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EXAMINER

VINE, ANA MARIA

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte XI CHEN and KOHEI MOROTOMI

Appeal 2024-000640
Application 29/798,750
Technology Center 2900

Before DANIEL S. SONG, GRACE KARAFFA OBERMANN, and
BRENT M. DOUGAL, *Administrative Patent Judges*.

SONG, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

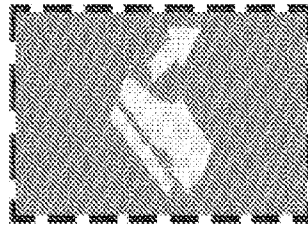
Pursuant to 35 U.S.C. § 134(a), the Appellant¹ appeals from the Examiner's decision to reject the claimed design. *See* Final Act. 1. We have jurisdiction under 35 U.S.C. § 6(b).

We reverse.

¹ “Appellant” refers to “applicant” as defined in 37 C.F.R. § 1.42. The Appellant identifies the real party in interest as Toyota Jidosha Kabushiki Kaisha. Appeal Br. 3.

CLAIMED SUBJECT MATTER

The claimed design is directed to a “DISPLAY SCREEN OR PORTION THEREOF WITH GRAPHICAL USER INTERFACE.” Appeal Br. 3. The sole figure of the claimed design is reproduced below:



The above figure depicts a shaded rectangular box with its boundary in dashed lines and, within the box, a lightened depiction of an outline of a shoe slightly above a narrow rectangle that is angled upwardly to the left and a slightly curved arrow above the toe of the shoe, the arrow pointing diagonally upward and toward the right.

REFERENCES

The Examiner relies on the following references to reject the claims:

Name	Reference	Date
Mazda	Mazda 6 Owners Manual: Electric Parking Brake (https://www.mazda6info.net/electric_parking_brake-216.html)	Dec. 18, 2016
Cadillac	Cadillac Escalade: Adjustable Throttle and Brake Pedal (https://www.fsuvs.com/adjustable_throttle_and_brake_pedal-966.html)	Oct. 30, 2020
Black Arrows	“Black arrows. Curved signs stock illustration” (https://www.istockphoto.com/vector/black-arrows-curved-signs-gm1050385984-280873451?phrase=curved arrow)	Sept. 1, 2022

REJECTION

The Examiner maintains the following rejections:

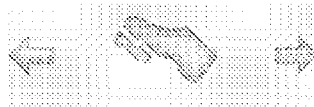
Claim(s) Rejected	35 U.S.C. §	Reference(s)/ Basis
1	103	Cadillac, Mazda, Black Arrows
1	103	Mazda, Cadillac, Black Arrows

OPINION

The Examiner rejects the claimed design under 35 U.S.C. § 103 as unpatentable finding that:

The design of Cadillac has basically the same design characteristics as the claimed design, in that both designs disclose a similar shaped shoe, a thick line of similar weight underneath the shoe, a gap between the shoe and the thick line of similar weight, and a rightward pointing arrow to the right of the shoe.

Final Act. 2–3. The Examiner determines that “[t]he claimed design is different from the design of Cadillac in that the arrow is curved and arranged diagonally above the shoe, and the thick line below the shoe is slightly more elongated.” Final Act. 3. The relevant portion of Cadillac is reproduced below:



The portion of Cadillac reproduced above shows a shoe with a shaded rectangular box and, within the box, a darker shaded depiction of a shoe slightly above a narrow rectangle that is angled upwardly to the left, one horizontal arrow pointing toward the right, and one horizontal arrow pointing toward the left.

The Examiner also makes similar findings with respect to Mazda, determining that in Mazda, “one arrow [is] arranged above the toe portion of

the shoe” and that “[t]he claimed design is different from the design of Mazda in that the pedal does not have an intersecting line and the arrow is slightly curved and points away from the icon.” Final Act. 3. The relevant portion of Mazda is reproduced below:



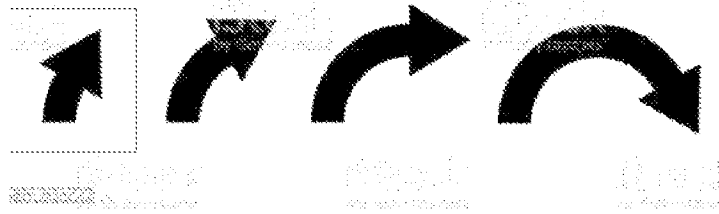
The portion of Mazda reproduced above shows a shoe slightly above an angled T-shaped design, and one arrow pointing downwardly at a slight angle near toward the toe of the shoe.

