No. 228

In the Supreme Court of the United States

OCTOBER TERM, 1953

EMANUEL L. MAZER AND WILLIAM ENDICTER, DOING BUSINESS AS JUNE LAMP MANUFACTURING COMPANY, PETITIONERS

v.

BENJAMIN STEIN AND RENA STEIN, DOING BUSINESS AS REGLOR OF CALIFORNIA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE REGISTER OF COPYRIGHTS AS AMICUS CURIAE

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This Court's order of October 12, 1953, granting the petition for a writ of certiorari, states that "The Solicitor General is invited to file a brief setting forth, along with other matters he deems pertinent, the views of the Copyright Office and a statement of its relevant practice" (R. 87). In accordance with that invitation, this brief is respectfully submitted on behalf of the Register of Copyrights as *amicus curiae*.

OPINIONS BELOW

The opinion of the District Court for the District of Maryland (R. 57–66) is reported at 111 F. Supp. 359. The opinion of the Court of Appeals for the Fourth Circuit (R. 70–84) is reported at 204 F. 2d 472.

JURISDICTION

The judgment of the Court of Appeals was entered on May 19, 1953 (R. 84). The petition for a writ of certiorari was filed on August 3, 1953, and was granted on October 12, 1953 (R. 87). The jurisdiction of this Court rests upon 28 U. S. C. 1254 (1).

QUESTION PRESENTED

Whether the "author" of a sculptured statue is entitled to copyright registration of the statue and to copyright protection against unauthorized copying of the statue by others for use as a statue, or as a lamp base or other article of utility, if, at the time copyright registration is sought, the "author" himself intends to, and subsequently does, use the statue as a lamp base in the manufacturing of lamps.

STATUTES AND REGULATIONS INVOLVED

The pertinent provisions of the Copyright Law, the Design Patent Law, and the regulations of the Copyright Office are set forth in Appendix A, *infra,* pp. 48–56.

STATEMENT

This is one of a number of suits instituted by respondents in several jurisdictions to recover damages from various defendants for alleged copyright infringement. The facts, as disclosed by the record in this case, may be summarized as follows:

Respondents are a family partnership engaged in the business of manufacturing lamps (R. 18). For their lamp bases, respondents utilize original works of sculpture—in the form of human figures and "free forms"—created by respondent Rena Stein (R. 19, 21, 40).[1] These statues are submitted by respondents as statues, without any lamp components added, to the Copyright Office for registration as "works of art" under Section 5 of the Copyright Law (17 U. S. C. 5, Appendix A, *infra*, p. 51 (R. 20, 23).

The statues involved in this case were so submitted to the Copyright Office, and Certificates of Registration were issued (R. 31–37). Thereafter, the statues were sold by respondents throughout the country both as statues and as lamps. The first sales of each copyrighted statue were as lamps rather than as statues only (R. 10–14).

[1] Typically, these statues are created as follows (R. 21): Respondent Rena Stein makes rough pencil sketches of the subject under consideration and then a composite drawing of what she believes is the best of the completed sketches. The resulting composition is sculptured by her in clay on an armature and a mold is prepared from the clay sculpture for casting copies.

As of November 18, 1952, some 7,440 copies of the six statues here involved were sold with lamp components attached and 10 were sold as statues without lamp parts (R. 10–14). However, according to the testimony of respondent Benjamin Stein, respondents have always had the company policy of offering the statues for sale to the trade as statues (R. 22). And respondents' advertising circular expressly states that "all designs [are] available as statues only, less one-third of price shown." (Pl. Exh. 12, R. 40.)

No question is raised here as to whether the lamps produced and sold by petitioners are unauthorized copies, so far as their bases are concerned, of respondents' copyrighted statues. The Court of Appeals stated: "Beyond any dispute, [petitioners] have meticulously and in minute detail copied every element of the copyrighted statues of the [respondents]." (R. 71).

Petitioners' sole defense is that the copyrights are invalid, and that, if respondents' statues are entitled to any protection against infringement, such protection may be obtained only under the Design Patent Law (R. 4–8).

This defense was sustained by the District Court, which followed the reasoning of the Court of Appeals for the Seventh Circuit in *Stein* v. *Expert Lamp Co.,* 188 F. 2d 611; certiorari denied, 342 U. S. 829, rather than that of the District Court for the Southern District of California in *Stein* v. *Rosenthal,* 103 F. Supp. 227.

The *Expert Lamp* case was also followed by the District Court for the Eastern District of Michigan in *Stein* v. *Benaderet*, 109 F. Supp. 364—now pending on appeal to the Sixth Circuit.

In support of its holding, the District Court in this case erroneously stated that the *Expert Lamp* decision "is consistent with the long-established practice of the Copyright Office" (R. 63). To correct this interpretation of the practice of the Copyright Office, the Register of Copyrights filed a brief as *amicus curiae* in the Court of Appeals, supporting respondents.

The Court of Appeals reversed, expressly declining to follow the Seventh Circuit (R. 80). Subsequently, the Court of Appeals for the Ninth Circuit also took issue with the Seventh Circuit and affirmed the district court decision in *Stein* v. *Rosenthal, supra*. *Rosenthal* v. *Stein*, 205 F. 2d 633.

SUMMARY OF ARGUMENT

Respondents' copyright is valid. The fact that the statues are used as lamp bases does not disqualify them as "works of art" and, consequently, does not destroy their copyrightability. Section 202.8 of the Copyright Office's regulations, which contemplates registration of works like respondents', accords with the plain language and history of the Copyright Law and reflects the long-established practice of the Office. The validity of this conclusion is unimpaired by the fact that

it may lead to cases where an applicant would be eligible for either a copyright or a design patent.

I

Section 5 (g) of the Copyright Law (17 U. S. C. 5 (g), provides in plain terms for copyrighting "works of art; models or designs for works of art." It tortures this language to argue, as petitioners do, that only works of *fine* art—"cultural treasure," unique (not mass-produced) masterpieces, objects of "art for art's sake" devoid of "utility"—were intended to be covered. The language of Section 5 (g) permits of no such restriction; the context—covering "all the writings of an author" (Section 4), and many items (*e. g.*, newspapers, maps, directories) which may be mass-produced (Section 5)—leaves no doubt that "works of art" must be read as it was written. So read, it clearly covers respondents' statues though they are used as lamp bases.

Legislative history confirms this conclusion. The Copyright Law of 1870 authorized registration for copyright of a "statue, statuary, and * * * models or designs intended to be perfected as works of the *fine* arts" (emphasis added). Even under that statute, works like respondents' were, in accord with the apparent understanding of Congress, deemed copyrightable. But the Act of 1909, reenacted in the law in force today, erased any doubt by authorizing copyright of "all the writings of an author" including "works

of art" and "reproductions of a work of art." The change was neither unconscious nor pointless; it was purposefully designed "as a broader specification than 'works of the fine arts' in the [earlier] statute * * *." Hearings on H. R. 19853, 59th Cong., 1st Sess., p. 11; and see S. Rep. No. 6187, 59th Cong., 2d Sess., p. 11.

II

The Copyright Office, both before and since 1909, has consistently registered items like respondents' statue. See Appendices B and C, *infra,* pp. 57–58. Thus, prior to 1909, articles like electric lamps, clocks, candle and match holders, and stationery cabinets were registered. Similar articles have been copyrighted ever since.

The fact that a work of art possesses utilitarian aspects has not in itself deprived it of its character as a "work of art" which is copyrightable. Of course, purely utilitarian objects which cannot fairly be considered to exhibit artistry—as distinguished from a pleasing or attractive functional design—have been held ineligible. But from Cellini's salt cellar to posters advertising a circus to respondents' statues used as lamp bases, the wide range of products of individual creativeness covered by the phrase "works of art" are eligible for the registration Congress authorized. See Mr. Justice Holmes in *Bleistein* v. *Donaldson Lithographing Co.,* 188 U. S. 239, 250.

Factors like mass production and commercial exploitation are no more effective to prevent copyrightability than is the fact that an object has utility. Mickey Mouse, pulp magazines, and a host of other examples which might be cited are all produced in quantity for profit. Some or all may miss the marks of uniqueness and creative inspiration for which many would reserve the characterization of "fine art." But none are any the less copyrightable for this. See *Bleistein* v. *Donaldson Lithographing Co., supra,* at 251. For a copyright is not an enrollment in a select national academy. It is a right Congress accorded generally to persons creating, *inter alia,* "works of art"—good or bad, inspired by artistic ideals or by crass hope of gain. And there is no such social interest in fostering the copying of another's creations as would warrant preventing the plagiarism of masterpieces while permitting free duplication of less worthy endeavors.

III

Finding that the plain language and history of the Copyright Law show the copyrightability of respondents' works, the court below saw no occasion to speculate whether respondents would also have been eligible for a design patent and whether the Copyright and Design Patent Laws may be construed as overlapping. But petitioners contend that the decision in effect sanctions such an overlapping. Accepting this premise for the

sake of argument, we think it clear that petitioners err in supposing (Br. 8, 18–19) that (1) the Copyright and Design Patent Laws "provide generally similar protection" and (2) for this reason, there can be no case where an applicant, at his option, could secure either a design patent or a copyright.

There are, in fact, significant differences in protection between a design patent and a copyright. Because a copyright protects originality rather than novelty and invention, the test for its infringement is whether a copy of the copyrighted work has actually been made. *Alfred Bell & Co. Ltd.* v. *Catalda Fine Arts, Inc.,* 191 F. 2d 99, 103 (C. A. 2). A patent, on the other hand, protects against products similar enough to deceive an observer into thinking them the same, whether or not the infringing items are copies or independently conceived originals. *Gorham Company* v. *White,* 14 Wall. 511, 528.

As a corollary of the lesser protection it affords, a valid copyright may be obtained for a work original with its author, regardless of novelty. *Burrow-Giles Lithographic Co.* v. *Sarony,* 111 U. S. 53, 57–58. A valid patent, on the other hand, calls for a high degree of uniqueness, ingenuity, and inventiveness. *Smith* v. *Whitman Saddle Co.,* 148 U. S. 674, 679. There is, further, a difference in duration—28 years, and renewal for 28 years, for a copyright (17 U. S. C. 24), and three-and-a-half, seven, or fourteen years, in

the election of the applicant, for a patent (35 U. S. C. 173, as reenacted, 66 Stat. 805).

Recognizing the difference between copyright and design patent protection, courts which have considered the problem have seen no reason to doubt that there are works which may qualify for either. *Louis De Jonge & Co.* v. *Breuker & Kessler Co.*, 182 Fed. 150, 151–152 (C. C. E. D. Pa.), affirmed, 191 Fed. 35 (C. A. 3), affirmed, 235 U. S. 33; *In re Blood,* 23 F. 2d 772 (C. A. D. C.); *Jones Bros. Co.* v. *Underkoffler,* 16 F. Supp. 729 (M. D. Pa.). This does not mean that the creator of such a work may obtain both a copyright and a design patent; he must elect the protection he desires. All that matters here, however, is that, assuming respondents would have been eligible for a design patent, this is no bar to copyright registration.

ARGUMENT

The fundamental question presented by this case is whether the "author"[2] of a sculptured statue may obtain a valid copyright where, at the time copyright registration is sought, the author intends to, and subsequently does, incorporate the statue into an article of utility. Attacking re-

[2] Section 4 of the Copyright Law (17 U. S. C. 4) provides that "the works for which copyright may be secured under this title shall include all the writings of an author." As explained by this Court in *Burrow-Giles Lithographic Co.* v. *Sarony*, 111 U. S. 53, 57–58, "An author in that sense is 'he to whom anything owes its origin; originator; maker; one who completes a work of science or literature.' Worcester."

spondents' copyright, petitioners contend that they may with impunity copy the statue without the permission of the author and incorporate it into an article of utility. The Copyright Office is of the opinion that the copyright is valid.

