COPY

The ornamental design for a LEATHER DESIGN, as shown and described.

IN THE DRAWINGS

Enclosed herewith are new substitute Figs. 1-3 for those originally filed.

REMARKS

The Office Action of July 5, 2002, has been carefully reviewed. Applicant notes that no prior art has been applied against Applicant's claim, and therefore the PTO considers Applicant's design to define novel and unobvious subject matter under §§102 and 103. Applicant respectfully requests favorable consideration and formal allowance.

The Examiner has objected to the drawings and rejected the claim under 35 U.S.C. § 112 first and second paragraphs. Applicant respectfully traverses this object and rejection.

In response, Applicant has enclosed new Figs. 1-4 for substitution for original Figs. 1-4 with the Examiner's approval. Applicant respectfully submits that new Figs. 1-4 overcome each of the objections listed in paragraph 1 of the Examiner's Office Action.

In addition, Applicant has amended the claim by adding the word -DESIGN- as suggested by the Examiner.

Finally, Applicant has deleted the special description from the specification as required by the Examiner.

Nevertheless, the deletion of the special description paragraph is not to be taken as any acquiescence by applicant of the position of the PTO that such paragraph is in some way improper or a broadening of the claimed invention beyond what is permitted by the law. Thus, applicant maintains his position that the claimed design is not limited to the exact details shown in the drawing, and is intended to cover equivalent and colorable imitations thereof, consistent with the law, and therefore the claimed design may be practiced otherwise than as specifically shown in the drawing and described in the specification. A case more recent than the case cited by the PTO, which confirms that a design is not limited to exactly what is disclosed, is *In re Daniels,* 46 USPQ2d 1788 (Fed. Cir. 1998). The court reversed the earlier decision of the BPAI and disagreed with the Board's statement "that a design is 'a unitary thing', and thus that when the design is changed it becomes a different design, ...".

Also see *Motorola v. Qualcomm,* 45 USPQ2d 1558, 1562-63, citing *Litton v. Whirlpool,* 221 USPQ 97 (Fed. Cir. 1984) to the effect that "minor differences between a patented design and an accused article's design cannot, and shall not, prevent a finding of infringement."

In addition to the cases cited above, a leading case is *Henry Hangar v. Sel-O-Rak Corp.*, 123 USPQ 3, 6, 7 (CA 5 1959), citing and relying on *Gorham v. White*, 81 US 511:

> The defendants placed great stress on the differences between the rack which was patented and the rack of the defendants ... . But do these and other differences change the effect of the design and the peculiar and distinctive appearance? These are the essentials of a design patent and are entitled to the patent law's protection.

In affirming the infringement ruling of the lower court in spite of the differences between the defendant's rack and the rack illustrated in the design patent in suit, the court stated:

> And it is the overall appearances that will control and not the minutia of differences.

That is the law, notwithstanding the contrary rules (or belief) of the PTO.

Not only is applicant's position in this regard supported by the case law, but it is also supported by the statute itself, noting 35 U.S.C. 289 which explicitly extends coverage of a design patent to "colorable imitations thereof".

For the PTO to say (or imply) that a design patent covers only what is precisely illustrated is therefore absolutely wrong and contrary to a long established line of

legal precedent, and applicant cannot and does not accept the PTO's position in this regard.

Accordingly, applicant's cancellation of the criticized paragraph does not mean that applicant agrees that cancellation of certain text from the present application is proper or that the claim is more limited after such cancellation than it was before. Applicant makes no concession regarding the scope of the claim or that such cancellation has any effect on the scope of the claim, and applicant respectfully reiterates for the record that the present design is not limited to the exact details shown in the drawing, and is intended to cover equivalents and colorable imitations thereof.

As applicant believes that all issues have been resolved, applicant respectfully requests favorable consideration, entry of the attached drawings and allowance.

Respectfully submitted,

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