and the claimed design is not limited to simply a square versus a rectangle. Even if it was obvious to replace Sabernig’s square base with a rectangular base in the proposed combination, the result would intuitively be a spherical ball *centered on* the rectangular base. The Examiner has not provide a reasoning, supported by a rational basis, why a designer would place the spherical ball off center on the rectangular base as in the claimed design. For this reason, we do not sustain the rejection.

DECISION SUMMARY

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1	103(a)	Sabernig and Lee		1

REVERSED