The position of the Copyright Office is set forth in Section 202.8 of the current regulations of the Copyright Office (37 C. F. R., 1949 ed., 202.8). Section 202.8, which was issued on December 22, 1948, prior to the registration of the statues here involved, states in pertinent part as follows (Appendix A, *infra*, pp. 55–56):

> Works of art (Class G)—(a) In general. This class includes works of artistic craftsmanship, in so far as their form but not their mechanical or utilitarian aspects are concerned, such as artistic jewelry, enamels, glassware, and tapestries, as well as all works belonging to the fine arts, such as paintings, drawings and sculpture. * * *

The purpose of the regulation is to permit the copyright registration of a work of art regardless of its possible mechanical or utilitarian aspects. As stated by the Register of Copyrights, Arthur Fisher, in his deposition introduced as evidence in this case (R. 25–30), "the phrase 'insofar as their form but not their mechanical or utilitarian aspects are concerned' is interpreted by the office and by our examiners to permit them to deal only with the question of whether the work is a work of artistic craftsmanship, and * * * it is our prac-

tice to consider as immaterial whether the work may also have a mechanical or utilitarian aspect." (R. 27.) Accordingly, if the particular work is a work of art, it is entitled to copyright registration under the regulation, irrespective of its utility.[3]

Concededly, the regulation does not purport to grant any rights to the mechanical or utilitarian uses of a copyrighted work of art. This is not to say, however, that copyright protection is lost where the work of art is incorporated in a useful article. It is the position of the Copyright Office that a copyright protects the work of art as a work of art without regard to any functional use to which it may be put, and that the subsequent utilization of such a work in an article of utility in no way affects the right of the copyright owner to be protected against infringement of the work of art itself.[4]

Thus, in the instant case, we do not take the position that petitioners may not lawfully pro-

[3] As shown below, pp. 23–24, the Copyright Office does not ignore mechanical or utilitarian aspects where the object is not a work of art. If the work is solely utilitarian in nature, or is a product of the industrial arts whose form is dictated by functional considerations, registration is denied. This qualification, however, does not, in our view, apply in the instant case which concerns a work of art.

[4] See Pogue, *Borderland—Where Copyright And Design Patent Meet*, 52 Mich. L. Rev. 33; Derenberg, *Copyright No-Man's Land: Fringe Rights in Literary and Artistic Property*, 1953 Copyright Problems Analyzed (CCH) p. 215; *Notes*, 66 Harv. L. Rev. 877; 27 Ind. L. Journ. 130; 38 Iowa L. Rev. 334; 21 Geo. Wash. L. Rev. 353; 37 Minn. L. Rev. 212.

duce and sell an electric lamp whose base is a sculptured statue. Nor do we contend that petitioners may not lawfully produce and sell an electric lamp whose base is an *authorized* copy of the sculptured statues copyrighted by respondents or a copy purchased from respondents. We submit only that the production and sale of an electric lamp whose base is an *unauthorized* copy of respondents' copyrighted statues is an infringement of the copyright. As we view the case, therefore, the issue is not, as petitioners formulate it, whether a design of an electric lamp may be protected as a monopoly by means of copyright registration. Rather, the issue is whether a copyrighted statue may be *copied,* irrespective of its use as a statue or as a component part of an electric lamp or any other article of utility. Petitioners may, in our view, make and sell any lamps they please with any kind of figures or statues as bases, provided only that they refrain from copying and selling statues copyrighted by someone else.

I

SECTION 202.8 OF THE COPYRIGHT OFFICE REGULATIONS IS IN ACCORD WITH THE STATUTORY LANGUAGE AND LEGISLATIVE HISTORY OF THE COPYRIGHT LAW

In this Court, petitioners apparently concede that Section 202.8 of the current regulations per-

mits the copyright registration of respondents' statues. As noted above, pp. 11–12, Section 202.8 provides for the registration of "works of art" and states that registration is not denied a work of art simply because it possesses mechanical or utilitarian aspects. Petitioners' contention here is that Section 202.8 is not authorized by the Copyright Law, that the Copyright Law, in so far as pertinent, authorizes copyright registration only of "works of fine art." (Pet. Br. 9–10, 19–24.) They urge (Pet. Br. 10, 20) that a mass-produced article cannot be the subject of copyright as a "work of art." Their argument is fallacious and cannot be accepted.

A. STATUTORY LANGUAGE

Petitioners' position is squarely contradicted by the clear and unambiguous language of Section 5 of the Copyright Act (Appendix A, *infra*, pp. 51–52). Section 5 (g) of the Copyright Act of 1947 (61 Stat. 652), which is a reenactment of the Copyright Act of 1909 (35 Stat. 1075), expressly provides for registration of "works of art; models or designs for works of art." 17 U. S. C., Supp. V, 5 (g). And Section 5 (h), which also reenacts the Copyright Act of 1909, similarly provides for registration of "reproductions of a work of art." 17 U. S. C., Supp. V, 5 (h). On its face, Section 5 is not limited to "works of *fine* art," and it neither expressly nor impliedly excludes

works of art which have utility and may be mass-produced.[5]

The plain words of Section 5 should be given their ordinary and accepted meaning. That the phrase "works of art" is commonly understood to have a broader meaning than "works of fine art" is shown by their dictionary definitions. "Art" is the "application of skill and taste to production according to aesthetic principles * * * application to the production of beauty in plastic materials by imitation or design, as in painting and sculpture * * * that which is produced, as paintings, sculpture, etc., by the application of skill and taste." Webster, *New International Dictionary* (2nd ed.) p. 155. "Fine art" is "art which is concerned with the creation of objects of imagination and taste for their own sake and without relation to the utility of the object produced." *Id.* at 949.

And the broader scope of the phrase "works of art" has been recognized by this Court. In *United States* v. *Perry,* 146 U. S. 71, 74–75, the Court pointed out that "works of art may be divided into four classes: 1. The fine arts, properly so called, intended solely for ornamental purposes * * *. 2. Minor objects of art, intended also for ornamental purposes * * * [which] are

[5] That the mass production argument is groundless is seen from the fact that millions of copies of books, paintings, etc., have been under copyright protection for years, and there has never been any court decision implying that only the original is protected. See also note 13, *infra*, pp. 31–32.

susceptible of an indefinite reproduction from the original. 3. Objects of art, which serve primarily an ornamental, and incidentally a useful, purpose * * *. 4. Objects primarily designed for a useful purpose, but made ornamental to please the eye and gratify the taste, such as ornamented clocks * * *."

Petitioners' brief itself vigorously asserts the distinction between "works of art" and "works of fine art." In arguing that only "works of fine art" are protected by the Copyright Law, petitioners state that "works of fine art have always been restricted to *original* painting, statue and sculpture having no utility, created solely for the sake of art" (Pet. Br. 20), that "the definition and understanding of 'works of fine art' requires that the work have artistic value only and be free of any practical utility" (Pet. Br. 10), and that this conception "precludes the mechanical duplication of the original form of the work of fine art" (*ibid.*).

But petitioners' effort to exclude objects having, or incorporated in articles having, utility from the category of "works of art" registrable under 17 U. S. C. 5 (g) not only requires a misreading of this specific subsection's language; it requires, in addition, that the context of the subsection be ignored. Section 4 expressly provides that the subject-matter of copyright "shall include all the writings of an author." 17 U. S. C. 4. And the classes of copyrightable materials listed in Section

5 as a whole (Appendix A, *infra*, pp. 51–52)—a listing Congress declared "shall not be held to limit the subject matter of copyright" (*infra*, p. 52)—shows no such animus against utility as petitioners assume. The subsections include directories, gazeteers, and other compilations; newspapers; lectures, sermons, and addresses; maps; drawings or plastic works of a scientific or technical nature; and photographs. Conjoined with such items, which frequently combine utility with limited aesthetic pretensions, the category of "works of art" invites no strained contraction to include only *fine* art. Properly read as it was written, the phrase includes respondents' statues, whatever their artistic merit and however much their use as lamp bases may, by the standard of "art for art's sake", qualify their role as "pure" or "fine" art.

B. LEGISLATIVE HISTORY

Accordingly, unless it is to be assumed that Congress employed the phrase "works of art" in a sense far narrower than its ordinary meaning, Section 202.8 of the regulations of the Copyright Office is fully authorized by the statutory language and is in accord with its purpose. The evolution of the language convincingly demonstrates that the Congressional choice of words was deliberate and not unintentional.

Prior to 1870, the Copyright Law afforded no protection either to works of fine art or to works

of art. In so far as statues are concerned, protection was conferred by the Design Patent Act of 1842 (Sec. 3, 5 Stat. 543, 544) upon "any new and original design for a manufacture," *"any new and original design for a bust, statue, or bas relief or composition in alto or basso relievo,"* or "any new and original shape or configuration of any article of manufacture." (Appendix A, *infra,* pp. 52–53, emphasis added). As amended in 1870, both the Design Patent Law and the Copyright Law provided protection for statues. The Design Patent Act of 1870 extended to a "new and original design for a manufacture, bust, *statue,* alto-relievo, or bas-relief" or "any new, useful, and original shape or configuration of any article of manufacture." (Sec. 71, 16 Stat. 198, 210, Appendix A, *infra,* p. 53, emphasis added.) The Copyright Law of 1870, however, was limited to a "statue, statuary, and * * * models or designs intended to be perfected as works of the *fine* arts" (Sec. 86, 16 Stat. 198, 212, Appendix A, *infra,* p. 48, emphasis added). In 1902, the specific enumeration of the subjects of design patent was eliminated, and the Design Patent Law was amended to cover broadly "any new, original, and ornamental design for an article of manufacture." (32 Stat. 193, Appendix A, *infra,* pp. 53–54.)[6] In 1909, the present language of the

[6] Prior to this amendment, utility was a relevant consideration in the issuance of a design patent. Compare *Smith* v. *Whitman Saddle Co.*, 148 U. S. 674, 678, with *Gorham Company* v. *White*, 14 Wall. 511. Cf. Pet. Br. 27.

Copyright Law was adopted, permitting the registration of "all the writings of an author" including "*works of art;* models or designs for *works of art;* reproductions of a *work of art.*" (Secs. 4, 5, 35 Stat. 1075, 1076–1077, Appendix A, *infra,* pp. 49–50, emphasis added.)

As this summary of the history of the Copyright and Design Patent Laws reveals, a duplication in coverage with respect to statuary has existed since 1870. During the period 1870–1909, the duplication was narrower than that which presently exists, protection under the Copyright Law being limited to statuary "intended to be perfected as works of the fine arts." With the broadening of the Copyright Law in 1909 to include "works of art" generally, statuary is now protected by copyright registration if it is a work of art, irrespective of its utility (cf. *Jones Bros. Co.* v. *Underkoffler,* 16 F. Supp. 729 (M. D. Pa.)), and it is protected by design patent if it is "new, original, and ornamental."

That the substitution of "works of art" for "works of fine art" in the 1909 Act was intended to broaden the scope of the Copyright Law—and was not, as petitioners assert (Pet. Br. 9–10), merely the elimination of a superfluous word—is clearly shown by the legislative history of that Act. The Copyright Office and the Library of Congress actively participated in the drafting of the bill which ultimately became the 1909 Act. See Hearings before Committee on Patents, House

of Representatives, conjointly with Senate Committee on Patents, on H. R. 19853, 59th Cong., 1st Sess., June 6–9, 1906, p. 6. With respect to this change in language, the Librarian of Congress[7] expressly advised the House and Senate Committees as follows (Hearings, *supra,* p. 11):

> The bill contains only the general statement that the subject-matter is to include "all the works of an author," leaving the term "author" to be as broad as the Constitution intended; and, as you know, the courts have followed Congress in construing it to include the originator in the broadest sense, just as they have held "writings," as used in the Constitution, to include not merely literary but artistic productions.
>
> After this general statement certain specifications follow in the bill of particular classes under which a particular application is to be made in the office, but these specifications are coupled with the proviso that they shall not be held to limit the subject-matter. The specifications so far as possible also substitute general terms for particulars. They omit, for instance, the terms "engravings, cuts, lithographs, painting, chromo, statues and statuary." They assume, however, that all of these articles will be included under the more

[7] The Copyright Office was then, and is now, part of the Library of Congress and under the direction and supervision of the Librarian of Congress. See 17 U. S. C. A. 201, Historical Note.

