

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

DORMAN PRODUCTS, INC.,
Petitioner,

v.

PACCAR, INC.,
Patent Owner.

Case IPR2014-00555
Patent D526,429 S

Before JAMES T. MOORE, PHILLIP J. KAUFFMAN,
and PHILIP J. HOFFMANN, *Administrative Patent Judges*.

HOFFMANN, *Administrative Patent Judge*.

DECISION
Denying Institution of *Inter Partes* Review
37 C.F.R. § 42.108

I. INTRODUCTION

Petitioner, Dorman Products, Inc., seeks review of the sole claim of U.S. Patent No. D526,429 S (Ex. 1001, “the ’429 patent”). *See* Paper 1 (“Pet.”). Patent Owner, PACCAR, Inc., contends that Petitioner’s request should be denied. *See* Paper 9 (“Prelim. Resp.”). As detailed in the following opinion, Petitioner has not established a reasonable likelihood of prevailing on the claim challenged. *See* 35 U.S.C. § 314; 37 C.F.R. § 42.108. Consequently, we do not institute an *inter partes* review.

A. *Related Proceeding*

Petitioner identifies, as a related proceeding, co-pending case, *Dorman Products Inc. v. PACCAR, Inc.*, Civil Action No. 2:13-cv-06383-JD (E.D. Pa.). Pet. 2–3; *see* Ex. 1002.

B. *The ’429 Patent and Claim*

In an *inter partes* review, “[a] claim in an unexpired patent shall be given its broadest reasonable construction in light of the specification of the patent in which it appears.” 37 C.F.R. § 42.100(b). With regard to design patents, it is well-settled that a design is represented better by an illustration than a description. *Egyptian Goddess, Inc. v. Swisa, Inc.*, 543 F.3d 665, 679 (Fed. Cir. 2008) (en banc) (citing *Dobson v. Dornan*, 118 U.S. 10, 14 (1886)). Although preferably a design patent claim is not construed by providing a detailed verbal description, it may be “helpful to point out . . . various features of the claimed design as they relate to the . . . prior art.” *Egyptian Goddess*, 543 F.3d at 679–80; *cf. High Point Design LLC v. Buyers Direct, Inc.*, 730 F.3d 1301, 1314–15 (Fed. Cir. 2013) (remanding to district

court, in part, for a “verbal description of the claimed design to evoke a visual image consonant with that design.”).

The ’429 patent is entitled, “Surface Configuration of Truck Headlamp,” and the claim recites “[t]he ornamental design for a surface configure of truck headlamp, as shown and described.” Ex. 1001, 1. The first embodiment, depicted in Figures 1–7, is a left side truck headlamp (the driver’s side in North American vehicles), and the second embodiment, depicted in Figures 8–14, is a right side truck headlamp (the passenger’s side in North American vehicles). *See* Ex. 1001, 1; Prelim. Resp. 4. Broken lines in the Figures form no part of the claimed design. Ex. 1001, 1.

The parties use substantially the same nomenclature for the elements of the headlamp.¹ We utilize the nomenclature provided by Patent Owner because it names more of the claimed elements. *See, e.g.*, Pet. 17–18; Prelim. Resp. 6. Figure 9 of the ’429 patent follows:

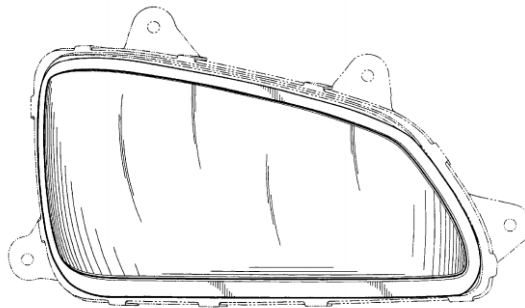


Fig.9.

Figure 9 is a front elevation view of a second embodiment of a truck headlamp (the right or passenger side), and includes a frame and a bezel surrounding a lens. Ex. 1001, 1 (Figure description); Prelim. Resp. 28 (description).

¹ Nomenclature of elements is not provided in the ’429 patent itself.

The parties acknowledge, and we agree, that the focus of an obviousness inquiry is the visual impression of the claimed design as a whole. *See* Pet. 12–14; Prelim. Resp. 28; *High Point Design*, 730 F.3d at 1312 (citing *Durling v. Spectrum Furniture Co.*, 101 F.3d 100, 103 (Fed. Cir. 1996)). The parties disagree with regard to whether functional elements of the design form part of the claim. Petitioner asserts that the design feature of a given embodiment cannot be the result of functional or mechanical considerations, and therefore the functional elements² of the headlamp of the ’429 patent do not form part of the claim. Pet. 14–17; *see also* Pet. 18–35 (arguing that the curved bezel is a functional feature). Patent Owner argues that whether or not these elements are functional, they still must be considered and construed as part of the visual impression created by the patented design as a whole. Prelim. Resp. 28–29. For the reasons that follow, we agree with Patent Owner.

