



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR       | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------------|---------------------|------------------|
| 11/400,190  | 04/10/2006  | Bernard Paul Joseph Thiers | THIE3003C5/JJC      | 3056             |
| 23364   | 7590        | 02/01/2013                 | EXAMINER            |                  |
| BACON & THOMAS, PLLC<br>625 SLATERS LANE<br>FOURTH FLOOR<br>ALEXANDRIA, VA 22314-1176 |             |                            | LAUX, JESSICA L     |                  |
|   |             |                            | ART UNIT            | PAPER NUMBER     |
|   |             |                            | 3635                |                  |
|   |             |                            | MAIL DATE           | DELIVERY MODE    |
|   |             |                            | 02/01/2013          | PAPER            |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE PATENT TRIAL AND APPEAL BOARD

---

*Ex parte* BERNARD PAUL JOSEPH THIERS

---

Appeal 2010-008197  
Application 11/400,190  
Technology Center 3600

---

Before LINDA E. HORNER, JAMES P. CALVE, and  
ANNETTE R. REIMERS, *Administrative Patent Judges*.

REIMERS, *Administrative Patent Judge*.

DECISION ON APPEAL

## STATEMENT OF THE CASE

Bernard Paul Joseph Thiers (Appellant) appeals under 35 U.S.C. § 134 from the Examiner's decision to reject under 35 U.S.C. § 103(a): (1) claims 1-3 and 5-7 as unpatentable over Moriau (US 6,006,486, issued Dec, 28, 1999), Eby (US 5,961,903, issued Oct. 5, 1999) and Piacente (US 5,858,160, issued Jan. 12, 1999); and (2) claims 4 and 8 as unpatentable over Moriau, Eby and Mehta (US 5,141,799, issued Aug. 25, 1992). Claim 9 has been cancelled. We have jurisdiction over this appeal under 35 U.S.C. § 6(b).

We AFFIRM.

## THE INVENTION

Appellant's invention relates to a floor covering 1 formed of laminated panels 2, wherein the panels 2 include a top layer 4 with a printed wood pattern 5. Spec. 7, ll. 12-15; figs. 1, 2.

Claim 1, the sole independent claim, is illustrative of the claimed invention and reads as follows:

1. A laminate floor covering panel having a perimeter defining first and second pairs of opposite edges;  
said panel having a top side and a bottom side, and comprising a base plate and a top layer;  
said base plate being formed of a material selected from the group consisting of MDF and HDF;  
said base plate having an upper side and a lower side, the first and second pairs of opposite edges located adjacent to and surrounding the upper side of the base plate;  
said panel at least at said first pair of opposite edges being provided with coupling parts for mutually coupling a plurality of such panels to each other in a common plane to form a floor covering, wherein these

coupling parts in coupled condition of two of such panels provide for an interlocking in a direction perpendicular to the plane of the panels as well as in a direction perpendicular to the edges concerned and parallel to the plane of the panels;

said top layer comprising a generally horizontally planar decorative layer extending over the entirety of the upper side of the base plate;

said decorative layer comprising a printed pattern;

said printed pattern representing a single wood pattern extending over the entirety of the upper side of the base plate;

said top layer defining a transparent or translucent synthetic layer having first and second generally planar surfaces, the second planar surface of the synthetic layer continuously covering said decorative layer;

said synthetic layer defining said top side of the panel;

wherein said synthetic layer comprises impressions extending from the first planar surface into a thickness of the synthetic layer short of the second planar surface to such a depth that the impressions are situated above the printed pattern, said impressions arranged to simulate textural and visual unevennesses which substantially follow said printed pattern to form an embossment which is in register with said printed pattern;

wherein the wood pattern depicts at least two wood nerves and a zone therebetween; wherein the impressions are mainly situated in said synthetic layer above said wood nerves, while the synthetic layer above said zone therebetween is substantially flat.

#### ANALYSIS

Appellant indicates that claims 2-8 stand or fall with the rejection of independent claim 1. Br. 6. Accordingly, we select claim 1 as the representative claim. *See* 37 C.F.R. § 41.37(c)(1)(vii)(2011).

The Examiner found that Moriau discloses the limitations of claim 1 except “the synthetic layer [including] impressions arranged to simulate an unevenness which follows the printed pattern to form an embossment which is in register with the printed pattern.” Ans. 4. The Examiner found that Eby discloses it is known to emboss the surface of a floor covering to simulate wood and that it may disclose an embossed pattern in register with a printed pattern and that Piacente discloses embossing that substantially follows a printed pattern. *Id.* The Examiner further found that these teachings include or render obvious simulation of a wood appearance that includes a single wood pattern having wood nerves/pores in register with a plurality of successive impressions, as called for in claim 1. Ans. 5. The Examiner determined it would have been obvious to one of ordinary skill to combine these references to have surface embossment substantially follow a printed pattern of wood nerves to simulate wood on the top surface of Moriau’s floor panel to enhance the realistic effect of the wood grain décor. *Id.*

Appellant argues that Eby discloses random surface texture that generally simulates the printed pattern but does not provide successive indentations that substantially follow a wood nerve of a printed pattern, as called for in claim 1. Br. 13. Appellant’s individual attack on the references is not persuasive, because the Examiner relies on Eby to disclose mechanical embossing of a floor covering to simulate wood in register with a printed pattern. *See* Ans. 4; Eby, col. 6, ll. 6-9 and 38-42. The Examiner relies on Piacente for embossing that substantially follows a printed pattern. Ans. 4.

