

The opinion in support of the decision being entered today is *not* binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* RONALD E. GILLINGHAM,  
MICHAEL M. FILIPOVICH, ROBERT ARMITAGE  
and JOSEPH B. FRENCH

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Appeal 2007-1490  
Application 10/707,484<sup>1</sup>  
Technology Center 1700

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Decided: June 12, 2007

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Before JAMESON LEE, ADRIENE LEPIANE HANLON, and  
SALLY C. MEDLEY, *Administrative Patent Judges*.

MEDLEY, *Administrative Patent Judge*.

DECISION ON APPEAL

1           **A. Statement of the Case**

2           Applicants appeal under 35 U.S.C. § 134 from a final rejection of  
3 claims 11, 12, and 14-21. We have jurisdiction under 35 U.S.C. § 6(b).

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1 Application for patent filed 17 December 2003. The real party in interest is Ford Global Technologies, LLC.

1           The prior art relied upon by the Examiner in rejecting the claims on  
2 appeal is:

3           Wandyez	US 6,086,145	Jul. 11, 2000
4           Carroll	US 2002/0017805 A1	Feb. 14, 2002

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6           Claims 12 and 14-21 stand rejected under 35 U.S.C. § 102(b) as being  
7 anticipated by Carroll (Final Rejection 3 and Answer 3).

8           Claims 12 and 14-21 stand rejected under 35 U.S.C. § 102(b) as being  
9 anticipated by Wandyez (Final Rejection 3 and Answer 3).

10           Claim 11 stands rejected under 35 U.S.C. § 102(b) as being  
11 anticipated by or, in the alternative, under 35 U.S.C. § 103(a) as obvious  
12 over Carroll (Final Rejection 4 and Answer 4).

13           Claim 11 stands rejected under 35 U.S.C. § 102(b) as being  
14 anticipated by or, in the alternative, under 35 U.S.C. § 103(a) as obvious  
15 over Wandyez (Final Rejection 4 and Answer 5).

16

#### BACKGROUND

17           The invention relates to a headliner structure for use in the interior  
18 roof of a vehicle. The headliner has at least one top layer with surface  
19 contours and at least one bottom layer with surface contours defining a  
20 cavity in between.

#### 21           **B. Issue**

22           The issue is whether Applicants have shown that the Examiner has  
23 failed to sufficiently demonstrate that there is a legal basis for rejecting  
24 claims 11, 12, and 14-21 over Carroll.

1 For the reasons that follow, Applicants have failed to demonstrate that  
2 the Examiner's rejection is legally incorrect.

3 **C. Findings of fact ("FF")**

4 The record supports the following findings of fact as well as any other  
5 findings of fact set forth in this opinion by at least a preponderance of the  
6 evidence.

7 1. Applicants' claims 11, 12 and 14-21 are the subject of this appeal.

8 2. Claims 1<sup>2</sup> and 11 are as follows:

9 A method of manufacturing a headliner for a vehicle, said method  
10 comprising the steps of:

11 providing vacuum forming equipment including upper and lower  
12 mold halves;

13 providing thermoplastic material including at least one top and at least  
14 one independent bottom layer;

15 placing said top and bottom layers into the vacuum forming  
16 equipment adjacent forming surfaces of the upper and lower mold halves;

17 substantially sealing at least one of the upper and lower mold halves  
18 from atmosphere;

19 joining said top and bottom layers together to form an integral  
20 headliner; and

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<sup>2</sup> Claims 1-10 were subject to restriction and were withdrawn from consideration (10/707,484, Sept. 16, 2005 nonfinal rejection).

1           applying vacuum to at least one of said top and bottom layers at  
2 predetermined locations so as to form at least one cavity between said top  
3 and bottom layers.

4           11. A headliner for a vehicle made by the method of claim 1, said top  
5 and bottom layers including a plurality of surface contours, and said top and  
6 bottom layers substantially joined together and including at least one area  
7 there between defining said at least one cavity.

8           3. Claim 12 is as follows:

9           A headliner for a vehicle, said headliner comprising:

10           at least one top layer including a plurality of surface contours;  
11           at least one bottom layer including a plurality of surface contours; and  
12           said top and bottom layers being substantially joined together to form  
13           an integral headliner including at least one area between inner  
14           surfaces of said top and bottom layers defining a cavity, therein said  
15           top layer is independent from said bottom layer prior to being joined  
16           to said bottom layer.