> general terms, as "prints and pictorial illustrations" or "reproductions of a work of art" or "works of art" or "models or designs for works of art." *The term "works of art" is deliberately intended as a broader specification than "works of the fine arts" in the present statute with the idea that there is subject-matter (for instance, of applied design, not yet within the province of design patents), which may properly be entitled to protection under the copyright law.* [Emphasis added.]

In the light of this express statement of the reason for the change in language, petitioners' claim that the 1909 Act is still restricted to works of fine art is footless. The testimony of the Librarian of Congress is enough to preclude any inference that Congress adopted the changed language unwittingly. And there is other evidence that Congress was not unconscious of the difference between "works of art" and "works of fine art." The Senate Report on a predecessor bill of the one which became the 1909 Act, following the hearings we have cited, expressly referred to the listed category of "works of art" as a *new designation,* and pointed out, in addition, that "'models or designs intended to be perfected as works of the *fine* arts' is changed to 'models or design for works of art.'" S. Rep. No. 6187, 59th Cong., 2d sess., p. 11 (latter emphasis added). That Congress was fully aware of the

distinction is shown, moreover, by Section 3 of the Copyright Act of 1874 (18 Stat. 78, 79, Appendix A, *infra,* pp. 48–49) which provided that the "words 'Engraving', 'cut' and 'print' shall be applied only to pictorial illustrations or works connected with the fine arts, and no prints or labels designed to be used for any other articles of manufacture shall be entered under the copyright law, but may be registered in the Patent Office."

It may be suggested, indeed, that even when the Copyright Law (before 1909) referred to "works of *fine* art," Congress understood it to cover a broader area than petitioners find covered today—an area including the statuary involved here. See pp. 27, 30, *infra.* That articles serving a useful as well as ornamental purpose could be registered under the earlier law is disclosed by an 1882 amendment, which authorized "manufacturers of designs for molded decorative articles, tiles, plaques, or articles of pottery or metal subject to copyright [to] put the copyright mark * * * upon the back or bottom of such articles * * *." 22 Stat. 181 (Appendix A, *infra,* p. 49). That enactment, according with common knowledge, belies petitioners' suggestion that a copyright is (or ever was) available only to protect a "cultural treasure" (Pet. Br. 9).

We think it clear, in a word, that when it authorized copyrights for "works of art" Congress meant what it said. And that authorization

plainly extends to the statues created by the respondents and copied by the petitioners.

II

SECTION 202.8 OF THE COPYRIGHT OFFICE REGULATIONS IS CONSISTENT WITH THE ESTABLISHED PRACTICE OF THE COPYRIGHT OFFICE SINCE 1909

The Copyright Office is not a judicial body and cannot adjudicate the validity of copyright claims submitted to it for registration. That ultimate determination rests with the courts. Assuming that all the procedural requirements of the law and regulations are met, the Copyright Office cannot refuse to register a claim to copyright in any work if the work is subject to copyright under the law. The Copyright Office can, however, refuse to register claims to works not within the contemplation of the statute. Cf. *King Features Syndicate, Inc.* v. *Bouvé,* 48 U. S. P. Q. 237 (D. D. C.); *Bouvé* v. *Twentieth Century-Fox Film Corp.,* 122 F. 2d 51 (C. A. D. C.).

Accordingly, if the procedural requirements of the Copyright Law and administrative regulations are met, the Copyright Office must decide, initially, whether the alleged art work comes within the statutory categories of "works of art; models or designs for works of art; [or] reproductions of a work of art." See 28 Ops. A. G. 557. In the absence of any controlling judicial definition, the Copyright Office has proceeded along what it considers to be a very conservative

path in reaching such decisions. In fact, text writers have suggested that the Office should be more liberal in its views in this regard. Weil, *The Copyright Law,* 214 (1917); Ladas, *International Protection of Literary and Artistic Property,* 716 (1938).

The regulations here in issue form a part of these conservative standards used by the Office in deciding whether to issue a copyright.

Petitioners contend, however, that in 1948, when the present regulation (Section 202.8) was issued, the Copyright Office "perverted" the law and improperly enlarged the class of "works of art" eligible for registration (Pet. Br. 33). Arguing that, despite the plain language of the 1909 Act, the Copyright Law is restricted to "works of fine art,"[8] petitioners assert that the Copyright Office so interpreted the Act from 1909 until 1948. In support of this argument, they rely on the language of the pre-1948 regulations. Their reliance, we submit, is misplaced. The fact is that the Copyright Office has consistently since 1909—and even before then—registered works like the ones in this case, following the clearly stated mandate of Congress.

1. As amended in 1917, Section 12 of the 1910 Regulations, which remained substantially unchanged until 1948, read as follows:[9]

[8] We have answered this contention in Point I of this brief, *supra,* pp. 13–23.

[9] As originally promulgated in 1910 this Regulation read: "Works of art.—This term includes all works belonging

Works of art and models or designs for works of art.—This term includes all works belonging fairly to the so-called fine arts. (Paintings, drawings, and sculpture.)

The protection of productions of the industrial arts, utilitarian in purpose and character, even if artistically made or ornamented depends upon action under the patent law; but registration in the Copyright Office has been made to protect artistic drawings notwithstanding they may afterwards be utilized for articles of manufacture.

Toys, games, dolls, advertising novelties, instruments or tools of any kind, glassware, embroideries, laces, woven fabrics, or similar articles are examples. The exclusive right to make and sell such articles should not be sought by copyright registration.

This regulation was superseded in 1948 because it did not explicitly reflect the established practice of the Copyright Office. It defined only the extremes of permissible and nonpermissible registration, leaving in doubt the works which fall

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fairly to the so-called fine arts. (Paintings, drawings, and sculpture.)

"Productions of the industrial arts utilitarian in purpose and character are not subject to copyright registration, even if artistically made or ornamented.

"No copyright exists on toys, games, dolls, advertising novelties, instruments or tools of any kind, glassware, embroideries, garments, laces, woven fabrics, or any similar articles."

in between. Thus, the regulation stated that the term "works of art" "*includes*" all works belonging fairly to the so-called fine arts but not "productions of the industrial arts, utilitarian in purpose and character * * *." It made no reference to articles which might fairly be considered works of art although they might also serve a useful purpose. As the registrations granted by the Copyright Office since 1909 demonstrate, the regulation was not intended to exclude such works of art. For the convenience of the Court, we have set forth in Appendix B, *infra*, pp. 57–64, typical examples from the Catalog of Copyright Entries for the period 1912 to 1952—selected at approximately five-year intervals—showing registrations of works of art possessing utilitarian aspects.

It has been the consistent practice of the Copyright Office since 1909 to refuse copyright registration only to those works of a strictly utilitarian nature which could not be called "works of art" although they might possess pleasing design. Thus, registration has been refused for pleasing or attractive functional designs for refrigerators, clocks, stoves, gasoline pumps, and oil dispensers on the ground that protection for such works must be considered under the Design Patent Law.[10] However, a work which was of itself an

[10] Contrary to petitioners' assumption, the items reproduced from the Catalog of Copyright Entries on p. 33 of their brief were not of this category. The items referred to

artistic conception in the category of the standard art media—sculpture, painting, etc.,—was not denied registration merely because it could be put to a useful purpose.

It should be observed that this was the practice even under the more restrictive law prior to 1909. As shown by the photographs reproduced in Appendix C of this brief, *infra,* pp. 66–78, articles registered in that period included works of sculpture intended for use as *electric lamps,* magazine racks, clocks, candle and match holders, and stationery cabinets.

Under the 1910 and 1917 Regulations, registration was granted for stained glass windows, bas-relief bronze doors, sculptures embodied in book-ends, candlestick holders, sanctuary lamps, and the like.[11] Similarly, artistic works of less aesthetic,

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were in fact registered as works of art, models or designs for works of art. With but a single exception, the works consisted of drawings or photographs of works which fall within the classic art form of paintings or drawings, albeit many may doubt the merit of their art. No hats, game boards, belt buckles, or lampshades were deposited. It is clear, then, from the very instances petitioners cite that all that is protected is the drawing or other identifying reproduction. *Baker* v. *Selden*, 101 U. S. 99, 102–103; *Muller* v. *Triborough Bridge Authority*, 43 F. Supp. 298 (S. D. N. Y.); *Fulmer* v. *United States*, 103 F. Supp. 1021 (C. Cls.).

The sole exception was GP 6079, which was a colorful plaster pig with a coin slot in its back, to be used as a bank. This, of course, falls within the class of artistic works which, however debatable their aesthetic merit, are clearly artistic in conception and have wide popular appeal. See pp. 27–28, *infra.*

[11] For example, the 1910 Catalog of Copyright Entries (which is required to be published by 17 U. S. C., Supp. V,

but perhaps more popular appeal, such as reproductions of Mickey Mouse, Donald Duck, cocker spaniels (cf. *Woolworth Co.* v. *Contemporary Arts,* 344 U. S. 228), greyhound dogs, and grotesque pigs, also have been granted registration notwithstanding their possible and potential use as toys for children, paperweights, automobile radiator caps, or savings banks.

2. Art, in its broadest sense, may be conceived to be a matter of individual taste or preference which does not depend upon public acceptance. The Copyright Office, however, does not generally accept the subjective preference of every copyright claimant as the test of registrability. The theories upon which it has granted copyrights for "works of art," as described in the preceding section of this Point, are as follows:

Historically, paintings, statues, sculpture, etchings, and the like have always been regarded as

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210) discloses registration of the following: (1) *Altar Candle Stick*—Ornamental vase resting on 6 claws and showing cross in relief on 2 sides, fluted stem with 3 cherub heads supporting top. Registration No. G–36140; (2) *Sanctuary Lamp Model*—Three chains suspended from ornamental top holding lamp ornamented by two angels in attitude of prayer. Registration No. G–36146; (3) *Set of Dishes For Tabernacle Service*—Circular design, small oval in border containing monogram and Hebrew characters, sprays of hoshanas, branch with fruit above oval. Registration No. G–35081; (4) *Sundial*, motto "Speedwell"—Face of sundial with fancy border. Registration No. G–31799; (5) *Egyptian Jardiniere*—Large bowl held upon the back of three lions, near top elephants' heads, potted with plants. Registration No. G–32062.

works of the fine arts. Like most human efforts, these works can be the achievement of genius or the result of mere amateurish feeling for expression. The Copyright Office accepts for registration all such works regardless of their excellence or lack of merit.[12] As Mr. Justice Holmes pointed out in *Bleistein* v. *Donaldson Lithographing Co.*, 188 U. S. 239, 250:

> 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.

Where the work, strictly speaking, does not lie within the historical concept of the fine arts, but is closely allied thereto—as is the case with jewelry, enamels, glassware and tapestry—the Office will reject an application only if a reasonable man might say that there was an entire absence of artistic craftsmanship notwithstanding the presence of pleasing functional design. For example, the Office has registered some claims to copyright in jewelry, the most notable illustration probably being that created by the contemporary artist, Salvador Dali. This jewelry constituted three-dimensional representations of

[12] See p. C of petitioners' Appendix, reprinting article on Copyrighting Jewelry by the former Register of Copyrights, Sam B. Warner.

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some of the well-known objects from paintings by Mr. Dali, such as limp watches, staring eyes, driftwood, etc., in the form of earrings, brooches and a necklace.

As noted above, works which are ornamental and intended primarily to serve an ornamental purpose, but which may incidentally serve a useful purpose, are also copyrightable. Pictorial stained-glass windows, bronze bas-relief doors, sculptured candleholders, and similar items fall within this class. As shown in Appendices B and C, *infra,* pp. 57–58, registrations made both before and after 1909 include works of this category. They are in essence artistic, and the incidental useful purpose is inherent in the object of the art form.