Appellant also argues that neither Eby nor Piacente disclose an embossment structure, wherein “the impressions extend from the first planar surface into a thickness of the synthetic layer short of the second planar surface,” as called for in claim 1. Br. 17. We agree with the Examiner’s findings as to the disclosure of Eby (Ans. 4, 7-8; Eby, col. 6, ll. 3-6), and Appellant has not provided any persuasive argument as to why the Examiner’s findings and conclusions with respect to Eby are erroneous.

Appellant further argues that there is no suggestion in the combination of Eby and Piacente to rearrange the top layer of Moriau, which requires planar surfaces with a decorative layer having a printed pattern under a planar synthetic layer, with the irregular structure and decorative ink or design layer extending over a foamed layer(s) of the combination of Eby and Piacente. Br. 19-21. To the extent Appellant is arguing the references must be capable of bodily incorporation in order to combine their teachings, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of a primary reference. *In re Keller*, 642, F.2d 413, 425 (CCPA 1981). “Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art.” *Id.* (citations omitted). Further, to the extent Appellant is arguing the references teach away from the proposed combination, mere differences between two references is insufficient to establish that such references “teach away” from any combination thereof. *See In re Beattie*, 974 F.2d 1309, 1312-13 (Fed. Cir. 1992). Prior art does not teach away from claimed subject matter merely by disclosing a different solution to a similar problem unless the prior art also criticizes, discredits or otherwise discourages the solution claimed. *See In re Fulton*, 391 F.3d

1195, 1201 (Fed. Cir. 2004). The Examiner has relied on each reference for particular teachings. We find the Examiner's articulated reasoning for combining the reference teachings in the manner claimed to be based upon rational underpinnings, and we adopt them as our own. Appellant has not shown that the Examiner's reasons for combining the teachings of these references are in error.

The Examiner's finding that Moriau discloses a printed pattern to simulate a single wood pattern (Ans. 4) also is supported by a preponderance of evidence. Contrary to Appellant's argument that Moriau fails to disclose that "the decorative layer may form a 'single' wood pattern" (Br. 12), Moriau discloses that the decorative layer can be imprinted with a wood pattern. Moriau, col. 8, 1. 67-col. 9, 1. 2. As correctly pointed out by the Examiner, Appellant's Specification "does not include a disclosure as to the meaning of 'single wood pattern' that would limit the understanding of such a broad term." Ans. 7. Consequently, we agree with the Examiner that there is nothing in Appellant's disclosure to suggest that the term "single wood pattern" is not a broad enough limitation to read on a teaching of a single plank depicting a wood pattern. *Id.* Providing a printed pattern simulating a single wood pattern extending over the entirety of the upper side of a base plate, would involve only ordinary creativity, and would not be uniquely challenging to a person of ordinary skill in the art. *See, e.g., KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 421 (2007) ("a person of ordinary skill has good reason to pursue the known options within his or her technical grasp"). As such, we further agree with the Examiner that "one of ordinary skill in the art upon reading Appellant's and Moriau's disclosures could understand the planks to have a 'single' wood pattern." Ans. 7.

Appellant's argument that "the limitation of the depiction of the wood nerves cannot be treated in mere isolation or only regarded as aesthetic design elements; instead this limitation attributes to the structure of the floor panel itself" (Br. 18) is not persuasive, because matters relating to ornamentation only (wood pattern depicting at least two wood nerves), which have no mechanical function cannot be relied upon to patentably distinguish the claimed invention from the prior art. *In re Seid*, 161 F.2d 229, 231 (CCPA 1947); *see In re Gulack*, 703 F.2d 1381, 1386 (Fed. Cir. 1983) (the critical question is whether there exists any new and unobvious functional relationship between the printed matter and the substrate). We find no substantial difference between the mechanical construction of Appellant's laminate floor panel and the laminate floor panel of Moriau. First, we note the similarity between Appellant's Figures 2 and 4 and Moriau's Figures 1 and 2. Like Appellant's claimed laminate floor panel, the laminate floor panel 1 of Moriau includes (1) a perimeter defining first and second pairs of opposite edges (2 and 3), a top and bottom side, a base plate 8 and a top layer including a decorative layer 55 and a synthetic layer 56; and (2) the first and second pairs of opposite edges (2 and 3) located adjacent to and surrounding the upper side of the base plate 8. *See* Ans. 3. We further note that, similar to Appellant's invention, Moriau discloses that base plate 8 of laminate floor panel 1 can be made of MDF (medium density fiberboard) or HDF (high density fiberboard) (i.e., highly compressed ground wood particles and binder material). *See* Moriau, col. 3, ll. 26-35; col. 8, ll. 59-64; fig. 2; Spec. 2, ll. 9-10. Since Moriau specifically discloses the mechanical structure of Appellant's claimed laminate floor panel, including that decorative layer 55 can be imprinted with a wood pattern, and

Appeal 2010-008197  
Application 11/400,190

Eby discloses that it is known to mechanically emboss the surface of a floor covering so that the impression extends into the structure in register with the wood pattern and Piacenta discloses such embossing in register with a printed pattern, we agree with the Examiner that the single wood pattern of the laminate floor panel of Moriau, as modified by the Examiner (*see* Ans. 4-5), depicts at least two wood nerves, as called for in claim 1.

Accordingly, for the foregoing reasons, we sustain the Examiner's rejection of claim 1 and of claims 2-8, which fall with claim 1.

#### DECISION

The decision of the Examiner is affirmed as to claims 1-8.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

Klh