Petitioner conflates invalidity based on functionality under 35 U.S.C. § 171 with invalidity based on obviousness under 35 U.S.C. § 103. An ornamental design for an article of manufacture may not be patented if that design is “primarily functional” rather than “primarily ornamental.” *See* 35 U.S.C. § 171; *High Point Design*, 730 F.3d at 1315. If a design is dictated by the utilitarian purpose of the article, it is not “primarily ornamental” and may be declared invalid under 35 U.S.C. § 171. *High Point Design*, 730 F.3d at 1315. Beyond the requirement that the design be “primarily ornamental,” § 171 incorporates the requirement of nonobviousness under § 103 by reciting that an ornamental design must meet the “conditions and

² Petitioner identifies the following as functional elements: the headlamp’s shape (trapezoidal or cat eye), and the curved bezel. Pet. 12.

requirements” of title 35. Therefore, as the Federal Circuit acknowledged in *High Point Design*, whether a design patent is “primarily ornamental” is an inquiry that is distinct from the nonobviousness requirement. *High Point Design*, 730 F.3d at 1311–17 (separately addressing invalidity based on functionality under 35 U.S.C. § 171 and invalidity based on obviousness under 35 U.S.C. § 103). Further, a challenge based on functionality under 35 U.S.C. § 171 is not permitted in an *inter partes* review because it is not based on 35 U.S.C. § 103 nor is it based on prior art that consists of a patent or printed publication. 35 U.S.C. § 311(b); 37 C.F.R. § 42.105(b)(2).

Therefore, we agree with Patent Owner that the allegedly functional elements identified by Petitioner (Pet. 12) must be considered in an obviousness analysis of the visual impression created by the patented design as a whole (Prelim. Resp. 28–29). We further analyze the ’429 patent’s claimed design through comparison to the primary references in section II.B. below.

C. *Prior Art Relied Upon*

Petitioner’s challenge relies upon the following items of asserted prior art:

Ex. 1005	Kenworth T600 Brochure	1996
Ex. 1006	Kenworth T600A Brochure	1991
Ex. 1007	Kenworth T660 Brochure	2007
Ex. 1009	US D498,859 S to Kobayashi	Nov. 23, 2004
Ex. 1010	US Des. 426,905 to Cook	June 20, 2000
Ex. 1011	US Des. 421,817 to Tucker	Mar. 21, 2000
Ex. 1012	Chrysler Town and Country Brochure	2001
Ex. 1013	Chrysler Sebring Convertible Brochure	2001
Ex. 1014	Chrysler Brochure	1999

Ex. 1015	Chrysler Eagle Brochure	1995
Ex. 1016	Chrysler PT Cruiser Brochure	2001

D. Asserted Grounds

Petitioner asserts that the claim of the '429 patent is unpatentable based upon the following grounds under 35 U.S.C. § 103:

References
Kobayashi, Cook, and the functionality of the curved bezel ³
Tucker, Cook, and the functionality of the curved bezel
The Chrysler Sebring Convertible Brochure, Cook, and the functionality of the curved bezel
Cook, Kobayashi, and the functionality of the curved bezel

II. ANALYSIS

A. Principles of Law

In a challenge to a design patent based upon obviousness under 35 U.S.C. § 103, the ultimate inquiry is “whether the claimed design would have been obvious to a designer of ordinary skill who designs articles of the type involved.” *Apple, Inc. v. Samsung Elecs. Co.*, 678 F.3d 1314, 1329 (Fed. Cir. 2012) (quoting *Durling*, 101 F.3d at 103). Here, the parties agree that the relevant designer of ordinary skill is “someone with a background and training in vehicle headlight designs and who is presumed to have knowledge of the prior art relevant to vehicle headlight designs.” Pet. 13; Prelim. Resp. 19.

³ In each asserted ground of unpatentability, Petitioner relies on Exs. 1005–1007 and 1012–1016 in an attempt to demonstrate that the curved bezel is functional. See Pet. 20–26, 28–35, 37–43, 46–52.