It is, in short, no bar to eligibility for copyright that an object which is made in an ornamental and artistic fashion is designed as, or as part of, an article of utility. Utility in itself is in no way incompatible with art. For example, Appendix C, *infra,* pp. 66–78, contains a photograph of a bas-relief bronze clock, which was registered prior to 1909. It cannot reasonably be said that such a work should be denied the protection of the Copyright Law solely because, like the Cellini salt cellar, it serves a useful purpose. The work of art remains a work of art notwithstanding its utilitarian features.[13]

[13] The fact that the Cellini salt cellar may have been originally produced in a single copy for a noble patron rather than

Not to be confused with this category is the class of works which are solely utilitarian in nature, or which may be said to be products of the industrial arts, whose form is dictated by functional considerations. Examples of this class would include such things as bicycle pumps, watch cases, refrigerators, automobile bodies, lawn mowers, and spectacle cases. A pleasing design or configuration of these types of work is generally attributable primarily to the functional use for

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in multiple copies for the multitudes would appear immaterial. Cf. Pet. Br. 42. Literary works which in an earlier era would perhaps have been reproduced by hand on illuminated parchment or in other single copies have not become less copyrightable by virtue of their present reproduction in thousands of copies by manufacturing techniques involving the use of movable type, plates, etc. Similarly, painting masterpieces once produced chiefly on canvas or as murals in single copies are now frequently reproduced in color plates for distribution in thousands of individual copies or in periodical or book form. Neither the mechanical and manufacturing processes used in this reproduction, the number of copies, the materials used, nor the association of the work of art with some useful purpose would appear to affect the copyrightability or essential nature of the work itself. What is copyrighted as the writings of an author, whether in their literary or artistic aspects, is the intangible property, not the physical materials of which it is made or the use to which it is put. The Venus de Milo remains no less a work of art if reproduced in marble for exhibition in a gallery, in porcelain on a family mantlepiece, as part of a salt cellar for table use, or as part of a lamp in a sitting-room. And what is true of the sculpture of the greatest of artists would appear equally true of the works of lesser sculptors, the quality of the work and the reputation of the author being as immaterial as whether the work itself may be seen only in a public gallery or in the humblest home.

which the article is intended. It is the position of the Copyright Office that no matter how pleasing the design, for example, of the body of the Studebaker automobile which was created by a famous industrial designer, such design is solely related to its functional purpose and, therefore, lies outside the field of copyright protection.

3. In making its determinations, the Copyright Office does not take into consideration the possible commercial exploitation of the work submitted for registration. Nothing in the language or history of the Copyright Law suggests that copyright protection should be denied because the work of art has commercial value. See *supra,* pp. 14–23. Even works of fine art, which presumably are created for their own sake without relation to utility, may serve a profitable purpose. If they served no such purpose, copyright registration would be of little more than theoretical value to their author. Presumably, registration is obtained because the author wishes to secure for himself "the exclusive right * * * To print, reprint, publish, copy, and vend the copyrighted work * * *." 17 U. S. C. 1 (a).

As Mr. Justice Holmes observed in *Bleistein* v. *Donaldson Lithographing Co.,* 188 U. S. 239, 251, holding certain illustrations copyrightable although of no intrinsic value other than as circus posters, "Certainly works are not the less connected with the fine arts because their pictorial quality attracts the crowd and therefore gives

them a real use—if use means to increase trade and to help to make money. *A picture is none the less a picture and none the less a subject of copyright that it is used for an advertisement.* * * * the special adaptation of these pictures to the advertisement of the Wallace shows does not prevent a copyright." (Emphasis added.) Similarly here, respondents' statues are none the less works of art because they may serve as lamp bases, creating a combination of aesthetic appeal and utility for which many people appear willing to pay and which petitioners deemed it profitable to copy.

Moreover, to deny copyright registration because of possible commercial exploitation of the work of art would be to make copyright protection turn upon the applicant's subjective intent at the time of application, or upon a later change in that intent. The impossibility of this test was clearly stated in *Stein* v. *Rosenthal,* 103 F. Supp. 227, 231 (S. D. Cal.), affirmed, 205 F. 2d 633 (C. A. 9):

> Having qualified for registration by reason of its purely artistic character, the question presented is whether an intent on the part of the claimant to copy such protected sculpture in such a way as to artistically enhance some separate and utilitarian article of manufacture destroys the right to copyright. The argument that this is so is but another vehicle to carry defendants' philosophy that if the artist intends

> to profit by his creation he cannot acquire protection. *To uphold this argument would be to require the Judicial inquiry to plumb the mind of every copyright proprietor and determine his plans and intentions as of the time of registration. This impossibility is not contemplated by the Statute.*" [Emphasis added.]

This observation is plainly applicable to the administrative inquiry as well. The test of copyrightability proposed by petitioners is both unsound and unworkable.

In sum, it is apparent from a review of the established practice of the Copyright Office that Section 202.8 of the current regulations is consistent with, rather than contrary to, the Copyright Office's long-standing interpretation of the 1909 Copyright Act. Petitioners' assertion that Section 202.8 is an attempt to enlarge the field of operations of the Copyright Office "in a clear encroachment upon the field of operation of the Patent Office" (Pet. Br. 11) is baseless.

III

THE AVAILABILITY OF DESIGN PATENT PROTECTION DOES NOT PRECLUDE COPYRIGHT REGISTRATION

The court below (R. 83–84) found it unnecessary to decide whether there is an area of overlap between the Copyright and Design Patent Laws—"in other words, [whether] there is a field in which an applicant, at his option, could secure

either a copyright or a design patent" (R. 83). The court said (R. 84):

> All that we hold, and all that we need hold, is that the copyrights of the statuettes granted to plaintiffs [respondents] were valid, even though plaintiffs intended primarily to use these statuettes in the form of lamp bases and did so use them, and that these copyrights were clearly infringed by defendants, who minutely copied these statuettes in the form of bases for lamps. * * *

Petitioners contend, however—implicitly assuming that respondents' statues would be eligible for a design patent—that the effect of the decision below is to permit an overlapping of the Copyright and Design Patent Laws. They argue that these laws must be construed to be "contiguous," never overlapping (Pet. Br. 14). And they urge (Br. 19) that under a contrary view "the Design Patent Laws become a dead letter."

It may be noted at the outset that there is no provision in the pertinent statutes to support the position that overlapping is forbidden. It is to be recalled, moreover, that, as we have shown in Points I and II, the decision below clearly accords with the language and history of the Copyright Law and the established practice of the Copyright Office thereunder. There is solid ground, therefore, for the view that this Court, like the court below, has no occasion to reach the broad issue petitioners pose.

But to meet their argument squarely, we think it clear that petitioners are mistaken. The contention that an applicant potentially eligible for a design patent may never obtain a copyright rests upon the erroneous premise that the Copyright Law and the Design Patent Law "provide generally similar protection" (Pet. Br. 8, 18–19). In fact, there are significant differences in the scope of the protection the two laws afford. Recognizing this, the courts which have encountered the problem have concluded (see pp. 41–46, *infra*) that there is a category of works for which either copyright or design patent protection may be available.[14]

1. Unlike a patent, a copyright gives no exclusive right to the art disclosed by the copyright or to the use of the art. The Copyright Law protects only the expression of an idea; it does not protect the idea itself. *Baker* v. *Selden,* 101 U. S. 99; *F. W. Woolworth Co.* v. *Contemporary Arts,* 193 F. 2d 162, 164 (C. A. 1), affirmed, 344 U. S. 228; *Ansehl* v. *Puritan Pharmaceutical Co.*, 61 F. 2d 131 (C. A. 8); *Fulmer* v. *United States,* 103 F. Supp. 1021 (C. Cls.); *Muller* v. *Triborough Bridge Authority,* 43 F. Supp. 298 (S. D. N. Y.). For example, if a book disclosing a formula for a medicine is copyrighted, others may not copy the book, but they may use the formula—the

[14] We are advised, in this connection, that the Patent Office agrees with the conclusion of the Copyright Office that the copyright of the respondents in this case is valid.

idea. A patent, on the other hand, would protect the idea by conferring an exclusive right to manufacture and sell the medicine made according to the formula. *Baker* v. *Selden, supra,* at 102–103.

Since a copyright is intended to protect authorship, the essence of copyright protection is the protection of originality rather than novelty or invention. *Bleistein* v. *Donaldson Lithographing Co.,* 188 U. S. 239, 249–250; *Baker* v. *Selden, supra* at 102, 104. For this reason, the test for copyright infringement is whether the second work is an original and independent treatment of the subject, or is a copy more or less servile of the first work. *Pellegrini* v. *Allegrini,* 2 F. 2d 610 (E. D. Pa.); *Alfred Bell & Co. Ltd.* v. *Catalda Fine Arts, Inc.,* 191 F. 2d 99, 103 (C. A. 2); *Ansehl* v. *Puritan Pharmaceutical Co.,* 61 F. 2d 131 (C. A. 8); *Christie* v. *Cohan,* 154 F. 2d 827 (C. A. 2), certiorari denied, 329 U. S. 734. On the other hand, the test for infringement of a design patent is whether "in the eye of an ordinary observer, giving such attention as a purchaser usually gives, two designs are substantially the same, if the resemblance is such as to deceive such an observer, inducing him to purchase one supposing it to be the other * * *." *Gorham Company* v. *White,* 14 Wall. 511, 528. As the Court of Appeals for the Second Circuit recently pointed out in *Alfred Bell & Co. Ltd.* v. *Catalda Fine Arts, Inc., supra* at 103:

> * * * "independent reproduction of a copyrighted * * * work is not infringement," whereas it is *vis a vis* a patent. Correlative with the greater immunity of a patentee is the doctrine of anticipation which does not apply to copyrights: The alleged inventor is chargeable with full knowledge of all the prior art, although in fact he may be utterly ignorant of it. The "author" is entitled to a copyright if he independently contrived a work completely identical with what went before; similarly, although he obtains a valid copyright, he has no right to prevent another from publishing a work identical with his, if not copied from his. A patentee, unlike a copyrightee, must not merely produce something "original"; he must also be "the first inventor or discoverer." "Hence it is possible to have a plurality of valid copyrights directed to closely identical or even identical works. Moreover, none of them, if independently arrived at without copying, will constitute an infringement of the copyright of the others."

Because of these differences in the scope of the protection granted by the Copyright and Design Patent Laws, the two differ in additional important respects:—(1). The standards for obtaining copyright protection are of a lower order than those required for design patents. A copyright may be registered if the particular work is "original," *i. e.,* if it owes its origin to the author. *Burrow-Giles Lithographic Co.* v. *Sarony,* 111

U. S. 53, 57–58. It is "valid without regard to the novelty, or want of novelty, of its subject-matter." *Baker* v. *Selden, supra* at 102. Correlative with the greater immunity of a patentee is the requirement that a design patent may be obtained only for a "new, original and ornamental design for an article of manufacture." 35 U. S. C. 171, as reenacted, 66 Stat. 805 (Appendix A, *infra,* p. 54). To be valid, a patent must disclose a high degree of uniqueness, ingenuity, and inventiveness. *Smith* v. *Whitman Saddle Co.,* 148 U. S. 674, 679; *Alfred Bell & Co. Ltd.* v. *Catalda Fine Arts, supra; In re Faustmann,* 155 F. 2d 388 (C. C. P. A.). (2). The duration of a copyright is initially twenty-eight years from the date of first publication and may be renewed for an additional twenty-eight years (17 U. S. C. 24),[15] whereas design patents are granted for the term

[15] In presenting its draft of the bill which subsequently became the Copyright Act of 1909, the Copyright Office, speaking through the Librarian of Congress, Herbert Putnam, advised the Congress as follows: "The third suggestion is that a common disposition to question a long term for copyright, on the ground that a short term suffices for patents, is based upon false analogy. Literary and artistic productions and useful inventions may be equally the creations of the mind, and they are coupled in the Constitution; but they are coupled, it is pointed out, only as deserving protection. Their character, and the duration of the protection required by each, may be very different. It is alleged to be very different. The monopoly is different; the returns to the creator are different, and the interests of the public are different in the two cases. The monopoly by patent in an invention is a complete monopoly of the idea. The monopoly by copyright in a literary or artistic work is a monopoly

of three-and-a-half years, seven years, or fourteen years in the election of the applicant. 35 U. S. C. 173, as reenacted, 66 Stat. 805.

