The opinion in support of the decision being entered today was not written
for publication and is not binding precedent of the Board.

Paper No. 25

UNITED STATES PATENT AND TRADEMARK OFFICE

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Ex parte VOLKER KETTLER, BERND SCHNEIDER
and WOLFGANG WIENSTROER

Appeal No. 2005-0058
Application No. 09/821,802

HEARD: FEBRUARY 23, 2005

Before COHEN, NASE and BAHR, Administrative Patent Judges.

BAHR, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 2-6 and 10-14, which are all of the claims pending in this application. An amendment to claims 5 and 13 filed subsequent to the final rejection has been entered (see Paper Nos. 14 and 15).

We REVERSE.

BACKGROUND

The appellants' invention relates to a parquet board with a tongue and groove edge profile comprising, *inter alia,* an upwardly projecting locking lip provided on the top edge of the tongue and a corresponding locking recess in a lower portion of the top groove cheek defining the top of the groove. A copy of the claims under appeal is set forth in the appendix to the appellants' brief.

The examiner relied upon the following prior art references of record in rejecting the appealed claims:

Tsai	5,274,979	Jan. 4, 1994
Moriau et al. (Moriau)	6,006,486	Dec. 28, 1999
Roy et al. (Roy)	6,216,409	Apr. 17, 2001 (filed Jan. 25, 1999)

The following rejections are before us for review.[1]

Claims 2, 3, 5, 6, 10, 11 and 13 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Moriau.

Claim 12 stands rejected under 35 U.S.C. § 103 as being unpatentable over Moriau in view of Roy.

Claims 4, 13 and 14 stand rejected under 35 U.S.C. § 103 as being unpatentable over Tsai in view of Moriau.

[1] The examiner has withdrawn the rejection under 35 U.S.C. § 112, second paragraph (answer, page 7).

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellants regarding the above-noted rejections, we make reference to the answer (Paper No. 19) for the examiner's complete reasoning in support of the rejections and to the brief (Paper No. 18) for the appellants' arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellants' specification and claims[2], to the applied prior art references, and to the respective positions articulated by the appellants and the examiner. As a consequence of our review, we make the determinations which follow.

The examiner's rejection of claims 2, 3, 5, 6, 10, 11 and 13 as being anticipated by Moriau is based upon the embodiment of Moriau's Figures 5-7. In order to meet the limitations of claim 13, for example, the *top* edge of the tongue being provided with a projecting locking lip, a recess being formed in a *lower* portion of the top groove cheek and the *bottom* groove cheek being shorter than the *top* groove cheek, Moriau's floor panel must be flipped upside-down relative to the orientation shown in Figures 5-7. In other words, the underside 7 must be considered to be the "upper decorative surface" recited in claim 13 and the lower side 35 of the tongue 31 must be considered to be the top edge of the tongue.

[2] Upon return of this application to the jurisdiction of the primary examiner, the examiner may wish to consider whether appellants' original application provides written description support, in compliance with 35 U.S.C. § 112, first paragraph, for a parquet board comprising "an upper decorative surface atop a core" as recited in claim 13. This limitation was added to claim 13 in Paper No. 12.

We agree with appellants that, in this case, one of ordinary skill in the art would not consider the underside 7 of Moriau's floor panel to be the top or the locking element 33 to protrude from the top edge of the tongue as proposed by the examiner. Akin to the situation in In re Gordon, 733 F.2d 900, 902, 221 USPQ2d 1125, 1127 (Fed. Cir. 1984), Moriau's floor panel would be unsuitable for its intended purpose in the orientation proposed by the examiner. As illustrated in Figure 7, the edge profiles of Moriau's floor panels are designed to ensure that the panels come together without gaps at the upper surface (at decorative layer 55 and protective top layer 56) to achieve the objective of Moriau to minimize the possibility of penetration of dirt and humidity under the protective top layer (column 2, lines 8-12), while a gap is present between the edges of the panels on the underside thereof. Additionally, the top surface, in the orientation illustrated in Figures 5-7, not the underside 7, is provided with the decorative layer 55 and protective top layer 56. For these reasons, a person of ordinary skill in the flooring art would recognize that Moriau's floor panel is orientation-critical and would understand the top and underside of Moriau's panel as illustrated in Figures 5-7, not the underside and top, to be the top and bottom, respectively, of the panel.

For the foregoing reason, the examiner's rejection of independent claim 13, as well as dependent claims 2, 3, 5, 6, 10 and 11, as being anticipated by Moriau must fail. The rejection is reversed.

The rejection of claim 12 as being unpatentable over Moriau in view of Roy is also reversed. Even assuming that Roy would have suggested modification of the outer

end of the tongue of Moriau's panel as proposed by the examiner, this would not remedy the basic deficiency of Moriau discussed above.

The examiner's rejection of claims 4, 13 and 14 as being unpatentable over Tsai in view of Moriau must also be reversed. The ridge 19 of Tsai characterized by the examiner (answer, page 6) as the "tapered surface" connecting the thickness in the remaining portion of the tongue to a thicker tongue portion, as called for in independent claim 13, is in fact simply a sheet-formed protrusion extending upwardly from an otherwise flat upper tongue surface and does not connect one tongue portion to a thicker tongue portion. The modification of Tsai in view of Moriau proposed by the examiner would not remedy this fundamental defect of Tsai.

CONCLUSION

To summarize, the decision of the examiner to reject claims 2-6 and 10-14 is reversed.

REVERSED

IRWIN CHARLES COHEN Administrative Patent Judge	)
JEFFREY V. NASE Administrative Patent Judge	) BOARD OF PATENT) APPEALS) AND) INTERFERENCES
JENNIFER D. BAHR Administrative Patent Judge	)

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