This obviousness inquiry consists of two steps. *Apple*, 678 F.3d at 1329. In the first step, a primary reference (sometimes referred to as a “*Rosen* reference”) must be found, “the design characteristics of which are basically the same as the claimed design.” *Id.* (quoting *In re Rosen*, 673 F.2d 388, 391 (CCPA 1982)). This first step is itself a two-part inquiry under which “a court must both ‘(1) discern the correct visual impression created by the patented design as a whole; and (2) determine whether there is a single reference that creates ‘basically the same’ visual impression.’” *High Point Design*, 730 F.3d at 1311–12 (quoting *Durling*, 101 F.3d at 103).

In the second step, the primary reference may be modified by one or more secondary references “to create a design that has the same overall visual appearance as the claimed design.” *Id.* at 1311. However, the “secondary references may only be used to modify the primary reference if they are ‘so related [to the primary reference] that the appearance of certain ornamental features in one would suggest the application of those features to the other.’” *Durling*, 101 F.3d at 103 (quoting *In re Borden*, 90 F.3d 1570, 1575 (Fed. Cir. 1996)).

B. Primary References

Each of Petitioner’s four grounds of unpatentability relies upon a different reference as the primary or *Rosen* reference. Pet. 4–5, 18–60. Specifically, Petitioner relies on each of Kobayashi, Tucker, the Chrysler Sebring Convertible Brochure (“the Sebring Brochure”), and Cook as a primary reference. For the below reasons, Petitioner has not established that any of these references show a headlamp whose design characteristics are basically the same as those of the claimed headlamp in the ’429 patent.

1. Kobayashi

Kobayashi's design patent is entitled, "Combination Lamp for an Automobile," and the claim recites, "[t]he ornamental design for a combination lamp for an automobile, as shown and described." Ex. 1009, 1. Figures 1, 2, and 3 of Kobayashi follow:

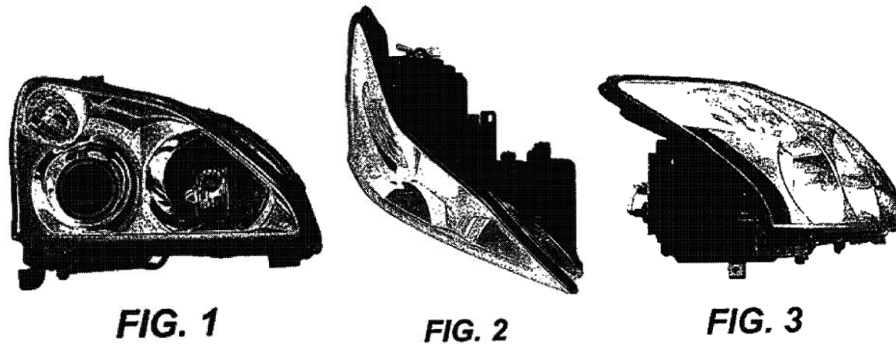


Figure 1 is front elevation view, Figure 2 is a top plan view and Figure 3 is a left side elevation view of Kobayashi's automobile lamp. Ex. 1009, 1.

Petitioner contends that Kobayashi is a proper primary or *Rosen* reference because in front elevation view, Kobayashi's headlamp and the headlamp claimed in the '429 patent ("the '429 headlamp") are essentially the same shape (trapezoidal or cat eye) and design. Pet 18. Petitioner proposes to modify the Kobayashi headlamp by curving the bezel. *Id.* 18–26.

Figure 9 of the '429 patent and Figure 1 of Kobayashi follow:

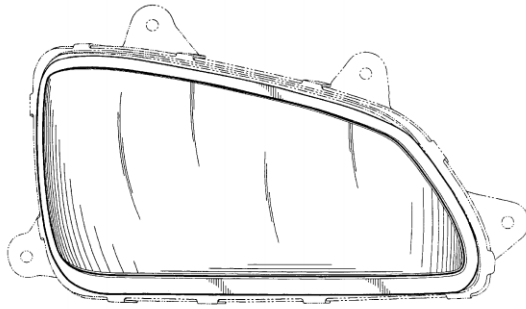
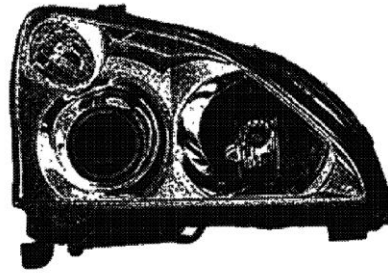
*Fig. 9.***FIG. 1**

