

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Ex parte FRANKLIN E. GIBSON¹

Appeal No. 2006-0695
Reexamination No. 90/006,063

ON BRIEF

Before HANLON, LANE, and MEDLEY, Administrative Patent Judges.

LANE, Administrative Patent Judge.

REMAND TO THE EXAMINER

Our consideration of the record leads us to conclude that this case is not in condition for a decision on appeal. Accordingly, we remand the application to the examiner to consider the following issue and take appropriate action.

¹ The owner and licensee of the patent under reexamination is said to be Tate Access Floors Leasing, Inc. and Tate Access Floors, Inc. (Appeal Brief at 1).

I.

The patent under reexamination is US patent 4,625,491, issued on 2 December 1986 from application 06/817,893, filed 13 January 1986. Claims 1-13 are involved in this appeal.² These claims are directed to a floor panel for elevated floors as well as a method of forming floor panels.

Claim 1 is illustrative and reads as follows:

A floor panel for elevated floors comprising a rectangular base structure adapted to be supported at its corners and providing a load surface operable to support loads thereon, a floor covering mounted on said load surface providing a decorative exposed surface layer on the side thereof opposite said load surface, said floor covering providing an inner body portion having an appearance contrasting with the appearance of said decorative surface layers, said floor covering providing a border along the edges of said panels along which said decorative surface layer is removed to expose said inner body portion and thereby provide an integral contrasting border around said decorative surface layer.

The following rejections are at issue in this appeal:

(1) Claims 1-10, 12 and 13 are rejected under 35 USC § 102(b) as being anticipated by Spielman, *Woodworking with Plastic Laminates: Instructor's Guide*, (1979), pp. 1-4 and attached papers labeled WPL 1, 6, 8, 13, and 14. Our understanding is that the attached papers are copies of transparencies that are part of the instructor's guide. ("Spielman") (Answer at 4-6).

(2) Claims 1-8 and 13 are rejected under 35 USC § 102(b) as being anticipated by Wagner, *Modern Woodworking: Tools, Materials, and Procedures*, (1970), pp. 20-12 and 20-13. (Answer at 6-8).

(3) Claims 1, 2, 8 and 13 are rejected under 35 USC § 102(b) as being anticipated by Morgan et al., US Patent 2,717,187 issued on 6 September 1955. (Answer at 8).

² Applicant submitted an amendment adding claims 14 and 15 (Amendment after final rejection dated 7 September 2004) but the examiner has indicated that such amendment was not entered. (Examiner's Answer ("Answer") at 2).

II.

The examiner rejected claims 1-10, 12, and 13 as being anticipated by the Spielman reference. In its Appeal Brief, applicant argues that a portion of the Spielman reference teaches away from its claimed invention. That portion is said to be a copy of a transparency labeled WPL-16. (Appeal Brief (“Brief”) at 13). Neither the examiner, the applicant nor the requestor appears to have cited WPL-16. (See, e.g., information disclosure statement submitted 19 July 2001 at Tab 8). In addition, there appears to be a number of other transparencies from the Spielman reference that are not found in the record before us.³

We hesitate to make a determination as to whether the Spielman reference anticipates the claimed invention without benefit of the entire reference and the examiner’s consideration of the entire reference. We have only a vague idea of what the other transparencies of the Spielman reference show and whether what they show may be relevant to the issues on appeal.

Therefore, upon return of the reexamination proceeding to the jurisdiction of the examiner, the examiner should:

- (1) obtain a complete copy of the Spielman reference,
- (2) enter the complete copy of the Spielman reference into the official record, and
- (3) consider the complete Spielman reference and determine whether to maintain, withdraw, supplement, or otherwise modify the rejections presently on appeal.

³ We surmise that there are other transparencies from pages 1-4 of the Spielman where what appears to be a brief summary of each transparency is provided.

III.

This application, by virtue of its “special” status, requires an immediate action. MPEP 708.01 (8th ed., Rev. 4, Oct. 2005). It is important that the Board be informed promptly of any action affecting the appeal in this proceeding.

REMANDED

/Adriene Lepiane Hanlon/))
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Administrative Patent Judge))
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