United States Copyright Office
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August 12, 2004

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Re: LARGE SWEEPING TAPER 20-4527
Copyright Office Control No. 61-215-1437 (B)

Dear Mr. Brown:

On behalf of the Copyright Office Board of Appeals, I am responding to your letter dated November 19, 2003, in which you requested that the Copyright Office reconsider, for a second time, the work entitled "Large Sweeping Taper 20-4527" for registration. After careful examination of the application, deposit, and all correspondence related to this work, the Board affirms the denial of registration.

DESCRIPTION OF THE WORK

The work, in whole, is a lighting fixture consisting of a rectangular wall mount, an upwardly curved thin metal cylinder that supports the lamp itself, and another curved strip of metal extending downward that intersects the aforementioned curved piece. The downwardly curved element is longer and broader than the upward piece and consists of an inverting, 'S' shaped curve with a narrowing width at the bottom. This tapering, tail-like curvature ("tapered portion"), specifically at issue in this appeal, is decorative, and apparently provides no physical support or any other utilitarian function for the lamp.



ADMINISTRATIVE RECORD

A. Initial Submission and Office's Refusal to Register

On March 4, 2003, the Copyright Office ("Office") received twenty-seven Form VA applications for registration of "sculpture - lamp-base" designs from your client, Hubbardton Forge Corporation. Visual Arts Section Examiner Marjorie M. Kress denied registration for all of these works by her letter dated May 10, 2003. She based her refusal to register on the determination that all of the works were "useful articles," which either contained no separable features, or included separable features which did not meet the requirements of copyrightability. (Letter from Kress to Graziano of 5/10/03, at 1.)

Ms. Kress conveyed that copyright law does not protect the design of useful articles, except to the extent that any pictorial, graphic, or sculptural features can be identified separately from, and exist independently of, the utilitarian aspects. (*Id.*) (citing 17 U.S.C. § 101(2003)). After giving several examples of features that are either physically or conceptually separable from a utilitarian function, Ms. Kress concluded that some of the works in the registration applications contain no separable authorship, while other works "contain features that can be identified as 'separable,' but they are not copyrightable." (Letter from Kress to Graziano of 5/10/03, at 2.)

Ms. Kress explained that in order to be copyrightable, a work must consist of sufficient creative authorship. She listed elements that are not copyrightable, such as familiar symbols, designs, or mere variations thereof. She also noted that the aesthetic or commercial value of a work has no part in the determination of whether a work is copyrightable. (*Id.*) Ms. Kress then concluded that none of the separable elements were copyrightable, because the elements contained insufficient amount of original authorship, one or more non-copyrightable elements, or a minor variation thereof. (*Id.*)

B. First Request for Reconsideration

In a letter to the Examining Division dated August 18, 2003, you requested that the Office reconsider the refusal to register one of the works contained in the group of rejected applications. Along with your letter, you included a better quality photograph of the Large Sweeping Taper. You asserted that the long "tapered portion" of the work is both sculptural and separable from the functional pieces of the work. (Letter from Brown to Examining Division of 8/18/03, at 1.) In support of this argument, you stated that the tapered portion "is capable of existing independently" and "is not even needed in order for the present device to function." (*Id.* at 2.)