Figure 9 of the '429 patent and Figure 1 of Kobayashi are front elevation views. Ex. 1001, 1; Ex. 1009, 1. When viewing relative lengths of sides of the '429 headlamp and Kobayashi's headlamp, as well as angles between sides, the '429 and Kobayashi's headlamp give different visual impressions. The length of the top side of the '429 headlamp is more than three-fourths ($3/4$ s) the length of the bottom side, while the length of the top side of Kobayashi's headlamp is only approximately half the length of the bottom side. Further, the angle between the bottom and right sides of the '429 headlamp is closer to 90° than is the angle between the bottom and right sides of Kobayashi's headlamp. As a result, the '429 headlamp gives the visual impression of a four-sided trapezoid, while Kobayashi's headlamp gives the impression of a right triangle with a hypotenuse formed by its top and right sides. Thus, at least based on these differences in appearance, the '429 and Kobayashi's headlamps would not have appeared to have basically the same design characteristics to a designer of ordinary skill "with a background and training in vehicle headlight designs and who is presumed to have knowledge of the prior art relevant to vehicle headlight designs." See Pet. 13.

Although the above is sufficient to show that design characteristics of Kobayashi's headlamp are not basically the same as those of the '429 headlamp, there exist other differences not addressed by Petitioner. For example, Petitioner does not address the shape of the headlamps in an inboard facing side elevation view. Figure 14 of the '429 patent and Figure 3 of Kobayashi follow:

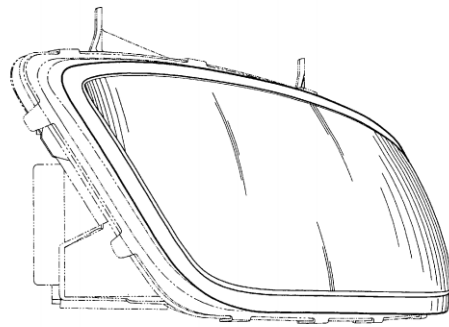


Fig.14.

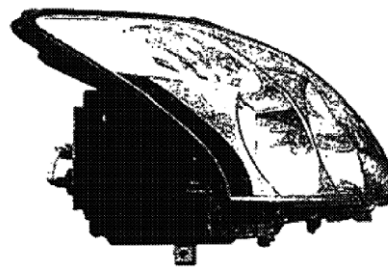


FIG. 3

Figure 14 of the '429 patent and Figure 3 of Kobayashi are inboard facing side (left side) elevation views. Ex. 1001, 1; Ex. 1009, 1. The headlamps are dissimilar in that, in the figures, the left side of the '429 headlamp is approximately straight along most of its length, while the left side of Kobayashi's headlamp is arcuate.

Thus, based on the foregoing, we are not persuaded that a designer of ordinary skill would have viewed Kobayashi's headlamp to give the same visual impression as the '429 headlamp. Therefore, Petitioner has not shown a reasonable likelihood of prevailing with Kobayashi as the primary reference.

2. *Tucker*

Tucker’s design patent is entitled, “Headlamp Bezel for a Motor Vehicle,” and the claim recites, “[t]he ornamental design for a headlamp bezel for a motor vehicle, as shown and described.” Ex. 1011, 1. Although Tucker shows an “embodiment . . . for the left side of a vehicle,” “[t]he design envisioned contains a second portion whose image is mirror symmetrical to the [embodiment] shown.” *Id.*, 1. Thus, mirror images of Tucker’s Figures 3, 2, and 6, labeled as Figures A, B, and C, respectively, follow:

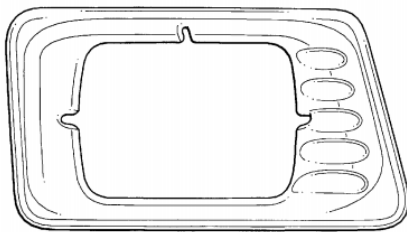


FIG. A

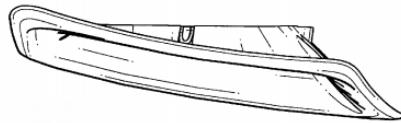


FIG. B

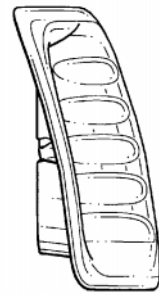


FIG. C

Figure A is a mirror image of Fig. 3 of Tucker, and thus is a front elevation view of a right side headlamp; Figure B is a mirror image of Fig. 2 of Tucker, and thus is a top plan view of a right side headlamp; and Fig. C is a mirror image of Fig. 6 of Tucker, and thus is a left side elevation view of a right side headlamp. *See* Ex. 1011, 1. Petitioner contends that Tucker is a proper primary or *Rosen* reference because in front elevation view, Tucker’s headlamp and the ’429 headlamp are essentially the same shape (trapezoidal or cat eye) and design. Pet 26–27. Petitioner proposes to modify the Tucker headlamp by curving the bezel. *Id.* 27–35.