17           4. The Examiner found that Carroll describes a top layer and a bottom  
18 layer, which together define a cavity as recited in claim 11 and 12, along  
19 with the various features recited in those claims that depend either directly  
20 or indirectly from claim 12 (Final Rejection 3-4 and Answer 3-4).

21           5. For dependent claim 11, the Examiner concluded that it is a  
22 product by process claim, the patentability of which does not depend on the  
23 method of production, citing *In re Thorpe*, 777 F.2d 695, 698 (Fed. Cir.  
24 1985) (Final Rejection 4 and Answer 4 and 7).

1           6. Applicants argue claims 12 and 14-21 together as a group (Br. 4-  
2 6).

3           7. Applicants place much emphasis on the term “headliner” in its  
4 claims and argue that Carroll does not disclose a headliner as follows:

5                   To reiterate, Appellants are claiming a headliner. Carroll  
6 et al., on the other hand does not disclose a headliner. Rather,  
7 Carroll discloses an unfinished panel, which, according to  
8 Carroll’s Claim 10, is intended to be attached to any, and used  
9 in combination with a vast array of other structures, to form a  
10 similarly vast array of other finished goods, one of which may  
11 include a headliner ... Carroll et al. is devoted not to a  
12 headliner, but to a structure which could be buried, for example,  
13 within the core of a headliner. ... Although it is true that  
14 Carroll et al. discloses an energy absorbing assembly, this alone  
15 does not mean that Carroll et al. discloses a headliner for a  
16 vehicle. A headliner, as noted in Appellants’ specification at  
17 paragraph 3, includes a device mounted inside the passenger  
18 compartment of a vehicle for providing an aesthetic covering  
19 for the roof’s sheet metal and/or framework upon which the  
20 headliner is to be mounted. Carroll et al. shows something that  
21 could be used within a headliner but does not disclose a  
22 finished headliner, nor does Carroll et al. disclose any  
23 completed structure for a headliner. (Br. 5).

24

25           8. The Examiner responded and concluded that the term “headliner”  
26 recited in the preamble of claim 12 is not limiting to that claim and that  
27 Carroll describes all of the structural components of claims 12 and 14-21,  
28 citing *Pitney Bowes, Inc. v. Hewlett-packard Co*, 182 F.3d 1298, 1305, 51  
29 USPQ2d 1161, 1165 (Fed. Cir. 1999) (Answer 5-6).

1           9. The following description is found in the background section of  
2 Applicants' Specification: "Various conventional headliner designs and  
3 their associated methods of manufacture are known and disclosed, for  
4 example, .... 2002/0017805 to Carroll, III ..." (10/707,484 para. 9).

5           10. Applicants' argue that claim 11 is patentable for the similar  
6 arguments advanced in connection with claims 12 and 14-21 and further  
7 argues that:

8           Moreover, *Carroll et al.* does not teach a structure which is  
9 vacuum formed and has independent top and bottom layers  
10 joined together to form an integral headliner. Moreover, the  
11 Examiner has not adduced any evidence to support a conclusion  
12 of obviousness. For this reason, as well as for the previously  
13 cited reasons, *Carroll et al.* cannot comprise a colorable basis  
14 for the rejection of Applicants' Claim 11. (Br. 7).

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16

#### **D. Principles of Law**

17           Claim interpretation is a question of law, but the subordinate findings  
18 relating to proper claim construction are issues of fact. Claim elements must  
19 be construed as they would be understood by those skilled in the art. *See*  
20 *Hoechst Celanese Corp. v. B.P. Chems., Ltd.*, 78 F.3d 1575, 1578, 38  
21 USPQ2d 1126, 1129 (Fed. Cir. 1996).

#### **E. Analysis**

22           Claim 12 is in independent form and claims 14-21 depend either  
23 directly or indirectly on claim 12. Claim 12 recites the term "headliner" in  
24 the preamble and again in the body of the claim. The Examiner concluded  
25 the preamble and again in the body of the claim. The Examiner concluded

1 that the term “headliner” should not be given any patentable weight since it  
2 is recited in the preamble and it is an intended use limitation (FF 8).