The Examiner relies on Black Arrows for disclosing “a rounded arrow pointing away” and concludes that:

It would have been obvious to modify Cadillac by elongating the pedal and placing the arrow above the toe box of the shoe, as seen in Mazda, or to modify Mazda by using the shoe icon seen in Cadillac, and by pointing the arrow away and rounding it, as taught by Black Arrows.

Final Act. 3–4.² According to the Examiner, Black Arrows is “so related in that it shows a range of arrow icon types” and “[t]he differences between the claimed design and the prior art are such that the claimed design as a whole would have been obvious.” Final Act. 4. The relevant portion of Black Arrows is reproduced below:

² Hence it is clear that the Examiner applies two different rejections to the claimed design, namely: (1) Cadillac in view of Mazda and Black Arrows, and (2) Mazda in view of Cadillac and Black Arrows. Final Act. 4.



The portion of Black Arrows reproduced above shows four different arrows that are arched to the right and are of different lengths, the left-most arrow being short and generally pointing upward while the right-most arrow being long and forming a semi-circle.

The Appellant argues that Cadillac is not a proper *Rosen* reference because in Cadillac: there are only straight arrows pointed to the left and right at the left and right sides; there is no curved arrow leading away from the shoe toe; the pedal is substantially less long; the shoe toe and heel portions are different than in the claimed design; elements have an outer darker outline than the inner gradient shading that fades in the center; and has a light background instead of a dark background as in the claimed design. Appeal Br. 13. The Examiner disagrees and responds that both the claimed design and Cadillac disclose, *inter alia*, “a rightward pointing arrow” and that “taken as a whole, Cadillac is a valid primary reference that has basically the same design characteristics and an appearance that is substantially the same as the claimed design.” Ans. 4.

The Appellant also argues that Mazda is not a proper *Rosen* reference because in Mazda: the straight arrow points downward into the shoe toe; the line below the shoe does not extend as far toward the heel; there is a perpendicular lower line opposite the downwardly pointing arrow; shoe toe and heel portions are shaped differently; and all elements are solid black on a white background instead of a dark background as in the claimed design.

Appeal Br. 14. The Examiner again disagrees and responds that the claimed design and Mazda are similar and that “[t]he presence of an intersecting line underneath the pedal does not disqualify Mazda as a primary reference.”

Ans. 6.

As evident from the above, the Examiner’s rejection and the Appellant’s arguments are generally based on the obviousness analysis as set forth in *In re Rosen* and its progeny, i.e., are based on the *Rosen-Durling* test. *In re Rosen*, 673 F.2d 388 (CCPA 1982); *Durling v. Spectrum Furniture Co., Inc.*, 101 F.3d 100, 103 (Fed. Cir. 1996). However, subsequent to the rejection and briefing in the present appeal, the Federal Circuit held that the *Rosen-Durling* test for evaluating obviousness in designs was too rigid, and that obviousness should be analyzed applying the framework set forth in *Graham v. John Deere Co. LKQ Corp. v. GM Global Tech. Operations LLC*, 102 F.4th 1280, 1292–95 (Fed. Cir. 2024) (en banc) (citing *Graham v. Deere*, 383 U.S. 1 (1966)). Thus, the new framework as articulated in *LKQ* applies in the present appeal.

Pursuant to *LKQ*, the obviousness inquiry asks “whether an ordinary designer in the field to which the claimed design pertains would have been motivated to modify the prior art design ‘to create the same overall visual appearance as the claimed design.’” *LKQ*, 102 F.4th at 1299 (quoting *Campbell Soup, Co. v. Gamon Plus, Inc.*, 10 F.4th 1268, 1275 (Fed. Cir. 2021)). “[T]he motivation to combine . . . need not come from the references themselves,” “[b]ut there must be some record-supported reason (without hindsight) that an ordinary designer in the field of the article of manufacture would have modified the primary reference with the feature(s) from the secondary reference(s) to create the same overall appearance as the

claimed design.” *Id.* Factors to consider in this regard include an ordinarily skilled designer’s experience and creativity; market demands and industry customs in the relevant field; and which ornamental features are commonplace in the relevant field. *See id.* For the reasons discussed below, we find the Examiner’s rejections insufficient to support the conclusion of obviousness.