Figure 9 of the '429 patent and Figure A, which shows a similar view of Tucker's headlamp, follow:

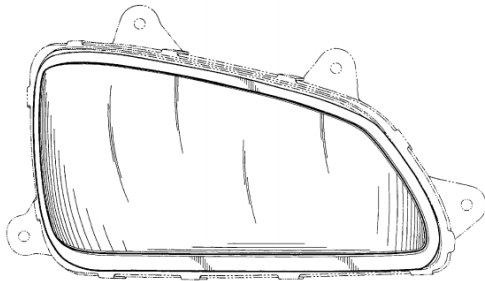


Fig. 9.

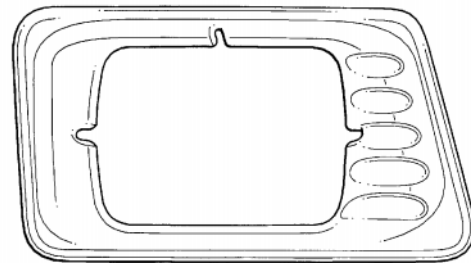


FIG. A

Figure 9 of the '429 patent and Figure A, which is a mirror image of Tucker's Figure 3, are front elevation views of right side headlamps. Ex. 1001, 1; *see* Ex. 1011, 1. When viewing relative lengths of sides of the '429 and Tucker's headlamp, as well as angles between sides, the '429 headlamp and Tucker's headlamp give different visual impressions. The top and bottom sides of the '429 headlamp are non-parallel, and the left and right side differ in length. Conversely, the top and bottom sides of Tucker's headlamp are parallel, and the left and right sides are close to parallel. Further, the left and right sides of Tucker's headlamp are close to the same length, while the lengths of the left and right sides of the '429 headlamp differ more noticeably. Thus, Tucker's headlamp gives the visual impression of having an approximately rectangular shape, while the '429 headlamp gives the impression of a non-rectangular trapezoid.

Therefore, at least based on these differences in appearance, the '429 and Tucker's headlamps would not have appeared to have basically the same design characteristics to a designer of ordinary skill "with a background and training in vehicle headlight designs and who is presumed to have

knowledge of the prior art relevant to vehicle headlight designs.” *See* Pet. 13.

Although the above is sufficient to show that design characteristics of Tucker’s headlamp are not basically the same as those of the ’429 headlamp, there exist other differences not addressed by Petitioner. For example, Petitioner does not address the shape of the headlamps in an inboard facing side elevation view. Figure 14 of the ’429 patent and Figure C, which is based on Fig. 6 of Tucker, follow:

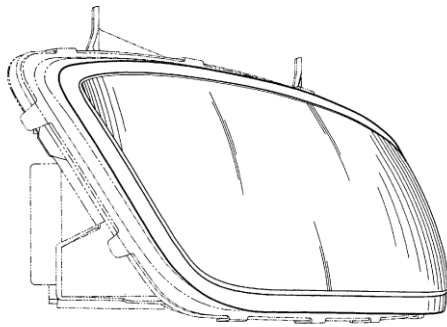


Fig.14.

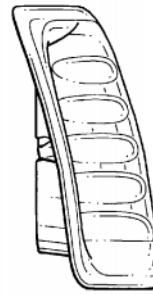


FIG. C

Figure 14 of the ’429 patent and Figure C, which is a mirror image of Fig. 6 of Tucker, are inboard facing side elevation views. Ex. 1001, 1; *see* Ex. 1011, 1. The headlamps noticeably differ from one another along a contour from the left side to the right side, as well as along a contour from a top side to a bottom side, and thus do not appear to have the same design characteristics as each other.

Based on the foregoing, we are not persuaded that a designer of ordinary skill would have viewed Tucker’s headlamp to give the same visual impression as the ’429 headlamp. Thus, Petitioner has not shown a reasonable likelihood of prevailing with Tucker as the primary reference.

3. *The Sebring Brochure*

The Sebring Brochure shows various views of the 2001 Chrysler Sebring Convertible, including its headlamps. *See* Ex. 1013. The Sebring Brochure does not identify front elevation, side plan, or left side elevation views of a right side headlamp. Nonetheless, Petitioner does rely on a comparison of a picture on page 27 of the brochure with the front elevation view of the '429 headlamp, in an attempt to establish that the Sebring headlamp essentially is the same as the '429 headlamp. *See* Pet. 27.