It is thus apparent that the protection accorded by the Copyright Law is significantly different from that of the Design Patent Law. If the respondents had obtained design patents for their statues, they would have had a monopoly—during the term of the patent—of the production and sale of electric lamps whose bases are such statues. See 35 U. S. C. 289, as reenacted, 66 Stat. 813 (Appendix A, *infra*, pp. 54–55). Their patents would have been infringed by the production and sale of electric lamps whose bases are statues which, in the eyes of an ordinary observer, are of substantially the same design. The protection which the respondents obtained from their copyright registration, however, is only the exclusive right—during the term of the copyright—to be protected from the unauthorized copying of

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merely of the particular expression of the idea. The inventor's exclusive control of his idea, it is said, may bar innumerable other inventions, applications of his idea, of importance to the public, while the author's or artist's exclusive control of his particular expression bars no one except the mere reproducer. The returns to an inventor are apt to be quick; the returns to an author are apt to be slow, and the slower in proportion to the serious character of his book, if a book. The returns to a successful inventor are apt to be large; the returns to even a successful author or artist are not apt to be more than moderate." Hearings Before Committee on Patents, House of Representatives, conjointly with Senate Committee on Patents, on H. R. 19853, 59th Cong., 1st Sess., June 6–9, 1906, pp. 12–13.

their statues.[16] They did not obtain a monopoly of the production and sale of electric lamps whose bases are statues, of independent creation, similar to but not copies of their copyrighted statues. Nor did respondents obtain a monopoly of the production and sale of electric lamps whose bases are identical authorized copies of theirs. Others remain wholly free to utilize copies of the statues in any manner they see fit, provided that such copies are purchased from respondents or authorized assignees of the copyright. The grant of this limited protection under the Copyright Law does not make a "dead letter" of the Design Patent Law.

2. Contrary to petitioners' view, judicial decisions have several times recognized that there are works which may qualify for either copyright or

[16] Section 1 of the Copyright Law grants to the copyright owner only "the exclusive right: (a) To print, reprint, publish, copy, and vend the copyrighted work; * * *." (17 U. S. C. 1 (a)). Accordingly, copyright protection of the statues could not extend to any other portion of the lamp. Section 3 of the Act makes this clear by providing that "the copyright provided by this title shall protect all the copyrightable component parts of the work copyrighted." (17 U. S. C. 3, Appendix A, *infra*, pp. 50–51.) Cf. *Eggers* v. *Sun Sales Corp.*, 263 Fed. 373 (C. A. 2). Here, the copyrightable component of the work copyrighted was the statue. The addition of non-copyrightable lamp fixtures would not change the scope of copyright protection even if the work had been so submitted for registration. In either case, it is the statue only which is entitled to copyright protection, and, as we have shown, there is no justification for holding that such protection is lost if the statue is commercially exploited by the addition of non-copyrightable matter.

design patent protection. In *Louis De Jonge & Co.* v. *Breuker & Kessler Co.*, 182 Fed. 150 (C. C. E. D. Pa.), affirmed, 191 Fed. 35 (C. A. 3), affirmed, 235 U. S. 33, the question was the copyrightability of an artistic painting which was intended to be used as a design for fancy wrapping paper. Relief against infringement was denied for failure of compliance with the statutory requirements governing the application of the copyright notice. As to the question here involved, which was not reached on appeal, the district court declared (182 Fed. at 151–152):

> It is, I think, difficult to see how a painting that may be either copyrighted or patented can be said to be "designed" for one rather than for the other form of protection until the author or owner makes his final choice. Up to that time he may do what he pleases with his property. If he chooses to copyright it as a work of art, he may do so; if he prefers to patent it as a design, he is free to do this also; and the mere fact that he originally intended to take one of these courses rather than the other does not prevent him from changing his purpose at the last moment. His state of mind upon this matter has nothing to do with the quality of the painting; and it is this quality, and not the intention of the author or owner, that determines what protection may be given to the artist's work.

> * * * Since it was qualified for admission into the two statutory classes, I see no reason why it might not be placed in either. But it could not enter both. The method of procedure, the term of protection, and the penalties for infringement, are so different that the author or owner of a painting that is eligible for both classes must decide to which region of intellectual effort the work is to be assigned, and he must abide by the decision.

The rationale of the *De Jonge* case was adopted by the Court of Appeals for the District of Columbia Circuit in *In re Blood*, 23 F. 2d 772. In that case, a copyright had been obtained for a label, and the owner subsequently attempted to obtain a design patent for the same label. The Patent Office rejected the latter application on the ground that copyright had already been obtained.[17] Affirming the Commissioner of Patents, the Court of Appeals pointed out (p. 772):

> The design is not entitled to double registration, once as a label design [copyright], and again as a design for a hosiery ticket [design patent.] Such a course would result for all practical purposes in an extension of the design monopoly. *The applicant was entitled to apply for a patent for the design as a hosiery label, or he might complete the label, and*

[17] At that time, the copyright registration of commercial prints and labels was administered by the Patent Office. In 1940, such jurisdiction was transferred to the Copyright Office (Act of July 31, 1939, 53 Stat. 1142, 17 U. S. C. 64).

now 17 U.S.C. Supp. V, 6

> *register the design, so completed, as a label.* He could not do both. He elected to pursue the latter course, and has obtained the protection thereby assured to him, and he is bound by that election. [Emphasis added.] [18]

In *Jones Bros. Co.* v. *Underkoffler,* 16 F. Supp. 729 (M. D. Pa.), the alleged infringer of plaintiff's copyrighted design for a cemetery memorial contended that the memorial was not copyrightable as a work of art but should have been patented as a design for an article of manufacture. Rejecting this argument, the court observed that (p. 730):

> It is apparent that under the above definitions of manufacture and art a certain object may be an article of manufacture as well as a work of art and the design therefor might well come under the De-

[18] The *Blood* case is further significant in that it reveals the identity of opinion of the Patent Office and the Copyright Office as to the partial overlapping of the Design Patent and Copyright Laws. Cf. footnote 14, *supra*, p. 36. That identity of opinion and practice has continued to the present. Both the *De Jonge* and *Blood* cases were recently relied upon by the Patent Office and the Patent Office Board of Appeals in denying a design patent application where copyright had already been obtained on the same work. In the Government's brief before the Court of Customs and Patent Appeals, the same cases were cited to sustain the position of the Patent Office. See Briefs and Transcript of Record, Patent Appeal Docket No. 5967, *In the Matter of the Application of Lurelle Guild,* 98 USPQ 68. The court found it unnecessary, however, to determine whether a copyright holder may later obtain a patent on the same article.

> sign Patent Law as a design for an article of manufacture or under the Copyright Act as a design for a work of art.

And, citing the *De Jonge* case with approval, the court further stated (p. 731):

> In a case which comes under either statute, it becomes a matter of choice by the author or owner whether he will seek protection under the patent or copyright law.

More recently, the practice of the Copyright Office was again approved in *William A. Meier Glass Co.* v. *Anchor Hocking Glass Corp.*, 95 F. Supp. 264 (W. D. Pa.). There, the action was for deceit and breach of trust by the defendant in using plaintiff's "loop" design as decoration on glassware. Since neither a design patent nor a copyright had been obtained by plaintiff, the court held that plaintiff's right to relief must be determined by reference to the common law. In passing, however, the court pointed out that (p. 267):

> The plaintiff's design being novel and original could have been the subject of a design patent since the originator of a new and novel design for an article of merchandise, who desires to prevent the right to free use and copying by others, is afforded the protection of the patent laws. 35 U. S. C. A. § 73.
>
> * * * * *
>
> Furthermore, the plaintiff would have been entitled, in order to protect his design,

> to invoke the protection of the copyright laws of the United States since the creation would fall within the terms of the Copyright Act, under which it would be included as works of art; models or designs for works of art. Section 5 (g) of the Copyright Act of 1947, 17 U. S. C. A. § 5 (g); 17 U. S. C. A. § 207; Section 201.4 (b) (7) of the Rules and Regulations of the Federal Register, following 17 U. S. C. A. § 207; 17 U. S. C. A. § 53.

Contrary to petitioners' views, therefore, it seems clear that, in appropriate cases, protection may be available for a work under either the Design Patent Law or the Copyright Law.[19] This is not to say, of course, that protection may be secured under both laws; the creator of the work must elect the protection he desires. We submit, however, that even if a design patent would have been available to respondents here, copyright registration was not precluded.

[19] Petitioners rely on *Taylor Instrument Companies* v. *Fawley-Brost Co.*, 139 F. 2d 98 (C. A. 7), in support of their contention that there is no overlapping territory in the Copyright and Design Patent Laws (Pet. Br. 37). That case holds, however, only that the Copyright and *Mechanical* Patent Laws are mutually exclusive. See also to the same effect, *Brown Instrument Co.* v. *Warner*, 161 F. 2d 910 (C. A. D. C.). And compare the latter court's decision in *In re Blood*, 23 F. 2d 772, recognizing that the Copyright and *Design* Patent Laws are not mutually exclusive. See pp. 43–44, *supra*.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the judgment below should be affirmed.

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APPENDIX A

1. The Copyright Laws

a. Act of July 8, 1870, 16 Stat. 198:

> SEC. 86. *And be it further enacted,* That any citizen of the United States, or resident therein, who shall be the author, inventor, designer, or proprietor of any book, map, chart, dramatic or musical composition, engraving, cut, print, or photograph or negative thereof, or of a painting, drawing, chromo, statue, statuary, and of models or designs intended to be perfected as works of the fine arts, and his executors, administrators, or assigns, shall, upon complying with the provisions of this act, have the sole liberty of printing, reprinting, publishing, completing, copying, executing, finishing, and vending the same; and in the case of a dramatic composition, of publicly performing or representing it, or causing it to be performed or represented by others; and authors may reserve the right to dramatize or to translate their own works.

b. Act of June 18, 1874, 18 Stat. 78:

> SEC. 3. That in the construction of this act, the words "Engraving," "cut" and "print" shall be applied only to pictorial illustrations or works connected with the fine arts, and no prints or labels designed to be used for any other articles of manufacture shall be entered under the copyright law, but may be registered in the Patent Office. And the Commissioner of Patents is hereby charged with the super-

vision and control of the entry or registry of such prints or labels, in conformity with the regulations provided by law as to copyright of prints, except that there shall be paid for recording the title of any print or label not a trade mark, six dollars, which shall cover the expense of furnishing a copy of the record under the seal of the Commissioner of Patents, to the party entering the same.

c. Act of August 1, 1882, 22 Stat. 181:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That manufacturers of designs for molded decorative articles, tiles, plaques, or articles of pottery or metal subject to copyright may put the copyright mark prescribed by section forty-nine hundred and sixty two of the Revised Statues, and acts additional thereto, upon the back or bottom of such articles, or in such other place upon them as it has heretofore been usual for manufacturers of such articles to employ for the placing of manufacturers, merchants, and trade marks thereon.

d. Act of March 4, 1909, 35 Stat. 1075:

SEC. 4. That the works for which copyright may be secured under this Act shall include all the writings of an author.

SEC. 5. That the application for registration shall specify to which of the following classes the work in which copyright is claimed belongs:

(a) Books, including composite and cyclopaedic works, directories, gazetteers, and other compilations;

(b) Periodicals, including newspapers;

(c) Lectures, sermons, addresses, prepared for oral delivery;

(d) Dramatic or dramatico-musical compositions;

(e) Musical compositions;

(f) Maps;

(g) Works of art; models or designs for works of art;

(h) Reproductions of a work of art;

(i) Drawings or plastic works of a scientific or technical character;

(j) Photographs;

(k) Prints and pictorial illustrations:

Provided, nevertheless, That the above specifications shall not be held to limit the subject-matter of copyright as defined in section four of this Act, nor shall any error in classification invalidate or impair the copyright protection secured under this Act.

e. Act of July 30, 1947, 61 Stat. 652, codifying and enacting into positive law Title 17 of the United States Code:

17 U. S. C. 1. EXCLUSIVE RIGHTS AS TO COPYRIGHTED WORKS.—Any person entitled thereto, upon complying with the provisions of this title, shall have the exclusive right:

(a) To print, reprint, publish, copy, and vend the copyrighted work;

17 U. S. C. 3. PROTECTION OF COMPONENT PARTS OF WORK COPYRIGHTED; COMPOSITE WORKS OR PERIODICALS.—The copyright provided by this title shall protect all the copyrightable component parts of the work copyrighted, and all matter therein in which copyright is already subsisting, but without extending the duration or scope of such copyright. The copyright upon composite

works or periodicals shall give to the proprietor thereof all the rights in respect thereto which he would have if each part were individually copyrighted under this title.

