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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte TOSHIAKI YAMADA and MASANORI KIBA

Appeal 2010-001211
Application 10/544,721
Technology Center 3700

Before STEVEN D.A. McCARTHY, JOHN W. MORRISON and NEIL T. POWELL, *Administrative Patent Judges*.

McCARTHY, *Administrative Patent Judge.*

DECISION ON APPEAL

The Appellants[1] appeal under 35 U.S.C. § 134 from the Examiner's final decision rejecting claims 1 and 14-27 under 35 U.S.C. § 103(a) as being unpatentable over Mote (US 3,303,604, issued Feb. 14, 1967) and Zheng (US 6,116,981, issued Sep. 12, 2000). Claims 2-13 are cancelled. We have jurisdiction under 35 U.S.C. § 6(b).

[1] The Appellants identify the real party in interest as Tadatorayohsiten Co., Ltd. of Osaka, Japan.

We REVERSE.[2]

Claims 1, 14 and 15 are independent. Claim 14 recites:

> 14. A set of building blocks comprising:
>
> a first piece (P1) which includes a flat plane (S) and a top side paralleled to the flat plane (S),
>
> wherein, at a center of the top side, a V-shaped groove (G) whose two surfaces (Ga, Ga) are tilted symmetrically from a reference plane (H) orthogonal to the flat plane (S) or a plane (S′) including the flat plane (S),
>
> an angle formed by each of the two surfaces (Ga, Ga) and the reference plane (H) being approximately 45 degrees, and
>
> whose bottom (Gb) extends parallel with the flat plane (S), is formed;
>
> a second piece (P2) having at least a corner edge (A) to be engaged with the groove (G) of the first piece (P1), so that one side (Af) of the corner edge is brought substantially in face contact with the groove (G),
>
> wherein a first width (WS) of the flat plane (S) is greater than a second width (WG) of the groove (G) along the direction perpendicular to the reference plane (H), and
>
> a center of the first width (WS) of the flat plane (S) is coincided with

[2] The Examiner on page 13 of the Answer withdrew a previously-entered rejection of claims 1 and 14-27 under the second paragraph of 35 U.S.C. § 112.

a center of the second width (WG) of the groove (G); and

wherein the first piece (P1) has a portion capable of supporting a third piece thereon.

Claims 1 and 15 each also claim a set of building blocks. The sets of building blocks recited in claims 1 and 15 each include first and second pieces. The first piece has a flat plane (S) and a V-shaped groove (G). Claims 1 and 15, like claim 14, each recite "wherein a first width (WS) of the flat plane (S) is greater than a second width (WG) of the groove (G) along the direction perpendicular to the reference plane (H)".

Mote describes a building toy including structural units or blocks made from empty milk cartons. (Mote, col. 1, ll. 9-11). The structural unit *15* depicted in Figures 1-3 of Mote consists of a parallelepiped having a planar bottom surface of square cross-section and elongated sides. The upper end portion of the structural unit is cut at 45° angles relative to the sides of the structural unit so as to form a right-angled, V-shaped groove extending from one upper corner to a diagonally opposite upper corner. (Mote, col. 3, ll. 17-42 and figs. 1-3).

The Examiner finds that the structural unit *15* depicted in Figures 1-3 of Mote satisfies the limitation "wherein a first width (WS) of the flat plane (S) is greater than a second width (WG) of the groove (G) along the direction perpendicular to the reference plane (H)." This finding appears to be premised on the fabrication of the structural unit from a carton with a rectangular, rather than a square, cross-section. (*See* Ans. 7-8). The Appellants disagree. (*See* App. Br. 15-16, 18 and 20).

The structural unit *15* depicted in Figures 1-3 of Mote has a square cross-section. For example, Mote describes a preferred milk carton for use

in fabricating the structural unit as having a "conventional rectangular parallelepiped shape." (Mote, col. 2, ll. 53-57). In view of the depiction of the structural units in the drawing, the "conventional rectangular parallelepiped shape" described by Mote has a square cross-section and elongated (that is, rectangular) sides. Mote goes on to teach that "milk cartons of other shapes (so long as they have square cross-sections) are equally applicable for the indicated purpose." (Mote, col. 2, ll. 57-62). Mote claims only structural units with square cross-sections. (*See* Mote, col. 9, ll. 22-23 (claim 1)). Mote does not appear to expressly describe structural units having cross-sections other than square. While Mote also teaches that it is not essential "that the cross-sectional areas of the units be equal, and [the cross-sectional areas] can vary in this respect if desired" (Mote, col. 2, ll. 30-32; *see also* Ans. 8), this teaching does not imply reason to fabricate Mote's structural units from milk cartons of other than square cross-section.

In view of Mote's express teaching to fabricate the structural units from cartons having square cross-sections, one of ordinary skill in the art would not have had apparent reason to fabricate the structural units from available cartons or blanks having other than square cross-sections as suggested by the Examiner at page 8 of the Answer. Likewise, the Examiner has not explained persuasively on page 8 of the Answer why one of ordinary skill in the art might have understood a carton of rectangular cross-section to have greater stability than a carton of square cross-section having a side width equal to the longest side width of the rectangular carton. Therefore, the Examiner has not shown that Mote describes structural units "wherein a first width (WS) of the flat plane (S) is greater than a second width (WG) of the groove (G) along the direction perpendicular to the reference plane (H)."

Neither has the Examiner shown that one of ordinary skill in the art would have had an apparent reason to modify Mote's structural limitations to meet this limitation. We do not sustain the rejection of claims 1 and 14-27 under § 103(a) as being unpatentable over Mote and Zheng.

DECISION

We REVERSE the Examiner's decision rejecting claims 1 and 14-27.

REVERSED

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