The picture from the Sebring Brochure and Fig. 9 from the '429 patent follow:

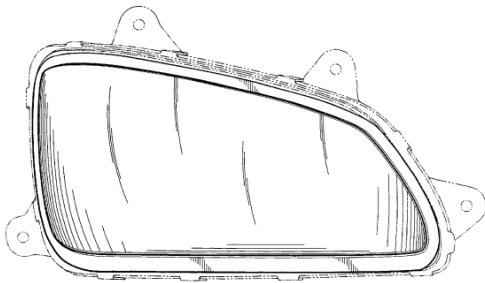
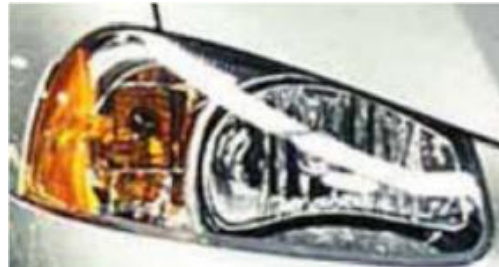


Fig. 9.



SEBRING BROCHURE

Figure 9 of the '429 patent is a front elevation view, while the picture from the Sebring Brochure is a front view, each of a right side headlamp. Ex. 1001, 1; Ex. 1013, 27.

Petitioner contends that the Sebring Brochure is a proper primary or *Rosen* reference because based on the picture from the brochure, the Sebring headlamp and the '429 headlamp are essentially the same shape (trapezoidal or cat eye) and design. Pet 35–36. Petitioner proposes to modify the Sebring headlamp by curving the bezel. *Id.* 36–43.

When viewing relative lengths of sides of the '429 headlamp and those of the Sebring headlamp, as well as angles at which sides are disposed, the '429 headlamp and Sebring headlamp give different visual impressions. The bottom side of the '429 headlamp is approximately straight and extends horizontally, while the bottom side of the Sebring headlamp is arcuate and angled downward from the left to right side. The left side of the '429 headlamp extends approximately straight and at approximately a 90° angle relative to the bottom side, while the left side of the Sebring headlamp is arcuate and curved inward at its top end.

Thus, at least based on these differences in appearance, the '429 and the Sebring headlamps would not have appeared to have basically the same design characteristics to a designer of ordinary skill “with a background and training in vehicle headlight designs and who is presumed to have knowledge of the prior art relevant to vehicle headlight designs.” *See* Pet. 13.

Although the above is sufficient to show that design characteristics of the Sebring headlamp are not basically the same as those of the '429 headlamp, Petitioner does not demonstrate the headlamps have essentially the same design characteristics when viewed from other sides. For example, Petitioner does not address the shape of the headlamps in an inboard facing side elevation view, which appears to have a distinctive shape in the '429 headlamp. Petitioner does not identify a comparable view of the Sebring headlamp, thereby making comparison between the two headlamps impossible from such a vantage point.

Based on the foregoing, we are not persuaded that a designer of ordinary skill would have viewed the Sebring headlamp to give the same

visual impression as the '429 headlamp. Thus, Petitioner has not shown a reasonable likelihood of prevailing with the Sebring Brochure as the primary reference.

4. *Cook*

Cook's design patent is entitled, "Exterior Surface Configuration of a Truck Headlight," and the claim recites, "[t]he ornamental design for an exterior surface configuration of a truck headlight, as shown and described." Ex. 1010, 1. Although Cook shows an "embodiment . . . for the left side of the truck," "[t]he design envisioned contains a second portion whose image is mirror symmetrical to the [embodiment] shown." *Id.*, 1. Thus, mirror images of Cook's Figures 3, 2, and 6 follow, labeled as Figures A, B, and C, respectively:

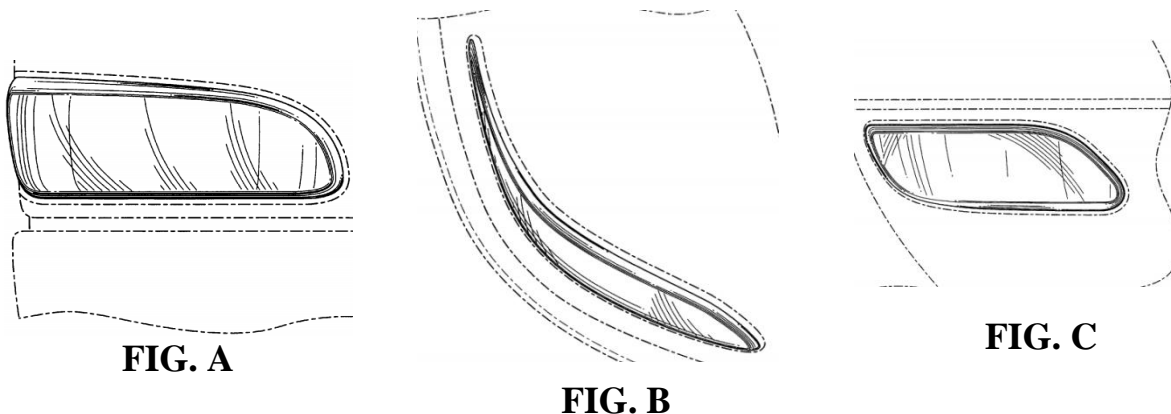


Figure A is a mirror image of Figure 2 of Cook, and thus is a front elevation view of a right side headlamp; Figure B is a mirror image of Figure 4 of Cook, and thus is a top plan view of a right side headlamp; and Figure C is a mirror image of Figure 3 of Cook, and thus is a left side elevation view of a right side headlamp. *See* Ex. 1010, 1.

Petitioner contends that Cook is a proper primary or *Rosen* reference because in front elevation view, Cook's headlamp and the '429 headlamp are essentially the same shape (trapezoidal or cat eye) and design. Pet 43–44. Petitioner proposes to modify Cook's headlamp by curving the bezel. *Id.* 44–52.

Figure 9 of the '429 patent and Figure A, which is based on Figure 1 of Cook, follow:

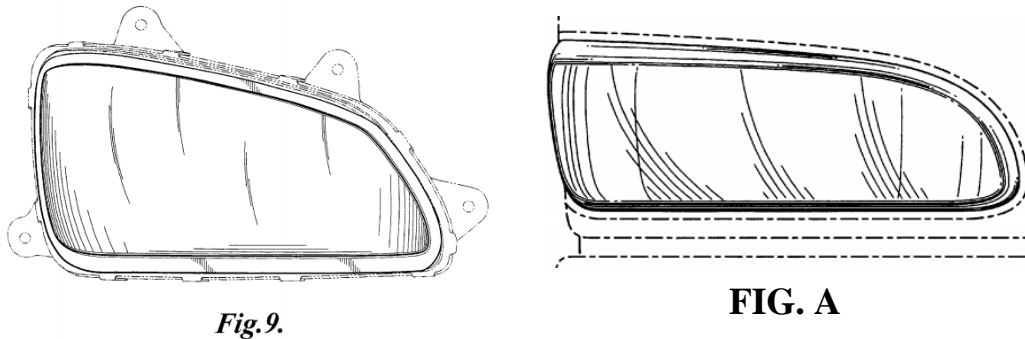


Figure 9 of the '429 patent and Figure A, which is based on Figure 3 of Cook, are front elevation views of a right side headlamp. Ex. 1001, 1; *see* Ex. 1010, 1. When viewing relative lengths of sides of the '429 headlamp and those of Cook's headlamp, as well as angles at which sides are disposed, the '429 headlamp and Cook's headlamp give different visual impressions. The top and bottom sides of the '429 headlamp are non-parallel. Conversely, the top and bottom sides of the Tucker headlamp are approximately parallel.

Thus, Cook's headlamp gives the visual impression of having a more rectangular shape than the '429 headlamp, which gives the impression of a non-rectangular trapezoid. Further, the left side of the '429 headlamp extends approximately straight and at approximately a 90° angle relative to

the bottom side, slightly curving inward near the top and bottom sides. Conversely, the left side of Cook's headlamp is curved outward near its top end. Also, the bottom side of the '429 headlamp is approximately twice the length of the right side, while the bottom side of Cook's headlamp is approximately 2.5 times the length of its right side, so that Cook's headlamp appears longer and narrower than the '429 headlamp.

Thus, at least based on these differences in appearance, the '429 and Cook's headlamps would not have appeared to have basically the same design characteristics to a designer of ordinary skill "with a background and training in vehicle headlight designs and who is presumed to have knowledge of the prior art relevant to vehicle headlight designs." *See* Pet. 13.

Although the above is sufficient to show that design characteristics of Cook's headlamp are not basically the same as those of the '429 headlamp, there exist other differences not addressed by Petitioner. For example, Petitioner does not address the shape of the headlamps in an inboard facing side elevation view, which appears to have a distinctive shape in the '429 headlamp. Petitioner does not identify a comparable view of Cook's headlamp, thereby making comparison between the two headlamps impossible from this vantage point.

Based on the foregoing, we are not persuaded that a designer of ordinary skill would have viewed Cook's headlamp to give the same visual impression as the '429 headlamp. Thus, Petitioner has not shown a reasonable likelihood of prevailing with Cook as the primary reference.