In addition to being separable, you asserted in your letter that the tapered portion also meets the originality requirement needed for copyright protection, as "almost any independent effort falls on the side of sufficient originality." (*Id.*) (citing *Warren Pub. Inc. v. Microdos Data Corp.*, 115 F.3d 1509, 1524 (11th Cir. 1997) (dissenting opinion)). You also noted that the originality requirement is sufficiently met as long as a work is a distinguishable variation of a prior work. (*Id.*) (citing *Twentieth Century Fox Film Corp. v. Marvel Enters., Inc.*, 155 F. Supp.2d 1 (S.D.N.Y 2001)). Quoting Justice Holmes from *Bleistein v. Donaldson Lithographing Co.*, 188 U.S. 293, 299-300 (1903), you state that the originality requirement is so minimal that most any personal expression "which is one man's alone" is copyrightable, "unless there is a restriction in the words of the act." (*Id.*) Further, you cite examples where the originality requirement was not met, such as where forms of expression are dictated solely by functional considerations (*CMM Cable Rep., Inc. v. Ocean Coast Properties, Inc.*, 97 F.3d 1504, 1519 (1st Cir. 1996)), or where artistic portions of a work were copied, and the remaining authorship was completely utilitarian (*Durham Indus., Inc. v. Tomy Corp.*, 630 F.2d 905 (2d Cir. 1980)). (Letter from Brown to Examining Division of 8/18/03, at 2.)

Finally, you argue that the tapered portion meets the minimal requirement for originality because it is "fanciful, and is not part of the overall shape or contour of the remainder of the present work." (Letter from Brown to Examining Division of 8/18/03, at 3.) You described the tapered portion as having:

> a radius of curvature which varies (and even inverts), unlike the substantially constant radius of curvature of the portion of the long element which extends from the wall mount to the intersection of the long element and the shorter, upwardly curved element. In addition, the tapered portion tapers, unlike the substantially constant width of the portion of the long element which extends from the wall mount to the intersection referred to above.

(*Id.*) You concluded that "the present author has created a work which contains separable features which are unique and which create a distinct mental image in the mind of the viewer," and the work should be registered. (*Id.*)

C. Examining Division's Response to First Request for Reconsideration

After reviewing the application for the large sweeping taper and the points made in your First Request for Reconsideration of August 18, 2003, Attorney Advisor Virginia Giroux of the

Examining Division denied registration in her letter of October 6, 2003, because she concluded that the work is a useful article with no features that are both separable and copyrightable. Ms. Giroux explained that a useful article is one that has an intrinsic function aside from merely portraying the appearance of an article or conveying information, and that "an article (normally) part of a useful article is considered a useful article." (Letter from Giroux to Brown of 10/6/03, at 1) (citing 17 U.S.C. § 101). She noted that only pictorial, graphic, or sculptural features that are physically or conceptually separable from the utilitarian parts of a useful article and have sufficient original and creative authorship may be protected by copyright. (*Id.*)

In determining whether a useful article has separate, copyrightable features, Ms. Giroux stated that examiners do not make aesthetic judgments and are not influenced by the time and effort it took to create the work or the design's attractiveness, visual effect or appearance, uniqueness, or commercial success. (*Id.*) Rather, sculptural features that cannot be physically separated from the useful article, but that can be visualized as a free standing sculpture, independent of and without destroying the basic shape of the article, are considered conceptually separable. (*Id.* at 2) (citing *Esquire v. Ringer*, 591 F.2d 796 (D.C. Cir. 1978); *Compendium II, Copyright Office Practices* §505.03 (1984)).

However, Ms. Giroux warned that the test for a work to be conceptually separable cannot be met "by merely analogizing the general shape of a useful article to works of modern sculpture since in this case, the alleged 'artistic or decorative' features and the useful article cannot be perceived as having separate existences." (*Id.*) The test for conceptually separable work is also not met "where certain features are non-functional or could have been designed differently, if the features are an integral part of the overall shape or contour of the useful article." (Letter from Giroux to Brown of 10/6/03, at 2.) She also reemphasized that copyrights are not registered for attractiveness, no matter how aesthetically pleasing an overall shape or configuration of a utilitarian article might be. (*Id.*) (citing *Esquire; Norris Indust., Inc. v. International Tel. & Tel. Corp.*, 696 F.2d 918 (11th Cir. 1983)). Ms. Giroux concluded that "we are willing to concede that the elongated tapered portion of the lamp is conceptually separable from the utilitarian aspects of the work. However, we do not believe that this component constitutes a copyrightable work of art." (*Id.*)

