



**United States Copyright Office**

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October 23, 2017

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**Re: Second Request for Reconsideration for Refusal to Register UR5; Correspondence ID: 1-1SJKBAB; SR # 1-2982365095**

Dear Ms. Walden:

The Review Board of the United States Copyright Office (“Board”) has considered Universal Robots A/S’s (“Universal Robots”) second request for reconsideration of the Registration Program’s refusal to register a sculpture claim in the work titled “UR5” (“Work”). After reviewing the application, deposit copy, and relevant correspondence, along with the arguments in the second request for reconsideration, the Board affirms the Registration Program’s denial of registration.

**I. DESCRIPTION OF THE WORK**

The Work is a robotic arm consisting of two metal tubes connected with a hinged mechanism surrounded by blue plastic caps with the Universal Robots logo on them. The bottom of the upright arm appears to be able to connect to a larger piece of a manufacturing line; it, too, is surrounded by blue plastic. The top ends with a hinged T-shaped piece with some blue plastic accents. A reproduction of the Work is depicted as follows:



## II. ADMINISTRATIVE RECORD

On December 30, 2015, Universal Robots filed an application to register a copyright claim in sculpture for the Work. In a January 5, 2016 letter, a Copyright Office registration specialist refused to register the claim, finding that it “is a ‘useful article’ which does not contain any separable authorship needed to sustain a claim to copyright.” Letter from Larisa Pastuchiv, Registration Specialist, to Cynthia Walden (Jan. 5, 2016).

In April 2016, Universal Robots requested that the Office reconsider its initial refusal to register the Work. Letter from Cynthia Johnson Walden to U.S. Copyright Office (Apr. 4, 2016) (“First Request”). Universal Robots argued that the Work “contains artistic features that are not necessary to its performance of its utilitarian function,” namely its “raised circular caps containing the stylized ‘UR’ design,” and the “‘T’ shaped, modular interlocking wrist.” First Request at 3, 5, 6. As such, Universal Robots alleged that “the UR5 sculptural work contains conceptually separable artistic elements that are entitled to copyright protection.” *Id.* at 8. Universal Robots also referenced several useful articles to which the Office previously granted registrations. *Id.* After reviewing the Work in light of the points raised in the First Request, the Office re-evaluated the claims and again concluded that the Work “does not contain any separable, copyrightable features” because “the caps and wrist of the arm are both integrated parts of the ‘overall shape’ of the arm.” Letter from Stephanie Mason, Attorney-Advisor, to Cynthia Johnson Walden (Aug. 12, 2016). The Office also noted that the UR5 logo “does not reflect a sufficient amount of original and creative authorship to support a copyright registration” because it consists only of the stylized letters “U” and “R” centered within a square, and “typographic ornamentation [and] lettering” are not copyrightable. *Id.* at 3.

In September 2016, Universal Robots requested that, pursuant to 37 C.F.R. § 202.5(c), the Office reconsider for a second time its refusal to register the Work. Letter from Cynthia Johnson Walden to U.S. Copyright Office (Sept. 12, 2016) (“Second Request”). Universal Robots claimed that, since the blue caps are “capable of being physically removed from the robotic arm without altering the useful aspects of the article,” *id.* at 4, and “are not necessary to the utilitarian functioning of the device,” they are “conceptually separable, artistic and protectable.” *Id.* at 6. Universal Robots also asserted that the T-shaped piece was “designed to achieve a sleek, modern and aesthetically pleasing appearance,” is “not necessary to the utilitarian function of the article,” and could have been designed in many other ways, rendering this part protectable as well. *Id.* at 7. Universal Robots claimed that these elements of the Work “embody more than the mere ‘modicum’ of creativity that is required for copyright registration.” *Id.* at 9. Universal Robots highlighted that the designers are Danish and inspired by the Danish Modern movement, which, they alleged, evinces the creativity and protectability of the Work, and that the Work therefore “qualifies for copyright protection as a sculptural work.” *Id.*

### III. DISCUSSION

#### A. *The Legal Framework*

##### 1) *Useful Articles and Separability*

Copyright does not protect useful articles as such, which are defined in the Copyright Act as “article[s] having an intrinsic utilitarian function that is not merely to portray the appearance of the article or to convey information.” 17 U.S.C. § 101. Artistic features applied on or incorporated into a useful article may be eligible for copyright protection if they constitute pictorial, graphic, or sculptural works under sections 101 and 102(a)(5) of the Copyright Act. This protection is limited to the “pictorial, graphic, or sculptural features’ [that] “can be identified separately from, and are capable of existing independently of, the utilitarian aspects of the article.” *Star Athletica, LLC v. Varsity Brands, Inc.*, 137 S. Ct. 1002, 1007 (2017) (quoting 17 U.S.C. § 101).

