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35/500,407	10/01/2015	MICHAEL ANASTASSIADES	221005-1790	7685
24504	7590	10/26/2020	EXAMINER	
THOMAS   HORSTEMEYER, LLP 3200 WINDY HILL ROAD, SE SUITE 1600E ATLANTA, GA 30339			SHIELDS, RHEA M	
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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* MICHAEL ANASTASSIADES

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Appeal 2019-002498  
Application 35/500,407  
Technology Center 2900

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Before JOHN C. KERINS, JILL D. HILL, and GEORGE R. HOSKINS,  
*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.<sup>1</sup> We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

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<sup>1</sup> 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:

<b>Name</b>	<b>Reference</b>	<b>Date</b>
Sabernig	US D625,879 S	October 19, 2010
Lee	US D670,424 S	November 6, 2012

## REJECTION

The claim stands rejected under 35 U.S.C. § 103(a) as obvious over Sabernig and Lee. Final Act. 2.

## 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).

Sabernig, R.  
U.S. Patent No. D625,879

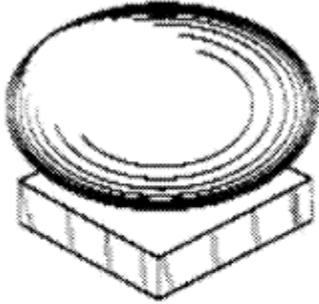


Fig. 1

Lee, W.  
U.S. Patent No. D670,424

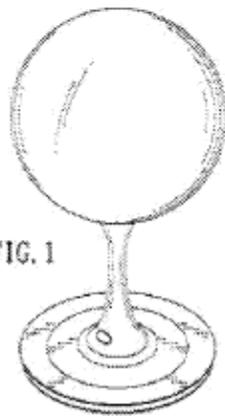
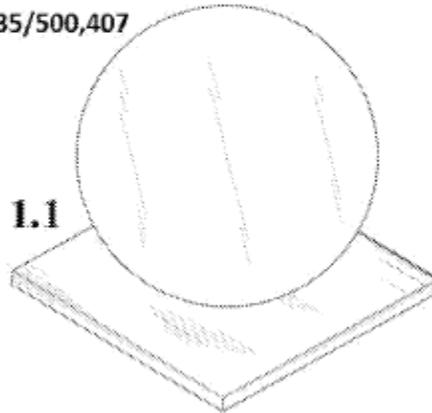


FIG. 1

35/500,407



1.1

Final Act. 3.

The Examiner construes the claimed design as “a light sphere or ball placed off center on top of a short square platform.” Final Act. 3 (emphasis omitted). 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.* The Examiner further finds that the claimed design differs from Sabernig in having a sphere on top of the platform. *Id.* The Examiner finds, however, that Lee discloses a spherical ball 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 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 square 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.* (citation omitted).

Appellant construes the claimed design as “a table lamp having a vertically disposed square support element on which a spherical light element is centered within the four edges of the support element, the light element being centered *within a vertical side of the support element.*” Appeal Br. 14 (emphasis added). Appellant argues, *inter alia*, that Sabernig’s squat light element and Lee’s spherical light element each extend beyond the edges of their respective bases, which would prohibit its base, and thus the lamp, from being vertically positioned. *Id.* at 14–15.

The Examiner responds that “since Lee is a sphere the side of Lee would not extend beyond the edges of the platform of Sabernig.” Ans. 9.

Here, Appellant has the better argument. While Sabernig and Lee could, indeed, be combined to create a spherical light element on a square base, we disagree with the Examiner’s determination that the light element, simply by virtue of being spherical, would not extend beyond the edges of the platform. There is simply no evidence to support this determination. *See, e.g.*, Lee, Figs. 4 and 7 (left side and bottom views of Lee’s lamp, in which the spherical light element is seen to extend beyond the edges of the platform); *id.* at Fig. 6 (top view of Lee’s lamp, in which the platform cannot be seen underneath the spherical light element). Because the light elements of both Sabernig and Lee extend beyond their respective bases, we agree

with Appellant that the resulting combination would more logically also extend beyond the bases.

The Examiner also concludes that “mere differences in circumference” are de minimis, insignificant, and immaterial when assessing patentability here. Final Act. 4; Ans. 9 (“While the sphere in the claimed design may rest within the edges of the base this difference in proportion of the sphere with comparison to its base is de minimis.”). We disagree. Given the simple forms of the respective designs presented by Appellant’s claim, Sabernig, and Lee, we determine that the relative size of the light element versus the base is a significant feature, not a de minimis feature, of the overall appearance of each design.

Lacking evidence or reasoning why a skilled artisan would design a lamp without the spherical light element overhanging the base, we do not sustain the rejection.

#### DECISION SUMMARY

In summary:

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

REVERSED