

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today
(1) was not written for publication in a law journal and
(2) is not binding precedent of the Board.

Paper No. 9

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte CLIFFORD T. CALFEE

Appeal No. 2000-1348
Application No. 29/092,024

ON BRIEF

Before STAAB, KRATZ, and DIXON, *Administrative Patent Judges*.

STAAB, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on an appeal from the examiner's final
rejection of the following design claim:

The ornamental design for a document holder as shown
and described.

The ornamental design is characterized by a substantially
rectangular upstanding panel having a pair of vertically

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extending slots therein, and a smaller horizontal ledge extending outwardly from a bottom edge of the upstanding panel.

The references of record relied upon by the examiner in support of a rejection under 35 U.S.C. § 103 are:

Nagley 1982	Des. 262,978	Feb. 9,
Stadtmauer 1995	5,443,237	Aug. 22,

The claim stands rejected under 35 U.S.C. § 103 as being unpatentable over Stadtmauer in view of Nagley.

The examiner considers that the ornamental design of Stadtmauer's document holder 25 is substantially the same as the claimed design, and that Nagley shows a copy holder made from transparent material. Based on these findings, the examiner concludes that it would have been obvious to a designer of ordinary skill "to modify the document holder of Stadtmauer so as to be made of the transparent material as suggested by Nagley" (answer, page 3). The examiner recognizes that the modified ornamental design of Stadtmauer would differ from appellant's design in certain respects, in particular in the appearance of the vertically extending slots

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in the upstanding panel. The examiner considers, however,
that any such differences

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are insufficiently significant to support patentability under section 103(a) since the difference[s] between [the] claimed design and [the] basic reference [are] minor when considering the overall appearance of . . . [the claimed design] as a whole.
[Answer, page 4.]

Appellant argues that the slots in the claimed design differ

from those of the modified Stadtmauer design such that appellant's slots

produce a significant visual effect that clearly distinguish and contribute to the distinctive appearance, as a whole, of the . . . [claimed design]. The nested slot arrangement stands out as a distinctive visual feature in the design as a whole because [appellant's] document holder is otherwise very simple and plain. Such a noticeable difference cannot simply be dismissed as slight or subtle or minor or *de minimis*.
[Brief, page 7.]

Appellant concludes on page 9 of the brief that "those features" [i.e., the visual effects attributable to the slots] convey a distinct visual impression which is novel and which would not have been obvious to the designer of ordinary skill who designs article of the type involved.¹

¹We appreciate that appellant's design differs from that of Stadtmauer in other respects. See, for example, the

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Like appellant, we consider the claimed ornamental design to be rather plain in appearance. One of the predominate visual features of the claimed design is the vertical slot configuration provided in the upstanding panel. This slot configuration is aptly described by appellant's counsel as being a "relatively narrow slot that is centered within and inset from a wider slot by a marginal flange, as shown in FIGURE 1 and FIGURE 5" (brief, page 4). The resulting appearance when viewed from the front (figure 5), the back (figure 6), and from various angles (see, for example, the perspective views of figures 1 and 7) is one of a relatively narrow slot floating within and inset from a relatively wider slot. Turning to Stadtmauer's figures 2 and 7, we see that the slots 25a formed in the upstanding panel 25 are of uniform shape throughout their penetration of the panel, except perhaps for a vertically extending flange that appears to be

flanged vertically extending edges of the upstanding panel. However, in that appellant does not argue these differences as patentably distinguishing over the references, we will not consider them in deciding the obviousness issues raised in this appeal.

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present adjacent the outer edges of the innermost slots (see Stadtmauer's figure 7). The prevailing appearance in Stadtmauer is one of uniform slots extending through and confined within front and back surfaces of the panel 25. Based on the relative simplicity of the claimed design as a whole, and the distinctive visual effect of appellant's slots as compared to the visual effect of Stadtmauer's slots, the examiner's conclusion that the visual effect of the more complex slot construction of appellant's design is insignificant and minor such that the claimed design and the modified Stadtmauer design would be viewed by the ordinarily skilled designer as being mere manifestations of the same design is not well taken in the absence of some evidence to support the examiner's position. In that no other reference evidence has been cited by the examiner to support this position, the examiner has failed to provide a sufficient factual basis to support a conclusion of obviousness. See *In re Warner*, 379 F.2d 1011, 1017, 154 USPQ 173, 178 (CCPA 1967), *cert. denied*, 389 U.S. 1057 (1968).

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The decision of the examiner is reversed.

REVERSED

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LAWRENCE J. STAAB)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
PETER F. KRATZ))
Administrative Patent Judge)	APPEALS AND
)	
)	INTERFERENCES
)	
JOSEPH L. DIXON)	
Administrative Patent Judge)	

LJS:hh

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