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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* LOUIS K. JUSTIN

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Appeal 2012-008703  
Application 12/784,824<sup>1</sup>  
Technology Center 3700

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Before MICHAEL C. ASTORINO, GEORGE R. HOSKINS, and  
CYNTHIA L. MURPHY, *Administrative Patent Judges*.

ASTORINO, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

The Appellant appeals under 35 U.S.C. § 134 from the Examiner's decision rejecting claims 1–4, 6, and 7. We have jurisdiction over the appeal under 35 U.S.C. § 6(b).

We AFFIRM.

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<sup>1</sup> According to the Appellant, the real party in interest is the Applicant Louis K. Justin. Appeal Br. 1.

*Claimed Subject Matter*

Claims 1 and 4 are the independent claims on appeal. Claim 1, reproduced below, is illustrative of the subject matter on appeal.

1. A punch for cutting a tile from a work piece, the punch comprising:
  - a body including:
    - a central portion;
      - a cutting blade formed about the central portion; the cutting blade being configured to cut the tile in a predetermined shape, wherein the predetermined shape of each cutting blade is formed by a plurality of segments that each have a joined end point and a distal end point, wherein the segments include:
        - a first segment having a first non-linear spline profile;
        - a second segment having the same non-linear spline profile as the first segment, wherein the first and second segments are provided on at least two sides of the central portion and wherein the joined end points of the first and second segments are disposed at the same location;
        - a third segment having a second non-linear spline profile;
        - a fourth segment having the same non-linear spline profile as the third segment, wherein the third and fourth segments are provided on at least two sides of the central portion and wherein the joined end points of the third and fourth segments are disposed at the same location; and
      - wherein the distal end point of the first segment is joined to the distal end point of the fourth segment and the distal end point of the second segment is joined to the distal end point of the third segment;
    - an impact receiving surface for receiving an impact,
    - a recess formed inboard of the cutting blade for receiving the tile during the cutting operation, and
    - a resilient member provided within the recess for ejecting the tile.

*Rejections*<sup>2</sup>

Claims 1–4, 6, and 7 are rejected under 35 U.S.C. § 102(b) as anticipated by Spengler (US 3,373,643, iss. Mar. 19, 1968).

Claims 1, 3, 4, 6, and 7 are rejected under 35 U.S.C. § 102(b) as anticipated by Copeland (US 212,131, iss. Feb. 11, 1879).

ANALYSIS

**Anticipation by Spengler**

*Independent claim 1 and dependent claims 2 and 3*

The Appellant contends that the Examiner arbitrarily draws axes, unreasonably, on Figure 4 of Spengler only to meet the limitations of the claims. Appeal Br. 4. The Appellant includes as evidence *Ex parte Denison*, Appeal 2009-004110, (BPAI 2010) (Ex. A) and *Ex parte Richardson*, Appeal 2009-003991, (BPAI 2009) (Ex. B) to support the contention. *See* Appeal Br. 4, 8; *see also* Reply Br. 1. The Appellant’s contention is unpersuasive.

First, the cases cited by the Appellant are not precedential cases and are of limited guidance to the issues presented in this case. Additionally, the Appellant fails to provide a persuasive line of reasoning analogizing the facts in those cases with facts in the presently appealed case.

Second, it is notable that claim 1 recites, “cutting blade is formed by a plurality of segments that each have a joined end point.” Appeal Br., Claims App. As such, claim 1 requires each of the plurality of segments to be

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<sup>2</sup> To facilitate our analysis, we set forth the rejections in a different order than the order presented in the Answer and Appeal Brief.

joined. *See* Ans. 6. Hence, it is reasonable to create a system to identify the plurality of joined segments. The system provided by the Examiner is representative of a coordinate system where the center point of the punch is the center of the coordinate system. *See* Ans. 6. The Examiner's system of identifying segments is reasonable. Put simply, we do not find the Examiner's annotations on Figure 4 of Spengler to be arbitrary.

The Appellant also contends that the Examiner's annotations on Figure 4 of Spengler "do not have joined end points of the first and second segments or joined end points of the third and fourth segments that are disposed at the same location" and "do not correspond to distal end points of the first segments that are joined to a distal end point of the fourth segment, or distal end points of the second segment that are joined to the distal end point of the third segment." *See* Appeal Br. 8. In response, the Examiner clarifies the findings presented in the Final Office Action (mailed May 18, 2011) by including the annotations on Figure 4 identifying joined end points and distal end points of Spengler's punch in the Answer. *See* Ans. 5–7, Final Action 3–4. The Appellant's contention does not provide adequate evidence or technical reasoning to indicate that the Examiner's findings are not supported by a preponderance of the evidence.