Ms. Giroux explained that to be copyrightable, a work must have original authorship and "possess more than a *de minimus* quantum of creativity." (*Id.*) (citing *Feist Publications v. Rural Tel. Serv. Co.*, 499 U.S. 340 (1991)). Further, authorship must constitute more than a trivial variation of public domain elements. (*Id.*) (citing *Alfred Bell & Co. v. Catalda Fine Arts, Inc.,* 191 F.2d 99 (2d Cir. 1951)). She cited specific examples where the standard for minimal creativity was not met, including a logo with lines forming an arrow and the word 'Arrows' in cursive script

(*John Muller & Co. v. New York Arrows Soccer Team*, 802 F.2d 989 (8th Cir. 1986)), a label with a few words interwoven with three fleurs-de-lis (*Forstmann Woolen Co. v. J.W. Mays, Inc.*, 89 F.Supp. 964 (E.D.N.Y. 1950)), a china pattern with simple geometric designs (*Homer Laughlin China Co. v. Oman*, 22 U.S.P.Q. 2d 1074 (D.D.C. 1991)), a fabric design with grid squares over a striped pattern (*Jon Woods Fashions, Inc. v. Curran*, 8 U.S.P.Q. 2d 1870 (S.D.N.Y. 1988)), and a collection of various geometric shapes (*Tompkins Graphics, Inc. v. Zipatone, Inc.*, 222 U.S.P.Q. 49 (E.D. Pa. 1983)). (*Id.* at 3.)

Applying the above standards, Ms. Giroux concluded that the "curved tapered tail-like element extending downward from the wall plate . . . is a familiar shape, or a minor variation thereof, and, in our view, does not reflect a sufficient amount of creative expression to support a copyright registration as an independent work of art." (*Id.*) She acknowledged the low threshold of originality set forth in the *Feist* case, but stated that the tapered portion by itself, and even the configuration with the other elements of the work, does not meet that low threshold. (*Id.*) Ms. Giroux specifically responded to your conclusion that the present work contained separable features "which are unique and which create a distinct mental image in the mind of the viewer," (Letter from Brown to Examining Division of 8/18/03, at 3), by pointing out that although uniqueness is applicable to patents, it is not relevant to copyright analysis. (Letter from Giroux to Brown of 10/6/03, at 4.) She also stated that copyright protection is based on the composition of the work itself, and "that the visual effect or impression that a work conveys, suggests some aspect of mental activity . . . goes to the mind of the viewer rather than the composition of the work itself." (*Id.*)

Finally, Ms. Giroux cited a statement of legislative history explicitly referring to useful articles, such as this work, that reads, "although the shape of an industrial product may be aesthetically satisfying and valuable, the Committee's intention is not to offer it protection under the bill." (Letter from Giroux to Brown of 10/6/03, at 4) (citing H.R. Rep. 94-1476, at 55 (1976)). Ms. Giroux summarized that the work is not copyrightable because each element is either related to the function of the work, or is subsumed within the overall shape, contour, or configuration of the work itself, or if separable, does not contain sufficient original and creative authorship. (*Id.* at 5.)

D. Second Request for Reconsideration

In a letter dated November 18, 2003, you requested that the Board of Appeals review the application and register the present work. You amended the claim to be registered, saying that "[t]he present artist is not attempting to obtain a registration for the overall shape of a utilitarian device; rather, the present artist is claiming his original non-utilitarian sculpture which

is attached to a utilitarian device. If necessary, the Copyright Office is hereby authorized to amend the nature of work statement to read 'sculptural design attached to light fixture,' or the like." (Letter from Brown to Board of Appeals of 11/18/03, at 2) (emphasis added).