3 Applicants argue claims 12 and 14-21 as a group (FF 6). Applicants’  
4 sole argument is that the claim 12 limitation “headliner” should be  
5 interpreted to mean a finished product, e.g., a device that can be mounted  
6 inside a vehicle for providing an aesthetic covering for the roof’s sheet metal  
7 and/or framework (FF 7). Applicants’ proposed claim construction is  
8 narrower than the Examiner’s proposed claim construction. Here, we need  
9 not decide who is right. Based on the record, even if the claim 12  
10 “headliner” is interpreted to mean a structure that has a finished appearance,  
11 the Applicants have failed to sufficiently demonstrate that the Examiner’s  
12 findings with respect to Carroll are erroneous.

13 Applicants’ position that it takes in connection with its appeal is  
14 directly contrary to Applicants’ position advanced earlier. In its background  
15 section of its Specification, Applicants state that “Various conventional  
16 headliner designs and their associated methods of manufacture are known  
17 and disclosed” citing specifically to the Carroll 2002/0017805 publication  
18 (FF 9). However, in its Appeal Brief, Applicants argue that Carroll does not  
19 describe a finished headliner (FF 7). Applicants provide no explanation for  
20 the contradictory positions it appears to take. The background section of  
21 Applicants’ own Specification leads one to understand that the Applicants  
22 considered and understood Carroll to describe a “conventional”, e.g.,  
23 “finished” headliner. To advance a position before the Board that appears to

1 be in direct contrast to earlier representations made, without any  
2 explanation, is troubling.

3           Moreover, even if the Carroll top and bottom layer assembly  
4 constitute an “unfinished panel,” which Applicants argue cannot by itself be  
5 a “headliner” as that term is understood in the art, Applicants acknowledge  
6 that Carroll describes that the “unfinished panel” can be contained within, or  
7 included as part of a headliner (FF 7). According to Applicants, the term  
8 “headliner” is known in the art to mean a finished product, e.g., something  
9 that is aesthetically pleasing to view. By Applicants’ own admission, the  
10 term “headliner” would connote to a skilled artisan a finished product.  
11 Thus, Applicants’ argument that Carroll does not describe a “finished  
12 product” necessarily unravels. Carroll describes using the assembly within a  
13 headliner, which one of ordinary skill in the art would recognize inherently  
14 contains all of the necessary structure to make it a “finished product.”  
15 Applicants have therefore failed to demonstrate that the Examiner’s rejection  
16 was in error.

17           In any event, aesthetics is in the eye of the beholder. The applicant  
18 submitted no testimony of any technical witness to the effect that one with  
19 ordinary skill in the art would regard a “headliner” as necessarily being a  
20 finished panel. Attorney argument does not take the place of evidence  
21 lacking in the record. Even an unfinished panel as disclosed in Carroll has  
22 all the structural requirements of being a headliner.

23           For the above reasons, we sustain the rejection of claims 12 and 14-21  
24 as being anticipated by Carroll.

1           The Applicants do not sufficiently explain why the Examiner's legal  
2 conclusion with respect to claim 11 is erroneous. The Examiner clearly  
3 stated that claim 11 is a product by process claim, the patentability of which  
4 does not depend on the method of production, citing *In re Thorpe*, 777 F.2d  
5 695, 698 (Fed. Cir. 1985) (FF 5). Applicants provide no meaningful  
6 explanation why the Examiner's conclusion is erroneous (FF 10). Thus, we  
7 also sustain the rejection of claim 11 as being anticipated, or alternatively  
8 obvious in view of Carroll.

9           Since we have determined that the claims are unpatentable on the  
10 basis of Carroll, we need not and will not consider the rejection based on  
11 Wandyez. Accordingly, the rejection of claims 11, 12 and 14-21 based on  
12 Wandyez is dismissed as moot.

13           **E. Decision**

14           Upon consideration of the record, and for the reasons given, the  
15 Examiner's rejection of claims 12 and 14-21 under 35 U.S.C. § 102(b) as  
16 being anticipated by Carroll is affirmed.

17           The Examiner's rejection of claim 11 under 35 U.S.C. § 102(b) or  
18 alternatively under 35 U.S.C. § 103(a) based on Carroll is affirmed.

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

**AFFIRMED**

Appeal 2007-1490  
Application 10/707,484

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