For the above reasons, we sustain the rejection of independent claim 1 under 35 U.S.C. § 102(b) as anticipated by Spengler. Claims 2 and 3 depend from claim 1, are not argued separately, and thus fall with claim 1.

#### *Independent claim 4*

The Appellant contends "[t]he Examiner's annotation that comprises scribed lines applied over the drawing of Spengler in Figure 4 are

completely *arbitrary* and ignore important limitations of the claims that the segments are joined at end points of the segment to the end points to two adjacent segments.” Appeal Br. 9 (emphasis added). As discussed above, the Appellant’s contention that the Examiner’s inclusion of annotations on Figure 4 is arbitrary is unpersuasive.

The Appellant also contends, “the segments as divided by the Examiner in his drawing applied to Figure 4 do not have first and second shapes that have two end points that are joined at the end points of the segment to the end points of the two adjacent segments.” Appeal Br. 9. However, the Appellant does not provide persuasive evidence or technical reasoning explaining error in the Examiner’s findings and the Examiner’s findings are supported by a preponderance of the evidence (*see* Ans. 5–7).

Thus, we sustain the rejection of claim 4 under 35 U.S.C. § 102(b) as anticipated by Spengler.

*Dependent claim 6*

The Appellant contends Spengler does not disclose, “[t]he punch of claim 4 wherein the at least two segments of the first shape have a curved shape and the at least two segments of the second shape have a curved shape,” as recited in claim 6 (Appeal Br., Claims App.). *See* Appeal Br. 10.

The Examiner identifies four segments of Spengler’s punch where each of the four segments has a curved shape. *See* Ans. 6; *see also* Ans. 7.

The Appellant asserts that Spengler’s punch blade “has two curved portions at the ends of the cartouche and two straight line portions that interconnect the two curved segments.” Appeal Br. 10. However, the Appellant’s assertion is directed to four different segments than the four

segments identified by the Examiner as corresponding to the segments as required by claim 6. As such, the Appellant's assertion and contention are not persuasive.

Thus, we sustain the rejection of claim 6 under 35 U.S.C. § 102(b) as anticipated by Spengler.

*Dependent claim 7*

The Appellant contends Spengler does not disclose, "[t]he punch of claim 4 wherein the work piece formed by the punch is tessellatable," as recited in claim 7 (Appeal Br., Claims App.). See Appeal Br. 10. The Appellant asserts, "[a] tessellated pattern is one that may be assembled with other pieces in a repeating array with no noticeable gaps between pieces." Reply Br. 1. The Appellant's contention is unpersuasive.

The term "tessellated pattern" is distinct from the claimed term "tessellatable." The Examiner determines that products formed by Spengler's punch "can be formed into a mosaic pattern (i.e., tessellat[ ]able)" because the products "can be formed together with other pieces formed by other shaped punches to make a mosaic pattern."<sup>3</sup> Ans. 8. We agree.

Thus, we sustain the Examiner's decision to reject claim 7 under 35 U.S.C. § 102(b) as anticipated by Spengler.

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<sup>3</sup> The term "tessellate" is defined as "tessellated" and the term "tessellated" is defined as "of, relating to, or like a mosaic." DICTIONARY.COM UNABRIDGED, "tessellate," (def. 2), <http://dictionary.reference.com/browse/tessellate?s=t> (last visited Dec. 22, 2014), "tessellated," (def. 1) <http://dictionary.reference.com/browse/tessellated?s=t> (last visited Dec. 22, 2014).

### **Anticipation by Copeland**

Our affirmance of the rejection of claims 1, 3, 4, 6, and 7 on one prior art ground specified by the Examiner, namely, under 35 U.S.C. § 102(b) as anticipated by Spengler, constitutes a general affirmance of the decision of the Examiner on these claims. 37 C.F.R. § 41.50(a). We do not separately address the rejection of claims 1, 3, 4, 6, and 7 under 35 U.S.C. § 102(b) as anticipated by Copeland.

### **DECISION**

The decision of the Examiner to reject claims 1–4, 6, and 7 is affirmed.

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

### **AFFIRMED**

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