

The above requirements of law render Appellant-Applicant's design unpatentable. The Go patent makes the design application wanting in novelty, originality or inventiveness. In Patent Law, "original" has special reference to inventive genius in creating design, the inventor must have created a design that is essentially different and superior to design that might be created by person skilled in the art; mere exercise of routinary skill does not amount to design invention. It was held that to constitute a new design that would have been patentable as such, it had to be so different from all other existing before, as to have appeared to have been such to ordinary observer (Perry vs. Starret, CCC-NY Tod. Cas 11012). On the same token, it was held in the case Norman, 69 USPQ 553, 587 O.G. 186, that "mere differences or variation in form, however pleasant and appealing, do not of themselves constitute patentable differentiation. What is required is that the design shows some originality beyond the competency of the routine designer, some characteristically different effect not suggested by the prior art or conventional formal variation which every designer, or craftsman employs in the normal performance of his functions".

Appellant-Applicant's argument that in the case of spoons, forks, plates and the like, where the articles have the same outline or general appearance but of different surface design have been granted patent is without merit. This Bureau subscribes to the Examiner's contention that spoons, forks, plate and the like have universally accepted shape and that they differ only in surface ornamentation printed or engraved on their surface. This cannot apply to the case at bar. The design of the wall décor in issue cannot be considered as a universally accepted shape. Applicant had an infinite variety of shapes and forms to choose from and did not have to adopt one which is identical in form with that of the Go patent.

WHEREFORE, premises considered the Examiner's final rejection of Application Serial No. D-5221 filed on November 17, 1983 is AFFIRMED.

Let the records of this case be remanded to the Mechanical and Electrical Examining Division for appropriate action in accordance with this Decision.

SO ORDERED.

IGNACIO S. SAPALO
Director