In addition, you clarified that your former position had not been that the tapered portion is automatically copyrightable, but that it is separable, and because it meets the minimum quantum of originality, it is copyrightable. (*Id.*) Further, you objected to Ms. Giroux's conclusion that the tapered portion lacks originality because it is a familiar shape in a simple configuration. Specifically, you stated that there was "no basis whatsoever for these statements" and that the "Copyright Office has not identified any known shape, familiar or otherwise, which resembles the tapered portion of the present work." (*Id.* at 4.)

You distinguished the cases listed by Ms. Giroux as examples of works that did not have sufficient creativity, (Letter from Giroux to Brown of 10/6/03, at 3), by pointing out that those designs "included familiar geometric shapes alone or together with descriptive indicia." (Letter from Brown to Board of Appeals of 11/18/03, at 4.) In comparison, you mentioned that "[w]hile certainly not dispositive, it is worth noting that there is no word or succinct phrase which could be used to describe the shape of the tapered portion of the present work in such a way that one could visualize its general shape based on the word or phrase alone." (*Id.*) You stated that there is no reason why this tapered portion does not meet the minimal amount of creativity required for a copyright, and you again requested that the present work be registered. (*Id.*)

DECISION

After reviewing all materials related to this appeal, the Board affirms the Examining Division's refusal to register the Large Sweeping Taper, because even if the tapered portion is conceptually separable from the utilitarian aspects of the design, the tapered portion does not meet the *de minimus* standard of originality and creativity needed for copyright registration.

A. Useful Article and Separable Features

The design of a useful article receives copyright protection "only if, and only to the extent that, such design incorporates pictorial, graphic, or sculptural features that can be identified separately from, and are capable of existing independently of, the utilitarian aspects of the article." 17 U.S.C. § 101 (definition of pictorial, graphic, or sculptural works). Not only are works considered useful articles that as a whole have an "intrinsic utilitarian function," but an

"article that is normally a part of a useful article is considered a 'useful article.'" 17 U.S.C. § 101 (definition of useful article). There is no dispute that the present work, as a whole, is a useful article that functions as a utilitarian wall-mounted lamp base. Your contention is instead that the tapered portion is separable from the utilitarian device and may be registered as an "original non-utilitarian sculpture which is attached to a utilitarian device." (Letter from Brown to Board of Appeals of 11/18/03, at 2.)

The Copyright Office registers only those pictorial, graphic, or sculptural elements of useful articles that are both separable and individually copyrightable, so as not to register a copyright where Congress intended none to be. "Congress has repeatedly rejected proposed legislation that would make copyright protection available for consumer or industrial products." *Esquire v. Ringer*, 591 F.2d 796, 800 (D.C. Cir. 1978). As stated earlier legislative history expressly states that "although the shape of an industrial product may be aesthetically satisfying and valuable, the Committee's intention is not to offer it protection under this bill." H.R. Rep. 94-1476 at 55. Therefore, for registration, the Office must find features that are either physically or conceptually separable from the utilitarian functions of the work, and those separable features must have sufficient originality to be independently copyrightable.

The test for whether a three-dimensional useful article has physically separable features is derived from the principle that a copyrightable work of sculpture which is later incorporated into a useful article retains its copyright protection. *Compendium II,* at 505.04. To have physical separability, the pictorial, graphic, or sculptural features must be capable of physical separation by ordinary means. *Id.* at 505.03. The tapered portion in the present work is not physically separable from the lamp because it is unified with, and is not actually detachable from, the base structure.

A sculptural feature may be conceptually separable from the useful article when the feature is not physically separable, if the feature would nevertheless be clearly recognizable as a sculptural work and could be visualized as such, "independent of the shape of the useful article without destroying the basic shape of the useful article." *Id.* In other words, "the artistic features and the useful article could both exist side by side and be perceived as fully realized, separate works -- one an artistic work and the other a useful article." *Id.*

The configuration of the intersection between the tapered portion and the functional upwardly curved cylinder is not conceptually separable from the work as a whole. If that combination, in its configuration, were considered for registration, the tapered portion would be "subsumed within the overall shape, contour, or configuration of the work itself." (Letter from Giroux to Brown of 10/6/03, at 5.) Even if the work, as a whole, resembles abstract modern

art, the test for features to be considered conceptually separable "is not met by merely analogizing the general shape of a useful article to works of modern sculpture, since the alleged 'artistic features' and the useful article cannot be perceived as having separate, independent existences." *Compendium II*, at 505.03.