17 U. S. C. 4. ALL WRITINGS OF AUTHOR INCLUDED.—The works for which copyright may be secured under this title shall include all the writings of an author.

17 U. S. C. 5. CLASSIFICATION OF WORKS FOR REGISTRATION.—The application for registration shall specify to which of the following classes the work in which copyright is claimed belongs:

(a) Books, including composite and cyclopedic works, directories, gazetteers, and other compilations.

(b) Periodicals, including newspapers.

(c) Lectures, sermons, addresses (prepared for oral delivery).

(d) Dramatic or dramatico-musical compositions.

(e) Musical compositions.

(f) Maps.

(g) Works of art; models or designs for works of art.

(h) Reproductions of a work of art.

(i) Drawings or plastic works of a scientific or technical character.

(j) Photographs.

(k) Prints and pictorial illustrations including prints or labels used for articles of merchandise.

(l) Motion-picture photoplays.

(m) Motion pictures other than photoplays.

The above specifications shall not be held to limit the subject matter of copyright as defined in section 4 of this title, nor shall any error in classification invalidate

or impair the copyright protection secured under this title.

2. The Design Patent Laws

a. Act of August 29, 1842, 5 Stat. 543:

SEC. 3. *And be it further enacted,* That any citizen or citizens, or alien or aliens, having resided one year in the United States and taken the oath of his or their intention to become a citizen or citizens who by his, her, or their own industry, genius, efforts, and expense, may have invented or produced any new and original design for a manufacture, whether of metal or other material or materials, or any new and original design for the printing of woollen, silk, cotton, or other fabrics, or any new and original design for a bust, statue, or bas relief or composition in alto or basso relievo, or any new and original impression or ornament, or to be placed on any article of manufacture, the same being formed in marble or other material, or any new and useful pattern, or print, or picture, to be either worked into or worked on, or printed or painted or cast or otherwise fixed on, any article of manufacture, or any new and original shape or configuration of any article of manufacture not known or used by others before his, her, or their invention or production thereof, and prior to the time of his, her, or their application for a patent therefor, and who shall desire to obtain an exclusive property or right therein to make; use, and sell and vend the same, or copies of the same, to others, by them to be made, used, and sold, may make application in writing to the Commissioner of Patents expressing such desire, and the Commissioner, on

due proceedings had, may grant a patent therefor, as in the case now of application for a patent: *Provided,* That the fee in such cases which by the now existing laws would be required of the particular applicant shall be one-half the sum and that the duration of said patent shall be seven years, and that all the regulations and provisions which now apply to the obtaining or protection of patents not inconsistent with the provisions of this act shall apply to applications under this section.

b. Act of July 8, 1870, 16 Stat. 198:

SEC. 71. *And be it further enacted,* That any person who, by his own industry, genius, efforts, and expense, has invented or produced any new and original design for a manufacture, bust, statue, alto-relievo, or bas-relief; any new and original design for the printing of wool[l]en, silk, cotton, or other fabrics; any new and original impression, ornament, pattern, print, or picture, to be printed, painted, cast, or otherwise placed on or worked into any article of manufacture; or any new, useful, and original shape or configuration of any article of manufacture, the same not having been known or used by others before his invention or production thereof, or patented or described in any printed publication, may, upon payment of the duty required by law, and other due proceedings had the same as in cases of inventions or discoveries, obtain a patent therefor.

c. Act of May 9, 1902, 32 Stat. 193:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That sec-

tion forty-nine hundred and twenty-nine of the Revised Statutes be, and the same is hereby, amended so as to read as follows:

"SEC. 4929. Any person who has invented any new, original, and ornamental design for an article of manufacture, not known or used by others in this country before his invention thereof, and not patented or described in any printed publication in this or any foreign country before his invention thereof, or more than two years prior to his application, and not in public use or on sale in this country for more than two years prior to his application, unless the same is proved to have been abandoned, may, upon payment of the fees required by law and other due proceedings had, the same as in cases of inventions or discoveries covered by section forty-eight hundred and eighty-six, obtain a patent therefor."

d. Act of July 19, 1952, 66 Stat. 792, codifying and enacting into positive law Title 35 of the United States Code:

35 U. S. C. 171. PATENTS FOR DESIGNS

Whoever invents any new, original and ornamental design for an article of manuture may obtain a patent therefor, subject to the conditions and requirements of this title.

The provisions of this title relating to patents for inventions shall apply to patents for designs, except as otherwise provided.

35 U. S. C. 289. ADDITIONAL REMEDY FOR INFRINGEMENT OF DESIGN PATENT

Whoever during the term of a patent for a design, without license of the owner, (1) applies the patented design, or any colorable imitation thereof, to any article of

manufacture for the purpose of sale, or (2) sells or exposes for sale any article of manufacture to which such design or colorable imitation has been applied shall be liable to the owner to the extent of his total profit, but not less than $250, recoverable in any United States district court having jurisdiction of the parties.

Nothing in this section shall prevent, lessen, or impeach any other remedy which an owner of an infringed patent has under the provisions of this title, but he shall not twice recover the profit made from the infringement.

3. Rules and Regulations of the Copyright Office

The pertinent provisions of the 1910 and 1917 regulations are set forth in the brief, *supra,* pp. 24–25. Section 202.8 of the current regulations (37 C. F. R. 1949 ed. 2028) states as follows:

Works of art (Class G)—(a)— IN GENERAL. This class includes works of artistic craftsmanship, in so far as their form but not their mechanical or utilitarian aspects are concerned, such as artistic jewelry, enamels, glassware, and tapestries, as well as all works belonging to the fine arts, such as paintings, drawings and sculpture. Works of art and models or designs for works of art are registered in Class G on Form G, except published three-dimensional works of art which require Form GG.

(b) *Published three-dimensinoal works of art.* All applications for copyright registration of published three-dimensional works of art shall be accompanied by as many photographs, in black and white or in color, as are necessary to identify the work. Each photograph shall not be larger

than nine by twelve inches, but preferably shall be eight by ten inches, nor shall it present an image of the work smaller than four inches in its greatest dimension. The title of the work shall appear on each photograph. In addition to the photographs, application on Form GG, and the statutory registration fee, each applicant shall select and comply with one of the following options:

(1) *Option A.* Send two copies of the best edition of the work (or one copy, if by a foreign author and published in a foreign country). The Copyright Office will retain the copies for disposition in accordance with its usual practice.

(2) *Option B.* Send two copies of the best edition of the work (or one copy, if by a foreign author and published in a foreign country) and in addition mark the package with the special label supplied by the Copyright Office or by the use of other appropriate means indicating that Option B has been chosen. The Copyright Office will promptly return the copies to the copyright claimant or to his agent, at an address within the United States, at his expense.

(3) *Option C.* Send no copies of the work. If Option C is selected the Copyright Office will issue its certificate, bearing a notation that photographs were accepted in place of copies, but expresses no opinion as to the need for, or possible effect of delay in, making deposit of copies prior to suit for infringement of copyright.

APPENDIX B

Typical Examples From the Catalog of Copyright Entries—1912 to 1952—Showing Registrations of Works of Art Possessing Utilitarian Aspects

Owl head bookends. [Statuette of owl's head with rectangular base.] Copyright May 8, 1912; Registration number G 40845. Copyright claimant: Myra M. Carr, New York.

Lamp. [Lamp having candelabrum stand and ornate umbrella-shaped top.] Copyright May 8, 1912; Registration number G 40848. Copyright claimant: W. H. Starenhagen Co., New York.

Doorknocker, Nichols House, Salem, Mass. [Ornate knocker with oval plate for name, in bas-relief.] Copyright May 25, 1912, Registration number G 40937. Copyright claimant: Sarah D. Symonds, Salem, Mass.

Ornamental desk model. [Top of desk upheld by four pillars with ornamental caps, and labeled, Benefactors of orphan asylum.] Copyright December 20, 1912; Registration number G 42458. Copryright claimant: Daprato Statuary Co., Chicago.

Bear ashtray. [Young bear seated in heart-shaped tray scratching his ear.] Copyright October 21, 1912; Registration number G 42038. Copyright claimant: Albert Humphreys, New York.

Lighting fixture design. By F. E. Guitini. [Bowl-shaped bracket embellished with figure of half-nude woman standing in bunch of flowers.] Copyright December 28, 1912. Registration num-

ber G 42645. Copyright claimant: Kathodion Bronze Works, New York.

Electric candelabra. [Model of ornamental candelabra with globes for numerous lights.] Copyright January 2, 1917; Registration number G 53384. Copyright claimant: Daprato Statuary Co., Chicago.

Electric portable table lamp. [Model of table lamp decorated with leaves and bird in nest.] Copyright March 22, 1917; Registration number G 53846, Copyright claimant: Andrew Garbutt, Holliston, Mass.

Candlestick. [Figure of little Colonial lady in full skirts, holding bunch of tulips in which candle stands.] Copyright December 22, 1917; Registration number G 53401. Copyright claimant: Helen Adele Lerch, Chicago.

Candelabra. [1. Model of candelabra with 13 lights on two tiers and ornamental base, 2. same with attachment for electric lights.] 1.) Copyright April 20, 1917; Registration number G 54040; 2.) Copyright May 16, 1917; Registration number G 54205. Copyright claimant: Daprato Statuary Co., Chicago.

American inkstand. [Figure of eagle with wings spread, perched behind inkwell.] Copyright April 20, 1917; Registration number G 54100. Copyright claimant: Kathodion Bronze Works, Inc., New York.

Door knocker. [Horse's head with horseshoe and spur attached to form knocker.] Copyright May 29, 1917; Registration number G 54291. Copyright claimant: Harry La Montague, New York.

Bookend. [In form of peacock with open tail.] Copyright August 24, 1917; Registration number G 54775. Copyright claimant: Florentine Art Plaster Co., Philadelphia.

Auto radiator emblem. [Model of Liberty Bell with eagle perched on top, flag at right and bust of President Wilson at left.] Copyright July 27, 1917; Registration number G 54652. Copyright claimant: Patrick Kilmartin, Chicago.

Knocker. [Ornate door knocker in bas-relief.] Copyright August 22, 1917; Registration number G 54760. Copyright claimant: Sarah W. Symonds.

Lamp portable 70.—[Model of lamp standard with lotus flowers at top, globular formation in center and large round base.] Copyright January 14, 1922; Registration number 64480, copyright claimant: American Statuary and Decorating Co., Philadelphia.

Boudoir lamp. [Model of small lamp decorated with leaves and flowers.] Copyright January 20, 1922; Registration number G 64633, Copyright claimant: Max B. Baum, Brooklyn.

Chandelier. [Model of ornamental chandelier for electric lights]. Copyright February 25, 1922; Registration number G 64889. Copyright claimant: Daprato Statuary Co., Chicago.

Sanctuary lamp. [Model of lamp with eight-day ruby glass and electric light.] Copyright March 20, 1922; Registration number G 55258. Copyright claimant: Daprato Statuary Co., Chicago.

Table lamp. [Model of tall lamp having standard decorated with scrolls and leaves.] Copyright August 11, 1922; Registration number

G 66415. Copyright claimant: Frank D. Betita, Linden, N. J.

Lamp base. [By Louis Ramanelli. Model of base with cylinder and cherubs in relief around foot.] Copyright October 23, 1922; Registration number G 66787. Copyright claimant: Florence Art Co., Chicago.

Lamp base 98. [By Aurelius Renzetti. Model of lamp with oak leaf design on oval base and around top.] Copyright March 9, 1924; Registration number G 71406. Copyright claimant: American Statuary and Decorating Co., Inc. Philadelphia.

Illuminated vase and portable lamp. [Model of vase and separable top reading lamp combined.] Copyright February 15, 1924; Registration number G 70781. Copyright claimant: Charles Edward Blake, San Francisco.

Gothic electrolier. [Model very ornamental electrolier with sixteen lights.] Copyright February 9, 1924; Registration number G 70750. Copyright claimant: Daprato Statuary Co., Chicago.

