

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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 MICHAEL L. FRIEDMAN,
HUSNU M. KALKANOGLU,
JOONG YOUN KIM
and
THOMAS KEVIN MACKINNON

Appeal No. 2006-1489
Application No. 10/452,059

HEARD: JUNE 7, 2006

Before GARRIS, PAK and KRATZ, Administrative Patent Judges.
GARRIS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on an appeal which involves claims 1-14.

The subject matter on appeal relates to a roofing element of the shingle or tile type for exterior application comprising a multi-layer structure. Further details of this appealed subject are set forth in representative independent claim 1 which reads as follows:

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1. A roofing element of the shingle or tile type for exterior application comprising a multi-layer structure having:

- (a) a skin including a first thermoplastic material;
- (b) a core including a second thermoplastic material;
- (c) wherein the first material is a highly weather resistant polymer relative to the second material;
- (d) wherein the second material is a polymer having filler therein and;
- (e) wherein the core is comprised of a substantially greater volume of second material than the volume of first material that comprises the skin; and
- (f) wherein the skin encapsulates a plurality of surfaces of the core.

The references set forth below are relied upon by the examiner as evidence of unpatentability:

Raley, Jr. (Raley)	3,669,918	Jun. 13, 1972
Lijzenga et al. (Lijzenga)	4,332,703	Jun. 1, 1982
Rowe	4,396,665	Aug. 2, 1983
Friedman et al. (Friedman)	6,808,785	Oct. 26, 2004

We refer to the evidence appendix of the appeal brief filed June 13, 2005 for a listing of the evidence relied upon by the appellants in support of their patentability viewpoint.

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All of the appealed claims are rejected under the judicially doctrine of obviousness-type double patenting as being unpatentable over claims 2-14 of U.S. Patent 6,808,785 to Friedman.

All of the appeal claims also are rejected under 35 U.S.C. § 103(a) as being unpatentable over Rowe in view of either Lijzenga or Raley.

Rather than reiterate the respective positions advocated by the appellants and by the examiner concerning the above noted rejections, we refer to the brief filed June 13, 2005 as well as the reply brief filed September 6, 2005 in support of the appellants' position and to the answer mailed July 6, 2005 in support of the examiner's position.

As an initial matter, we observe that the appellants have not separately argued dependent claims 2-14 in the manner required by 37 CFR § 41.37(c)(1)(vii)(2004). Accordingly, in our assessment of the contested rejections on appeal, we have focused only on independent claim 1.

OPINION

For the reasons expressed in the answer and below, we will sustain each of the rejections advanced on this appeal.

We hereby summarily sustain the obviousness-type double

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patenting rejection of all appealed claims since this rejection has not been contested by the appellants and, indeed, has been characterized by the appellants as "not really at issue on appeal" (sentence bridging pages 5-6 of the brief).

As for the Section 103 rejections of all appealed claims, it is the appellants' basic contention that each of these rejections is improper because the roofing laminate or element of Rowe is not "of the shingle or tile type" as required by independent claim 1. In support of this contention, the appellants refer to their disclosure and proffer evidence in the form of definitions from the McGraw-Hill Dictionary of Scientific and Technical Terms, the Webster's New Collegiate Dictionary, and The New Encyclopedia Britannica as well as the declaration of Robert L. Jenkins under 37 CFR § 1.132 (2004) which includes exhibits entitled (A) Grace Construction Products and (B) Residential Asphalt Roofing Manual.

In response, the examiner argues that the appellants' specification and drawing disclosure does not restrict the scope of claim 1 to roofing elements which exclude those disclosed by Rowe. Moreover, the examiner considers patentee's roofing laminates or elements to fall within the appellants' proffered definitions for the terms "shingle" and "tile." Concerning the

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Jenkins declaration and the exhibits attached thereto, it is the examiner's fundamental view that, while a shingle or tile may be distinguishable in certain specific circumstances from a roofing laminate (e.g., in the form of a roll), the here claimed "roofing element of the shingle or tile type" fails to distinguish in all respects from the roofing elements or laminates disclosed by Rowe.

Our consideration of the appeal record leads us to the ultimate determination that the examiner's argument and evidence outweigh those of the appellants.

Like the examiner, we appreciate that a shingle (or tile) is distinguishable from patentee's roofing laminate when the latter is packaged in the form of a roll having a 36 inch width and a 60 foot length as described in the paragraph bridging columns 2 and 3. Indeed, the distinction between a shingle and the aforementioned roll of roofing laminate is pictorially shown on pages 2-3 in chapter 1 of the Residential Asphalt Roofing Manual (i.e., Exhibit B of the declaration). Nevertheless, the appellants' argument and evidence are deficient in two pivotal respects. First, appealed claim 1 is unlimited with respect to the recitation "shingle or tile type" and thus encompasses all of the shingle types shown on page 2 of the aforementioned Manual as

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well as shingle or tile types beyond those shown on this page. Similarly, the Rowe patent disclosure is not limited to roofing elements or laminates 36 inches wide and 60 feet long which are packaged in the form of a roll and thus includes roofing elements other the roll forms shown on page 3 of the Manual.

In this latter regard, it is appropriate to emphasize that the 36 inch wide and 60 feet long laminate described in the paragraph bridging columns 2 and 3 of Rowe is intended to be cut to the particular dimensions required by the roofing substrate which will be covered with the laminate (see the patent disclosure in its entirety; also see as a supporting comparison the above discussed Manual in its entirety). In fact, Rowe expressly teaches that laminate widths more narrow than the aforementioned 36 inches can be utilized in other roofing applications (see column 8, lines 51-59) and specifically discloses a laminate width of 12 inches for use as flashing strips (id., at lines 59-62). In applying such a flashing strip to a roofing substrate having, for example, a 40 inch length, it would have been obvious and indeed necessary for an artisan to cut the laminate flashing to a corresponding length of, for example, 40 inches.

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The foregoing exposition illustrates our earlier mentioned point that the disclosure of Rowe encompasses a wide variety of laminate forms including, for example, patentee's laminate in the form of a flashing strip having dimensions of 12 inches by 40 inches. We highlight these dimensions because they correspond to typical dimensions for 4 of the 5 shingles illustrated on page 2, chapter 1 of the Manual (i.e., Exhibit B). Furthermore, the penultimate shingle displayed on this page has not only the dimensions but also the appearance and shape (i.e., a rectangular shape with no cut outs for tabs) as the 12 inch by 40 inch laminate flashing strip discussed previously.

The above exposition emphasizes the point that the shingle types and laminate forms encompassed by appealed claim 1 and the Rowe patent respectively include embodiments which possess indistinguishable features such as size, shape and appearance. Other indistinguishable features possessed by the roofing element of claim 1 and the roofing laminate of Rowe include the here claimed limitations not argued by the appellants such as a multi-layer structure, a skin and core arrangement, and the materials of construction which are recited in claim 1. We are convinced by these circumstances that the independent claim on appeal includes within its scope roofing elements of the shingle or tile

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type which are indistinguishable from embodiments of the roofing laminates disclosed by Rowe such as the 12 inch by 40 inch laminate flashing strip described earlier. We hereby sustain, therefore, the Section 103 rejections of all appealed claims as being unpatentable over Rowe in view of either Lijzenga or Raley.

The decision of the examiner is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED

BRADLEY R. GARRIS)	
Administrative Patent Judge)	
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CHUNK K. PAK)	BOARD OF PATENT
Administrative Patent Judge)	APPEALS AND
)	INTERFERENCES
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PETER F. KRATZ)	
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BRG/hh

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