To assess whether an artistic feature incorporated into the design of a useful article is protected by copyright, the Office examines whether the feature “(1) can be perceived as a two- or three-dimensional work of art separate from the useful article and (2) would qualify as a protectable pictorial, graphic, or sculptural work—either on its own or fixed in some other tangible medium of expression—if it were imagined separately from the useful article into which it is incorporated.” *Id.* at 1007; *see also* COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES § 924 (3d ed. 2017) (“COMPENDIUM (THIRD)”). This analysis focuses on “the extracted feature and not on any aspects of the useful article that remain after the imaginary extraction [because the] statute does not require the decisionmaker to imagine a fully functioning useful article without the artistic feature.” *Star Athletica*, 137 S. Ct. at 1013. Put another way, while useful articles as such are not copyrightable, if an artistic feature “would have been copyrightable as a standalone pictorial, graphic, or sculptural work, it is copyrightable if created first as part of a useful article.” *Star Athletica*, 137 S. Ct. at 1011; 17 U.S.C. § 113(a) (“[T]he exclusive right to reproduce a copyrighted pictorial, graphic, or sculptural work in copies under section 106 includes the right to reproduce the work in or on any kind of article, whether useful or otherwise.”); *see also Esquire, Inc. v. Ringer*, 591 F.2d 796, 800 (D.C. Cir. 1978) (holding that copyright protection is not available for the “overall shape or configuration of a utilitarian article, no matter how aesthetically pleasing that shape . . . may be”).

##### 2) *Originality*

A work may be registered if it qualifies as an “original work[] of authorship fixed in any tangible medium of expression.” 17 U.S.C. § 102(a). In this context, the term “original” consists of two components: independent creation and sufficient creativity. *See Feist Publ’ns, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 345 (1991). First, the work must have been independently created by the author, *i.e.*, not copied from another work. *Id.* Second, the work must possess sufficient creativity. *Id.* Only a modicum of creativity is necessary, but the

Supreme Court has ruled that some works (such as the alphabetized telephone directory at issue in *Feist*) fail to meet even this low threshold. *Id.* The Court observed that “[a]s a constitutional matter, copyright protects only those constituent elements of a work that possess more than a *de minimis* quantum of creativity.” *Id.* at 363. It further found that there can be no copyright in a work in which “the creative spark is utterly lacking or so trivial as to be virtually nonexistent.” *Id.* at 359.

The Office’s regulations implement the longstanding requirement of originality set forth in the Copyright Act and described in the *Feist* decision. *See, e.g.*, 37 C.F.R. § 202.1(a) (prohibiting registration of “[w]ords and short phrases such as names, titles, slogans; familiar symbols or designs; [and] mere variations of typographic ornamentation, lettering, or coloring”); *id.* § 202.10(a) (stating “to be acceptable as a pictorial, graphic, or sculptural work, the work must embody some creative authorship in its delineation or form”). Some combinations of common or standard design elements may contain sufficient creativity with respect to how they are juxtaposed or arranged to support a copyright. Nevertheless, not every combination or arrangement will be sufficient to meet this test. *See Feist*, 499 U.S. at 358 (finding the Copyright Act “implies that some ‘ways’ [of selecting, coordinating, or arranging uncopyrightable material] will trigger copyright, but that others will not”). A determination of copyrightability in the combination of standard design elements depends on whether the selection, coordination, or arrangement is done in such a way as to result in copyrightable authorship. *Id.*; *see also Atari Games Corp. v. Oman*, 888 F.2d 878 (D.C. Cir. 1989).