Cadillac in view of Mazda and Black Arrow

To adequately support the rejection, the Examiner must provide “some record-supported reason (without hindsight) that an ordinary designer in the field of the article of manufacture would have modified” the design of Cadillac to provide a slightly curved arrow above the toe of the shoe, the arrow pointing diagonally upward and toward the right. *LKQ*, 102 F.4th at 1299. As the Appellant points out, Cadillac merely “includes left and right arrows,” and we observe that both of these arrows are horizontally oriented. Reply Br. 19. In addition, as the Appellant further argues, Mazda’s arrow points downward in an opposite direction as the claimed design. Reply Br. 18.

The Examiner explains that “Cadillac already shows the rightward arrow pointing away from the shoe so when placed above the toe box, the arrow would still be pointing away similarly to the claimed design.” Ans. 7; *see also id.* at 8 (“Cadillac also shows having a straight arrow pointing away from the shoe. . . . The direction of the arrow, pointing away from the shoe, is additionally reinforced by the arrow pointing away from the shoe in Cadillac”). However, notwithstanding the fact that Cadillac’s arrow is spaced significantly away from the shoe such that its association with the

shoe (much less the toe) is attenuated, we disagree with the Examiner's apparent position that Cadillac's teaching of arrows pointing away from the shoe can be disassociated with the direction in which these arrows actually point, namely, in horizontal directions.

The Examiner has relied on Mazda for positioning an arrow at the toe of the shoe and relied on Black Arrows for disclosing a slightly curved arrow pointing diagonally upward and toward the right, and seemingly, also for disclosing an arrow that points "away." Final Act. 3. However, as the Appellant argues, "comparison of the claimed design to Mazda fails to describe the directional orientations of the arrows, in that the two designs depict the arrows in opposite directions." Appeal Br. 10. In particular, Mazda's arrow points in a direction that is opposite to that of the claimed design. It is not clear where the Examiner and the record sufficiently establishes a reason why a designer of ordinary skill in the art would have modified the design of Cadillac to incorporate a slightly curved arrow above the toe of the shoe, wherein the arrow points diagonally upward, which is in an opposite direction of Mazda's arrow, and toward the right. Although the Examiner asserted that "Cadillac already shows the rightward arrow pointing away from the shoe," this determination based on a horizontally pointing arrow is deficient for the reason discussed above. Ans. 7.

As to the reasoning for applying Black Arrows for the design of the arrow, all that we are provided for in the record is that Black Arrows is "pointing away" and that it is "so related in that it shows a range of arrow icon types." Final Act. 3, 4. It is unclear how Black Arrows in isolation is "pointing away" and how or why the disclosed arrow would motivate a

designer of ordinary skill to change the Mazda's arrow to point in the opposite direction when applied to Cadillac.

Mazda in view of Cadillac and Black Arrows

The Examiner's rejection of the claimed design based on Mazda in view of Cadillac and Black Arrows is also deficient for similar reasons discussed above in that the Examiner does not sufficiently explain, nor the record sufficiently establish, why a designer of ordinary skill in the art would have modified the design of Mazda to modify its arrow so that it is slightly curved and points diagonally upward and toward the right in an opposite direction to that of Mazda. We again note that the horizontal arrows of Cadillac are insufficient to provide such motivation, and the Examiner's application of Black Arrows does not remedy that deficiency.

Disposition of the Rejections

Therefore, in view of the above considerations, we reverse the Examiner's rejections of the claimed design based on Cadillac in view of Mazda and Black Arrows, and on Mazda in view of Cadillac and Black Arrows. The Appellant's further arguments asserting that the suggested combination still fails to result in the claimed design, and the Examiner's response that such differences are obvious and/or *de minimis*, are moot. Appeal Br. 9–10, 14–17; Ans. 5; Reply Br. 15, 18. In addition, the Appellant's arguments regarding the differing intended purpose of the claimed design to those of Cadillac and Mazda, and the Examiner's responses thereto, are also moot. Appeal Br. 16; Ans. 9, 12; Reply Br. 13–14, 19. Furthermore, the Appellant's arguments asserting that the applied

prior art are not analogous art, while pertinent to the *LKQ* analysis, is nonetheless moot in view of the above. Reply Br. 2, 6–12.

CONCLUSION

The Examiner’s rejections are reversed.

DECISION SUMMARY

The following table summarizes our decision:

Claim Rejected	35 U.S.C. §	Reference(s)/ Basis	Affirmed	Reversed
1	103	Cadillac, Mazda, Black Arrows		1
1	103	Mazda, Cadillac, Black Arrows		1
Overall Outcome				1

REVERSED