The Board, like the Examining Division, is "willing to concede that the elongated tapered portion," by itself, "is conceptually separable from the utilitarian aspects of the work." (Letter from Giroux of 10/6/03, at 2.) It seems possible to visualize the separation of the tapered portion independent of the lamp base without destroying the functionality of the useful article. Therefore, the Board now considers whether the tapered portion, by itself, is copyrightable.

B. Originality

In order to be copyrightable, a work must be "an original work of authorship." 17 U.S.C. § 102. Therefore, the work must both be independently created by the author and contain a modicum of creativity. *Feist*, 499 U.S. at 345. The Board does not dispute that the "present artist created the tapered portion without reference to the work of any other person." (Letter from Brown to Board of 11/18/03, at 4.) Therefore, the only issue for the Board to decide is whether there is sufficient creativity in the tapered portion to support a copyright.[1]

1. There is a standard for sufficient creativity, even though it is low.

You have correctly noted that the standard of originality is low, and that "almost any independent effort" is sufficient. (Letter from Brown to Examining Division of 8/18/03, at 2.) However, the words, "almost any" leave the statement open to exceptions where the minimum standard for creativity is not met, despite the independent creation of the work. As stated by the Supreme Court of the United States, "the standard of originality is low, but it does exist." *Feist*, 499 U.S. at 345. "[T]here remains a narrow area where admittedly independent efforts are deemed too trivial or insignificant to support copyright." 1 Melville B. Nimmer & David Nimmer, *Nimmer on Copyright* §2.01[B] , at 2-14 (2002)(citing *Feist*, 499 U.S. at 358).

Further, you quote in your letter of August 18, 2003, at 2, Justice Holmes' statement from *Bleistein*, 188 U.S. at 299-300:

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[1] Despite the Examining Division's statement that "[t]he tapered portion embodied in this work, individually, *and in its particular configuration*, does not contain sufficient amount of original and creative sculptural authorship to support a copyright registration," (Letter from Giroux to Brown of 10/6/03, at 4) (emphasis added), the Board does not address the issue of originality in the combination of the tapered portion with the functional, upwardly curving cylinder. Because the intersection is not separable, *see supra* Decision Part A, the Board does not reach the non-contested issue of whether such configuration meets the modicum of creativity.

> Personality always contains something unique. It expresses its singularity even in handwriting, and a very modest grade of art has in it something irreducible, which is one man's alone. That something he may copyright unless there is a restriction in the words of the act.

These words again state the principle that most independent authorship satisfies the originality requirement.[2] While *Bleistein* did not turn on the issue of originality,[3] and its language predates further development of copyright law,[4] the quoted statement nevertheless does not prohibit the rejection of registration for lack of creativity. The statement is qualified by the phrase, "unless there is a restriction in the words of the act." Such restrictions may include that useful articles are not copyrightable, 17 U.S.C. § 101, nor are familiar shapes, 37 C.F.R. 202.1(a)(2003).

You have also stated that any work that provides an independent "distinguishable variation" of a prior work is copyrightable. (Letter from Brown to Examining Division of 8/18/03, at 2.) The Office acknowledges this principle and its application to variations on prior works, as well as to modifications and variations of works and expressions which lie in the public domain, but the Office is also aware that the variation must be more than "merely trivial" to support a copyright. *Alfred Bell*, 191 F.2d at 102.