Chinese flapper lamp. [Figure of Chinese girl with bobbed hair climbing lamp post.] Copyright February 25, 1924; Registration number G 70815. Copyright claimant: Leon Fighiera, San Francisco.

Newspaper holder. [Model of owl with wings outspretd standing on base curved up at end.] Copyright November 26, 1923; Registration number G 70355. Copyright claimant: Jessie Emma Gross, La Porte, California.

Oblong base boudoir lamp. [Leaf design lamp with graduated fluted stem. Oval base boudoir

lamp. Floral design lamp with graduated flushed stem.] Copyright April 23, 1924; Registration number G 71277, G 71278. Copyright claimant: Charles A. Keaton, New York.

Metal floor lamp. [Design of lamp with large round base supporting tall sound standard.] Copyright February 23, 1924; Registration number G 70811. Copyright claimant: Laubenheimer Co., Chicago.

Ashtray. [Model of three nude girls holding up bowl.] Copyright March 20, 1924; Registration number G 71034. Copyright claimant: Eva Hall Miller, Bloomington, Ind.

Shelf side bracket. [Model of electric fixture in form of shelf.] by Aurelius Renzetti. Copyright August 9, 1924; Registration number G 72034. Copyright claimant: American Statuary and Decorating Co., Philadelphia.

Lamp stand. [Model of architectural base with branch of flowers and ribbon effect, and shape covered with fern leaves in low relief.] Copyright January 6, 1927; Registration number G 79278. Copyright claimant: Paolo Testi, Woodcliff, N. J.

Angel No. 3461. [Figure of angel holding electric candelabra with head turned to left.] Copyright April 28, 1927; Registration number G 80042. Copyright claimant: Daprato Statuary Co., Chicago.

Bronze Cinerary urn to contain ashes for six interments. Copyright February 18, 1932; Registration number G 8068. Copyright claimant: Grove Hinman.

280690—58——5

Modern Roman design sanctuary railing. Copyright April 23, 1932; Registration number G 8523. Copyright claimant: A. Daprato Co.

Eagle for U. S. Embassy in Paris Gatepost. Copyright June 14, 1932; Registration number G 8938. Copyright claimant: Carl P. Jennewein.

Sundial. Copyright June 11, 1932; Registration number G 8896. Copyright claimant: George J. Lober.

Bryant Memorial bird font and bath. Copyright June 25, 1932. Registration number G 9014; Copyright claimant: Jos. Newall & Co.

Three Lancet Gothic Window with scenes depicting different aspects of Christ's life. Copyright July 5, 1932; Registration number G 9042. Copyright claimant: Henry L. Willet.

Lady Vase. Copyright March 14, 1937; Registration number G 25176; Copyright claimant: Louis A. Butler.

Running greyhound in open work. [Candleholder] Copyright December 30, 1936; Registration number G 24450. Copyright claimant: Margaret Ruth Clovinger.

Memorial bronze door. Copyright February 1, 1937; Registration number G 24745. Copyright claimant: James S. J. Novelli.

Mermaid bookend. Copyright April 12, 1937; Registration number G 25511. Copyright claimant: Eileen Parnell Bohland.

Hanging holy water font. Copyright March 8, 1937; Registration number G 25359. Copyright claimant: St. Paul Statuary Co.

Baptismal font. Copyright December 20, 1937; Registration number G 27734. Copyright claimant: Vermont Marble Co.

Cement basin for fountain or bird bath. Copyright February 27, 1942; Registration number G 40154. Copyright claimant: Ernest Pellegrini.

Winterman Memorial Bench. Copyright July 13, 1942; Registration number G 40365. Copyright claimant: Lorenz W. Stolz.

Cat and bird nest. [Plaster lamp base.] Copyright November 11, 1946; Registration number G 4015. Copyright claimant: Alfred Alter Corp., New York.

Perfect pipeholder. [Metal.] Copyright July 18, 1947; Registration number GP 6110. Copyright claimant: Abalin Casting Co., New York.

Chinaman cook. [Salt shaker.] Ceramic figurine. Copyright July 20, 1946; Registration number G 4852. Copyright claimant: A. C. Kendig, South Pasadena, Calif.

Sitting Piggy bank. [Plaster coin bank.] Copyright May 1, 1947; Registration number G 5387. Copyright claimant: Columbia Statuary Co., Chicago.

Sitting elephant caricature. [Metal coin bank.] Copyright January 15, 1947; Registration number G 3906. Copyright claimant: National Arts, New York.

Hereford bullhead bookend. [Metal.] Copyright July 1, 1947; Registration number GP 6190. Copyright claimant: Gladys Brown, Pomona, Calif.

Leaf ivyholder. [Fan-shaped lead with two scrolls at base; plaque.] Copyright February 28, 1952; Registration number GP 3475. Copyright claimant: Art Mount Manufacturing Co., d. b. a. Art Mount, Brooklyn, N. Y.

Snowman casserole. [Ceramic.] Copyright December 28, 1951; Registration number GP 3228. Copyright claimant: Barnes-Chase Co., Los Angeles, Calif.

Cookie stove. [Ceramic jar in form of old-fashioned stove.] Copyright January 20, 1952; Registration number GP 3223. Copyright claimant: California Cleminsons, El Monte, Calif.

Perfume Tray. [With oriental figures and building on tray; ends pointed.] Copyright February 25, 1952; Registration number GP 3400. Copyright claimant: Yule Manufacturing Co., Inc., Brooklyn, N. Y.

Striptease salt and pepper shakers. [Barrel-shaped shakers with nude and partially nude fameales as handles.] Copyright April 30, 1951; Registration number GP 3522. Copyright claimant: Norman & Howard Kreiss, d. b. a. Kreiss & Co., Los Angeles, Calif.

Galagray fish bowl. [Ceramic fish-shaped bowl.] Copyright July 20, 1952; Registration number GP 4123. Copyright claimant: California Cleminsons, El Monte, Calif.

Combination bowl, flower holder and ashtray. [Free form bowl; philodendron leaf; spiral flower holder, Ceramic.] Copyright September 1, 1952; Registration number GP 4188. Copyright claimant: Lee Parhomenko and Roselle Junqua.

Waldorf Ware. [Plate with acorn and oak leaf pattern.] Copyright September 8, 1952; Registration number GP 4207. Copyright claimant: Shenango Pottery Co., t. a. Shenango China, New Castle, Pa.

APPENDIX C

U. S. GOVERNMENT PRINTING OFFICE: 1983

4. If the author of the work is dead, or a corporate body, see instructions. If assigned, give the name and nationality of the present owner. If the author is employed for hire, give the name and nationality of the employer for whom the work was done. It is optional to indicate the nationality or citizenship.	4. Name and Nationality of Author. Are [illegible]
5. State what right is claimed under the law of 1870, as amended by the Act of March 3, 1891. If the work is a reproduction of a work of art, give a brief description of the original work, and state whether the right claimed is limited to the reproduction.	3. Form of Claim. Designer
6. Give name of person to whom reply is to be sent, together with full address.	6. Name and Address to Which Reply is to be Mailed. Name: Stanley Parker. Address: 603 N. Park Av. Philadelphia. Pa.

CLI 2821 JAN 3.1904

COPIES WITHOUT CLERICAL ERRORS

DESCRIPTION.

631 JAN 9 1904

WORK OF REPRODUCTIVE ART. A brief description of the PAINTING, DRAWING, STATUE, STATUARY, OR MODEL OR DESIGN INTENDED TO BE PERFECTED AS A WORK OF THE FINE ARTS. This description must, however, be sufficiently full to identify the article.

A female figure having an urn in front partly concealed by draping around the head. The figure made from the waist up and below this the form concealed by conventionalized skirt drapery which flow down and forward forming a tray at the rear. Sides and back of skirt in fluted form.

The whole forms design as a candlestick with match tray.

The figure standing and just turned from hips and waist.

PHOTOGRAPH OR PICTURE OF ARTICLE.

APPLICATION FOR COPYRIGHT REGISTRATION.

FORM B
ORIGINAL WORKS OF ART.

This law requires the filing of **one copy** of a **photograph** taken directly from the Painting, Drawing, Statue, Statuary, or Model or Design intended to be perfected as a work of the fine arts. This photograph should preferably be mounted upon this page.

Fasten the PHOTOGRAPH here.

4. If the work was prepared on employment or as a contribution under a collective work, state what one of the following classes the author belongs to, and nation or citizenship: A citizen, a subject, or a citizen or subject of some foreign state or nation, and the name of such foreign state or nation. It is necessary to deposit the name and nationality of any author, artist, or designer who is not entitled, claimant of the copyright, but it is **obligatory to indicate the nationality or citizenship.**	4. Name and Nationality of Author, Artist, or Designer. Name [illegible] Nationality [illegible] Name [illegible] Sweden Citizenship [illegible] [illegible]
5. State whether copyright is claimed as *Author, Designer, or Proprietor.* Use Words in one only of these three legal designations, and use no other term or terms.	5. Form of Claim. Proprietor
6. Give name of person to whom reply is to be sent, together with full address.	6. Name and Address to Whom Reply is to be Mailed. Name André Lecourd Address 71 Broadway [illegible]

CERTIFICATE RECEIVED APR 23 1904
MAILED.

$1 50 WITH CERTIFICATE. FINE ARTS.

DESCRIPTION.

Write or typewrite here a brief description of the PAINTING, DRAWING, STATUE, STATUARY, or MODEL or DESIGN INTENDED TO BE PERFECTED AS A WORK OF THE FINE ARTS. This description must, however, be sufficiently full to completely identify the article.

CLI 10352 APR 25 1904

APR. 25 1904

FOUR STAGES OF LIFE. A [illegible] in bas relief in representation of [illegible] rests on four feet, the two in front [illegible] in her right hand, resting [illegible] of [illegible] trees.

PHOTOGRAPH ON FILE

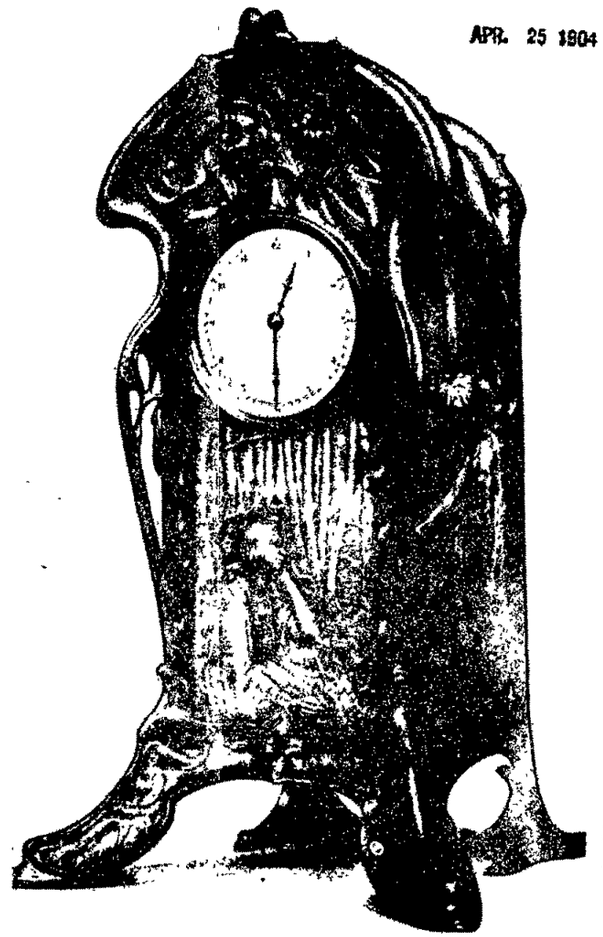
APPLICATION FOR COPYRIGHT REGISTRATION.

FORM B
ORIGINAL WORKS OF ART

The law requires the filing of **one copy** of a **photograph** taken directly from the Painting, Drawing, Statue, Statuary, or Model or Design intended to be perfected as a work of the fine arts. This photograph should preferably be mounted upon this page.

Fasten the PHOTOGRAPH here.

APR. 25 1904



3. [illegible]	4. Name and Address of Author, and [illegible]
5. [illegible]	7. Fees Credited.
6. [illegible]	8. Name and Address to Whom Reply is to be Mailed.