C. Secondary References

Notwithstanding the above discussion, even if any of Kobayashi, Tucker, the Sebring Brochure, or Cook were a valid primary reference, Petitioner does not establish that further modification of any of the primary references would have resulted in “the same overall visual appearance as the claimed design” with respect to the curved bezel. *High Point Design*, 730 F.3d at 1311. Specifically, in each of the four grounds of unpatentability, Petitioner proposes to curve the bezel as shown in either Cook or Kobayashi. *See* Pet. 4–5, 18–19, 27–28, 36–37, 44–45. However, neither Cook nor Kobayashi has a bezel with a curve similar enough to that of the ’429 headlamp such that a modification of Kobayashi, Tucker, the Sebring Brochure, or Cook (as the primary reference), with Cook or Kobayashi (as the secondary reference), would result in a headlamp with the same overall appearance as the ’429 headlamp.

Figure 11 of the ’429 patent, Figure 2 of Kobayashi, and Figure A, which is based on Cook’s Figure 4, each show a top plan view of a right side headlamp.

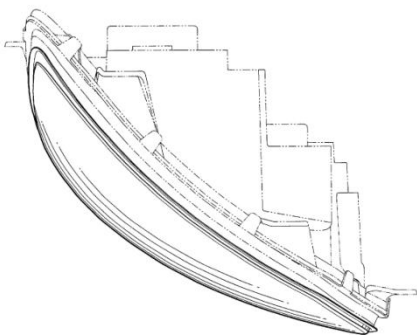


Fig. 11.

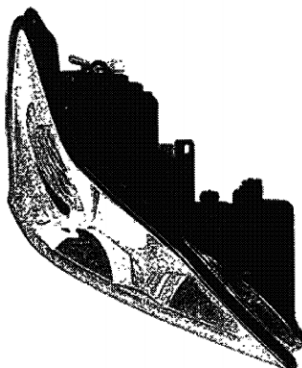


FIG. 2

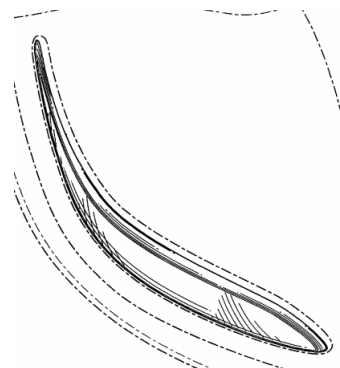


Fig. A

Figure 11 of the '429 patent, Figure 2 of Kobayashi, and Figure A, which is a mirror image of Figure 4 of Cook, are top plan views of a right side headlamp. Ex. 1001, 1; Ex. 1009, 1; *see* Ex. 1010, 1. Each of the curved bezels of Kobayashi's and Cook's headlamps have a different appearance than the bezel of the '429 patent. The '429 patent's curved bezel has a smooth arcuate shape from front to back, while Kobayashi's bezel has an approximately straight front portion and an approximately straight back portion connected by a curved portion. With respect to Cook, the bezel extends much farther back than does the '429 patent's bezel, and appears much thinner at its back end than does the back end of the '429 headlamp's bezel. Thus, adding the curved bezel of either Kobayashi or Cook to any of the primary references would not have resulted in a headlamp with the same overall appearance as the '429 headlamp.

With respect to the Kenworth T600 Brochure (Ex. 1005), the Kenworth T600A Brochure (Ex. 1006), the Kenworth T660 Brochure (Ex. 1007), the Chrysler Town and Country Brochure (Ex. 1012), the Chrysler Brochure (Ex. 1014), the Chrysler Eagle Brochure (Ex. 1015), and the Chrysler PT Cruiser Brochure (Ex. 1016), Petitioner does not contend that these references show a curved bezel similar to that of the '429 headlamp. Instead, Petitioner relies on the references in an attempt to show that the bezel shape in the '429 patent is functional. *See* Pet. 20–26, 28–35, 37–43, 46–52. As discussed above in section I.B., however, even functional elements must be considered in an obviousness analysis of the visual impression created by the patented design as a whole.

Based on the foregoing, even assuming for sake of argument that an ordinary designer would have been prompted to modify any of the

headlamps disclosed in Kobayashi, Tucker, the Sebring Brochure, or Cook to include the curved bezel of Cook or Kobayashi, the resulting design would not have the same overall appearance of the '429 headlamp.

On this record, Petitioner has not shown a reasonable likelihood of prevailing with regard to any of the grounds of unpatentability.

III. CONCLUSION

Upon consideration of the Petition and Preliminary Response, we are not persuaded, for the reasons discussed, that there is a reasonable likelihood that Petitioner would prevail on at least one alleged ground of unpatentability with respect to the claim of the '429 patent.

IV. ORDER

It is

ORDERED that the Petition is denied and no trial is instituted.

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Patent D526,429 S

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