You have also attempted to distinguish the present work from other works that have not met the standard of originality. You cited *CMM Cable Rep., Inc. v. Ocean Coast Properties, Inc.*, 97 F.3d 1504, 1519 (1st Cir. 1996), (Letter from Brown to Examining Division of 8/18/03, at 2), stating that designs dictated solely by functional concerns do not meet the minimal

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[2] The context of this quote is whether one may copyright a work that is of the same specific subject matter as another's work. Justice Holmes concluded in the affirmative, preceding the given quote with, "[o]thers are free to copy the original. They are not free to copy the copy. . . . The copy is the personal reaction of an individual upon nature." *Bleistein*, 188 U.S. at 299. This quote emphasizes that most works that are not copied from the expression of another's work are eligible for copyright. It does not address the second of the two required prongs for copyrightability of a work, i.e., [1] independent creation and [2] a modest quantum of creativity in the work's composition or expression. *See* n 3.

[3] "It is to be noted that the poster in issue . . . was extremely detailed and elaborate . . . . Apart from the question of the copyrightability of advertisements per se, there would seem to be little difficulty in finding in the poster sufficient originality to support copyright." Nimmer § 2.01[B] at 2-13.

[4] The references in this case from 1903 to uniqueness and handwriting are not relevant to copyrightability today. Uniqueness is not a requirement of creativity. *Feist* at 345; H.R. Rep. 94-1476 at 51. Although handwriting is independently one's own, typography and lettering are not copyrightable. 37 C.F.R. 202.1(a).

standard for creativity.[5] Likewise, you cited *Durham Indus., Inc. v. Tomy Corp.*, 630 F.2d 905 (2d Cir. 1980), (Letter from Brown to Examining Division of 8/18/03, at 2), declaring that where a utilitarian device is merely added to copied artistic features, the work does not consist of adequate creativity for copyright protection. However, as the Board has conceded that the tapered portion in the present work is conceptually separate from the useful article, it does not rely on any utilitarian functions in its originality analysis. It considers only the tapered portion in isolation with regards to originality. Thus, the Board's position is that the tapered portion, separate from the useful article, is merely a trivial variation of a basic sculptural shape and does not have the minimum amount of creativity required for registration.

2. Familiar shapes in sculptural works are not copyrightable.

The Copyright Office utilizes the policy set forth in §503.02(b) of *Compendium II, Copyright Office Practices* regarding the minimum standards for the copyrightability of sculptural material.

> The requisite minimal amount of original sculptural authorship necessary for registration in Class VA does not depend upon the aesthetic merit, commercial appeal, or symbolic value of a work. Copyrightability is based upon the creative expression of the author, that is, the manner or way in which the material is formed or fashioned. Thus, registration cannot be based upon standard designs which lack originality, such as common architecture moldings, or the volute used to decorate the capitals of Ionic and Corinthian columns. Similarly, it is not possible to copyright common geometric figures or shapes in three-dimensional form, such as the cone, cube, or sphere.

As a standard design, the tapered portion does not meet the amount of creative authorship needed to support a copyright.

The Office has previously cited cases where familiar designs have not been copyrightable, such as *Jon Woods Fashions*, 8 U.S.P.Q. 2d 1870 (grid pattern), *John Muller & Co.*, 802 F.2d 989 (arrow-like design), and *Tompkins Graphics*, 222 U.S.P.Q. 2d 49 (basic geometric shapes). You have distinguished these cases by stating that they "included familiar geometric

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[5] Even designs that do not have a *sole* intrinsic utilitarian function may be considered useful articles and, without separable features, are not copyrightable regardless of creativity. The word 'sole' was deleted from the definition of useful articles as an unworkable standard; "there are no two-dimensional works and few three-dimensional objects whose design is absolutely dictated by utilitarian considerations." *Esquire,* 591 F.2d at 804.