DESCRIPTION.

CLOSE WITH CERTIFICATE FINE ARTS. CLI 12735 [illegible]

[illegible] Painting, Drawing, Statue, Statuary, or Model or Design Intended to be Executed as a Work of the Fine Arts. [illegible]

PHOTOGRAPH ONLY

B

[illegible] PHOTOGRAPH here.

4. If the claimant [illegible] obligatory to indicate the nationality or citizenship.	4. Name and Nationality of Author, Artist, or Maker. [illegible]
5. State nature of the copyrighted work [illegible]	5. Form of Claim. Design
6. Give name of person to whom reply is to be sent, together with full address.	6. Name and Address to Whom Reply is to be Mailed. [illegible]

RECEIVED UPON COMPLETION OF CONTEMPLATED PUBLICATION
JUN 23 1906
Class 1

RECEIVED UPON CERTIFICATE OF CONTEMPLATED PUBLICATION
CL I 18833 JUN 20 1906

DESCRIPTION.

Write or typewrite here a brief description of the PAINTING, DRAWING, STATUE, STATUARY, or MODEL or DESIGN INTENDED TO BE PERFECTED AS A WORK OF THE FINE ARTS. The description required, however, is sufficiently full to completely identify the article.

Marjorie Rack.

Under Plate for Marjorie, Consisting
Tulip Flowers and Morning Glories.
The design consists of the head
with wavy hair and shoulders
arms of a young woman surrounded
by Tulip Flowers and Scrolls.
Plate to be reproduced in metal
true color and composition.
The size is (27") twenty seven inches
by (13½") thirteen and one half inches.

HOTCHKISS & CO. PHILA.

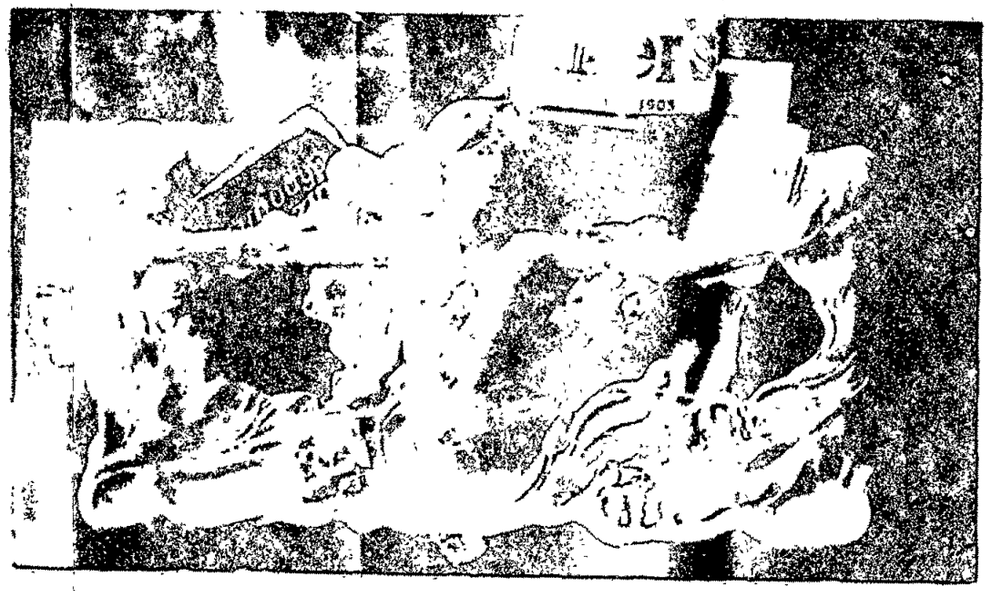
APPLICATION FOR COPYRIGHT REGISTRATION.

FORM B
ORIGINAL WORKS OF ART.

The law requires the filing of **one copy** of a **photograph** taken directly from the Painting, Drawing, Statue, Statuary, or Model or Design intended to be perfected as a work of the fine arts. This photograph should preferably be mounted upon this page.

Fasten the PHOTOGRAPH here.

JUN 23 1906



Proprietor card made by O. C. W.

4. [illegible]	6. Name of the Author / ~~Designer~~ / Artist and of the Country of which he is a Citizen or Subject. Joseph & R. Bohr; 27 Cottage Place, Mt. Pleasant; Nationality: U.S.A.
5. State [illegible] Write in [illegible]	7. Form of Claim. Author

FILED WITH CERTIFICATE, FINE ARTS.

DESCRIPTION.

CL I 18449 JUL -2 1906

Write or type written here a brief description of the PAINTING, DRAWING, STATUE, STATUARY, or MODEL or DESIGN INTENDED TO BE PERFECTED AS A WORK OF THE FINE ARTS. The description [illegible], however, be sufficiently full to completely identify the article, without the aid of the photograph. (See page 3.)

JUL 2 1906

The piece of Statuary entitled "Bear at Wingtree" represents a Bear who standing between branches the points of which form electric Lights. He stands and supports itself with his right paw while his looking towards the point he licks his left paw hanging in. The shape of the tree is conventional. to serve as electrolier. The Model is about 9 5 inches high

PHOTOGRAPH ON FILE

FORM B ORIGINAL WORKS OF ART

JUL 2 1906

4. If the author, artist or designer is living, state citizenship and residence. If he died before completing the work, state that fact.

It is obligatory to indicate the nationality. If a person of the world "citizen" in the country to which the applicant owes allegiance.

6. Name of the Author / Designer / Artist and of the Country of which he is now a Citizen or Subject.

Name: Edward Weston

Nationality: American, U.S.A.

5. State what other copyright is claimed in Author, Designer, or Proprietor.

Write in one only of these three legal designations, and use no other term or terms.

7. Form of Claim.

Designer.

DESCRIPTION.

Write or typewrite here a brief description of the PAINTING, DRAWING, STATUE, STATUARY, or MODEL or DESIGN INTENDED TO BE PERFECTED AS A WORK OF THE FINE ARTS. The description must, however, be sufficiently full to completely identify the article, without the aid of the photograph. (See page 3.)

This Statuary piece. Entitled Paper Cutter - consists of a standing Figure, Leg forward, with a cutter upon one end of the blade or Cutter and Woman as handle.

Her pose - left arm Extended in front of him resting the point of blade. His head rests across his Right Forearm, his right hand his left is curled around cutter and rests upon the Edge of blade near the right shoulder.

The Reclined Nude Woman in the distance. With her head Position is Turned more to the Left. Profile.

On the Right hand edge of blade near the right hand is the following inscription: "Paper Cutter" The piece is in bronze.

Edward Weston

PHOTOGRAPHIC CLUB

DEC 1936

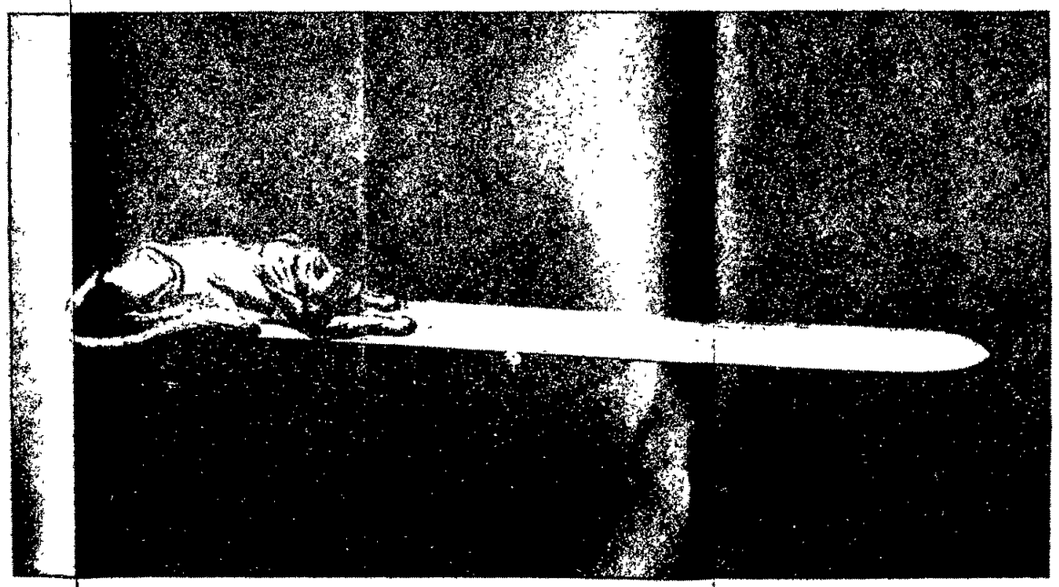
Photostat Corp. by O.C.W. N.Y.C.

APPLICATION FOR COPYRIGHT REGISTRATION.

FORM B ORIGINAL WORKS OF ART

The law requires the filing of **one copy** of a **photograph** taken directly from the Painting, Drawing, Statue, Statuary, or Model or Design intended to be perfected as a work of the fine arts. This photograph should preferably be mounted upon this page.

Fasten the PHOTOGRAPH here.



5. State whether copyright is claimed as *Author, Designer, or Proprietor.*

☞ Write in one only of these three legal designations, and use no other term or terms.

5. Form of Claim.

Designer

6. Name of the { Designer / Artist } and of the Country of which he is now a Citizen or Subject.

Name, Eli Harvey
(Write name in full. Give surname.)

Residence, 30-7 La Salle Avenue, Kenmore, Buffalo, N.Y.
(City, State, and Street and No.)

Nationality, { Name of country of which designer is now a citizen or subject. } American
(MUST BE GIVEN)

CL I 20289 DEC - 5 1906

DESCRIPTION.

Proprietor's card made by O-C-W. W.J.T.

RECEIVED DEC 5 1906

50 CTS. WITHOUT CERTIFICATE. FOR ARTS.

Write or typewrite below a description sufficient to identify the PAINTING, DRAWING, STATUE, STATUARY, or MODEL or DESIGN INTENDED TO BE PERFECTED AS A WORK OF THE FINE ARTS. The description must, however, be sufficiently full to completely identify the article, without the aid of the photograph. (See page 3.)

This Stationery Design for Stationers Exhibit Consists of a Cabinet in form of a rectangular solid. 17¾ inches high x 9¼ inches wide x 5 inches deep. All measurements are the extreme measurements. The moulding at top and bottom of Cabinet. The four sides of Cabinet are recessed panels. The front panel of Cabinet is the door of a drawer the length of which is full height of panel & depth is same as width of Cabinet. The drawer has a brass drop handle. The moulding are six Roman heads with rings in their mouths placed on the panels of Cabinet. One on the front of drawer & one at each of the near panels and one in the center of each end panel. The Cabinet rests on four conventionalized lion's heads attached to the underside of the Cornice of Cabinet. The outer panel of moulding extends down the stone the curves of Cabinet as a flange. On the top of Cabinet in middle of the back side is placed a pedestal in design similar to the Roman Arch, on which is placed the head of an American Elk, including part of the neck. The eyes are omitted. The antlers are those of an adult male and extend to the rear of Cabinet. To the left of the Elk is a round or oval in which is placed a piece of Parchment. To the right of the Elk is a similar round or oval in which is placed a piece of Parchment.

At the middle of each end of Cabinet is placed a Brass Cup Glass with a cover, held in place by a flange mounting. On a cover for each cup is placed a Roman Arch, similar to that on the top of the Cabinet. On the top of the Arch on the right of the Elk is a Squirrel sitting on the Arch curled over his back, holding an Acorn in his mouth and his front paws. On the left of the Elk is a Bird with two of the same acorns, and the remaining acorn is in his mouth. The eyes of the Squirrel and Bird are omitted. The Cabinet is made of Quarter Sawed Oak, finished in a Bronze Electro Plate in addition, except the eyes of the Squirrel mentioned as not plated. Copies may be made of the other designs but not of the Bronze Electro Plate finish.

Eli Harvey

PHOTOGRAPH FILED DEC 5 1906

B
ORIGINAL WORKS OF ART

APPLICATION FOR COPYRIGHT.

The Act requires the deposit of **one copy** of a **photograph** of the work, if it is a work of the fine arts. This photograph should preferably be mounted upon this page.

Fasten the PHOTOGRAPH here.