A mere simplistic arrangement of non-protectable elements does not demonstrate the level of creativity necessary to warrant protection. For example, the United States District Court for the Southern District of New York upheld the Copyright Office’s refusal to register simple designs consisting of two linked letter “C” shapes “facing each other in a mirrored relationship” and two unlinked letter “C” shapes “in a mirrored relationship and positioned perpendicular to the linked elements.” *Coach, Inc. v. Peters*, 386 F. Supp. 2d 495, 496 (S.D.N.Y. 2005). Likewise, the Ninth Circuit has held that a glass sculpture of a jellyfish consisting of clear glass, an oblong shroud, bright colors, vertical orientation, and the stereotypical jellyfish form did not merit copyright protection. *See Satava v. Lowry*, 323 F.3d 805, 811 (9th Cir. 2003). The language in *Satava* is particularly instructive:

It is true, of course, that a *combination* of unprotectable elements may qualify for copyright protection. But it is not true that *any* combination of unprotectable elements automatically qualifies for copyright protection. Our case law suggests, and we hold today, that a combination of unprotectable elements is eligible for copyright protection only if those elements are numerous enough and their selection and arrangement original enough that their combination constitutes an original work of authorship.

*Id.* (internal citations omitted).

Finally, Copyright Office registration specialists (and the Board) do not make aesthetic judgments in evaluating the copyrightability of particular works. See COMPENDIUM (THIRD) § 310.2. The attractiveness of a design, the espoused intentions of the author, the design's visual effect or its symbolism, the time and effort it took to create, or the design's commercial success in the marketplace are not factors in determining whether a design is copyrightable. See, e.g., *Bleistein v. Donaldson Lithographing Co.*, 188 U.S. 239 (1903).

### ***B. Analysis of the Work***

After carefully examining the Work and applying the legal standards discussed above, the Board finds that the Work is a useful article that does not contain the requisite separable authorship necessary to sustain a claim to copyright.

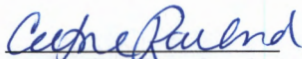
As Universal Robots acknowledges, the Work indisputably is a useful article. As explained above, separable artistic features of useful articles may be protected by copyright law if the features can be perceived as a work or art separate from the useful article and could qualify as a protectable pictorial, graphic or sculptural work if imagined separately from the useful article. *Star Athletica*, 137 S. Ct. at 1007. In this case, though, the Board has serious doubts that the elements Universal Robots identifies as expressive—namely the plastic caps and the T-shaped piece—could be visualized as works of authorship separate and independent from the Work's utility. See *id.* at 1013 (the identified feature must “qualify as a nonuseful pictorial, graphic, or sculptural work.”); see also *id.* at 1010 (“the feature cannot itself be a useful article or ‘[a]n article that is normally a part of a useful article’ (which is itself considered a useful article)”). Even if those features could be deemed separable, however, they simply are not sufficiently original to warrant copyright protection.

While the threshold for originality under *Feist* is low, it is not non-existent. The raised caps on their own constitute simple geometric shapes, which are not copyrightable. See COMPENDIUM (THIRD) § 906.1. And the logo design is not sufficiently original because it consists of the stylized letters “U” and “R” centered within a square. The T-shaped arm itself is a simple shape. Regardless of whether the Work was created independently, standard designs and shapes do not meet the low bar of creativity required, see COMPENDIUM (THIRD) § 906.1 (common geometric shapes not copyrightable) and § 906.2 (familiar symbols and designs or mere variations thereof not copyrightable), and typographic ornamentation, lettering, and coloring are not copyrightable. The Office finds that the Work as a whole—including the use of the different elements of the raised caps, logo, and T-shaped arm—do not rise to the level of originality required by the Copyright Act. While, as explained above, the combination of simple shapes and elements may in some situations warrant copyright protection, here the overall effect is of an unoriginal design. And Universal Robots' arguments appealing to the aesthetic elements of Danish design are not persuasive. While Danish design may indeed be well-regarded and visually appealing, that is of no consequence here. The Board does not evaluate the beauty or aesthetic appeal of works when assessing copyrightability. See, e.g., *Star Athletica*, 137 S. Ct. at 1015 (“asking whether some segment of the market would be interested in a given work

threatens to prize popular art over other forms, or to substitute judicial aesthetic preferences for the policy choices embodied in the Copyright Act”). Thus, the Work is not original enough to constitute protectable expression, and is not eligible for copyright registration.

#### IV. CONCLUSION

For the reasons stated herein, the Review Board of the United States Copyright Office affirms the refusal to register the copyright claim in the Work. Pursuant to 37 C.F.R. § 202.5(g), this decision constitutes final agency action in this matter.

BY:   
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Copyright Office Review Board