shapes alone or together with descriptive indicia," (Letter from Brown to Board of Appeals of 11/18/03, at 4), while the tapered portion of the present work is a "fanciful" and "three-dimensional abstract shape." (*Id.*, at 2.) However, the design in *Forstmann Woolen Co.*, 89 F.Supp. 964, was not made of simple geometric shapes, but rather of what might fairly be termed complex, yet familiar, fleurs de lis, that are likewise not copyrightable. It is not only common geometric shapes that do not receive copyright protection, but familiar designs that lack creativity and are deemed to be in the public domain. You further pointed out that a fleur de lis and most other shapes mentioned are easily identified with a name. "While certainly not dispositive, it is worth noting that there is no word or succinct phrase which could be used to describe the shape of the tapered portion of the present work in such a way that one could visualize its general shape based on the word or phrase alone." (Letter from Brown to Board of Appeals of 11/18/03, at 4.) The Board, however, disagrees.

What you describe as having "a radius of curvature which varies (and even inverts)" is a simple variation of the 'S-shape' or 'squiggle,' as found in the tilde symbol (~) and the question mark (?). The only other feature in this shape is that the width at the hanging end narrows into a point. This tapering is also a common feature associated with hanging or open ended curves, as evidenced in the symbols just cited. Just as these shapes on paper are uncopyrightable, placing uncopyrightable two-dimensional features into three-dimensional form, does not, of itself, guarantee the necessary creativity for copyright protection. *See generally Durham Indus.*, 630 F.2d 905

3. Standard shapes commonly used in a particular medium are not copyrightable.

The variations, both of the 'S-shaped' curve and tapering, are often common elements to iron and iron-type works, such as the present piece. "Expressions that are standard, stock, or common to a particular subject matter or medium are not protectable under copyright law." *Satava v. Lowry*, 323 F.3d 805, 807 (9th Cir. 2003). In *Satava*, the court noted that glass-in-glass sculpture "is a centuries-old art form that consists of a glass sculpture inside a second glass layer, ... the shroud. ... The shroud is malleable before it cools, and the artist can manipulate it into any shape he or she desires." *Id.* at 808. Although any shape may be created, the court concluded that an artist "may not prevent others from tapering the shape of their shrouds, because that shape is standard in glass-in-glass sculpture." [6] *Id.* at 811. Similarly, tapering and variations of 'S-shaped' curves are

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[6] In *Satava*, the court applied the doctrine of standard elements, or 'scenes a faire,' as "a defense to infringement rather than as a barrier to copyrightability." *Satava*, 323 F.3d at 810. However, the doctrine's use in that case is analogous to the Copyright Office's policy of denying registration to standard designs where no copyright protection exists for lack of sufficient creativity.

frequent and standard features in iron-work designs and, without more, i.e., without further distinguishing authorship in the sweeping tapered portion of the lamp, this portion, even if conceptually separable, lacks the creativity needed for copyright protection.

The court in *Satava* decided that glass-in-glass sculptures of jellyfish are "composed of unprotectable ideas and standard elements, and ... the combination of those unprotectable elements is unprotectable." *Satava,* 323 F.3d at 807. "A combination of unprotectable elements is eligible for copyright protection only if those elements are numerous enough and their selection and arrangement original enough that their combination constitutes an original work of authorship." *Id.* at 811. In the present work, the tapered portion is an 'S-shaped' curve with tapering. The combination of these very simple, common features which make up the tapered portion does not meet the standard of creativity. Whereas the artist in *Satava* did retain a "thin copyright," protecting "against only virtually identical copying" for the arrangement of hues in the work, etc., *id.* at 812, the present work does not have any remaining features or aspects which may be considered as part of the overall conceptually separable portion of the lamp which could sustain a copyright registration.

CONCLUSION

For the reasons stated above, the Copyright Office Board of Appeals concludes that the present work does not meet the requirements for copyright protection and therefore affirms the refusal to register the Large Sweeping Taper. This decision constitutes final agency action on this matter.

Sincerely,

/s/

Marilyn J. Kretsinger
Associate General Counsel
for the Appeals Board
United States Copyright Office