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EXAMINER
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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* LAURENT MEERSSEMAN and OKE NOLLET

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Appeal 2015-001037  
Application 12/481,041  
Technology Center 1700

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Before ROMULO H. DELMENDO, MARK NAGUMO, and  
BRIAN D. RANGE, *Administrative Patent Judges*.

DELMENDO, *Administrative Patent Judge*.

DECISION ON APPEAL

The Applicants (hereinafter the “Appellants”)<sup>1</sup> appeal under 35 U.S.C.  
§ 134(a) from a final decision of the Primary Examiner to reject claim 1.<sup>2</sup>

We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

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<sup>1</sup> The Appellants state that the real party in interest is “FLOORING INDUSTRIES LIMITED, SARL” (Appeal Brief filed September 15, 2014, hereinafter “Appeal Br.,” 1).

<sup>2</sup> Appeal Br. 2; Final Office Action mailed July 16, 2014, hereinafter “Final Act.,” 1; Examiner’s Answer mailed October 3, 2014, hereinafter “Ans.,” 2.

## BACKGROUND

The subject matter on appeal relates to a printed substrate, which may be included in a floor panel as a top layer with printed décor on a basic panel (Specification, hereinafter “Spec.,” ¶ 2). Claim 1, the sole claim on appeal, is reproduced from the Claims Appendix to the Appeal Brief, with disputed limitations highlighted in italics, as follows:

1. A printed substrate for manufacturing floor panels, each of the floor panels having at least a basic panel and a top layer with a printed decor, the top layer being obtained from the printed substrate and being provided on the basic panel, the printed substrate comprising:

*a rolled-up material web* including a support in the form of a flexible material sheet; and

a print provided on the support;

wherein the print includes the printed decors of a plurality of floor panels to be manufactured;

wherein the printed decors in the print are grouped in at least a first stripe and a second stripe that extend in the longitudinal direction of the flexible material sheet;

*wherein the first stripe has a first tint that is equal over the length of the first stripe;*

*wherein the second stripe has a second tint that is equal over the length of the second stripe;*

wherein the first and the second stripes are adjacent, and *the first tint is different than the second tint;*

wherein the stripes extend with their longitudinal direction in a longitudinal direction of the printed substrate;

wherein the printed decors represent a wood motif;

wherein the print of each stripe in width direction of the stripe represents the motif of only a single wooden panel including wood nerves, wood pores and/or other wood characteristics that extend continuously over the stripe in the width direction; and

wherein the print of each stripe is constructed of a substantially uniform fond print and *a motif print that repeats itself in the longitudinal direction.*

## THE REJECTION

Claim 1 stands rejected under 35 U.S.C. § 103(a) as unpatentable over Durnberger (US 2008/0066406 A1, published March 20, 2008)<sup>3</sup> (Ans. 2–6; Final Act. 2–4).

## DISCUSSION

The Examiner found that Durnberger describes a printed decorative paper (i.e., a printed substrate) including every limitation recited in claim 1 except that the paper is not in the form of “a rolled-up material web” as required by the claim (Ans. 2–3). The Examiner determined, however, that the limitation “rolled up material web is a functional limitation and does not change the structure of the floor panel” (*id.* at 4). Furthermore, the Examiner found that because Durnberger’s substrate is a flexible paper substrate, it would be capable of being rolled up in the manner as recited in claim 1 (*id.*). The Examiner concluded that “[i]t would have been obvious to roll up the material web since it would allow for easier transportation of the printed floor covering” (*id.*; *see also* Final Act. 3–4).

The Appellants offer several arguments, but we do not find any of them persuasive to identify reversible error in the Examiner’s rejection. We address each of these arguments below.

### 1. *The Rolled-Up Material Web Limitation*

The Appellants agree with the Examiner that the “rolled-up material web” limitation does not further limit the structure of a *floor panel* as claim 1 directed to a printed substrate and not to a floor panel (Reply Brief filed

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<sup>3</sup> The Examiner stated that Durnberger is a “**direct translation**” of WO 2006074831 A1 (Ans. 2), but it does not appear that the latter reference has been applied against the claim.

October 27, 2014, 2). But the Appellants disagree with the Examiner’s finding that the printed substrate in rolled-up form would provide easier processing and transportation (Appeal Br. 4–5). Specifically, the Appellants argue that “[t]he act of rolling and unrolling the paper sheet would require extra handling and effort, which would make processing more difficult and cumbersome” and that “there is simply no reason to believe that transporting a rolled-up sheet would be easier than transporting a flat sheet” (*id.* at 5). According to the Appellants, their position is bolstered by Durnberger’s disclosure that processing can be facilitated by cutting the paper in smaller sheets—not by rolling larger sheets (*id.*) (citing Durnberger ¶ 35).

Although we do not share the Examiner’s view that the disputed limitation is a functional limitation insofar as the claimed printed substrate is concerned, decorative or printed sheets in convenient rolled-up form are notoriously well-known. Non-limiting examples include printed adhesive labels, decorative gift-wrapping paper, and even adhesive vinyl flooring materials in rolled-up forms. Here, the Appellants do not—and could not—assert that no prior art printed sheets have been provided in rolled-up form. Rather, their argument appears to be that given Durnberger’s disclosure of cutting the printed sheets into smaller pieces (Durnberger ¶ 35), the Examiner failed to provide a sufficient reason that would have prompted a person skilled in the art to manufacture Durnberger’s printed sheets in rolled-up form. But the mere fact that Durnberger describes an alternative form (i.e., cut up sheets) would not preclude an obviousness conclusion as to other known forms, including rolled-up forms. *Cf. In re Mouttet*, 686 F.3d 1322, 1334 (Fed. Cir. 2012).

Notwithstanding Durnberger’s specific disclosure of cut-up forms, we determine that a person having ordinary skill in the art would have immediately recognized various advantages (e.g., processing, storage, and transport) in providing printed sheets in rolled-up form. *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007) (an obviousness “analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ”); *Perfect Web Techs., Inc. v. InfoUSA, Inc.* 587 F.3d 1324, 1329 (Fed. Cir. 2009) (an analysis of obviousness “may include recourse to logic, judgment, and common sense available to the person of ordinary skill that do not necessarily require explication in any reference or expert opinion.”).

For these reasons, we discern no prejudicial error in the Examiner’s determination that a person having ordinary skill in the art would have been prompted to provide Durnberger’s printed substrate in rolled-up form to allow for easier processing and transportation.

## 2. *The Different Tint Limitations*

Claim 1, reproduced above, recites that “the first stripe has a first tint that is equal over the length of the first stripe,” “the second stripe has a second tint that is equal over the length of the second stripe,” and “the first tint is different than the second tint.” This feature is shown in Figure 1, reproduced from the application as follows:

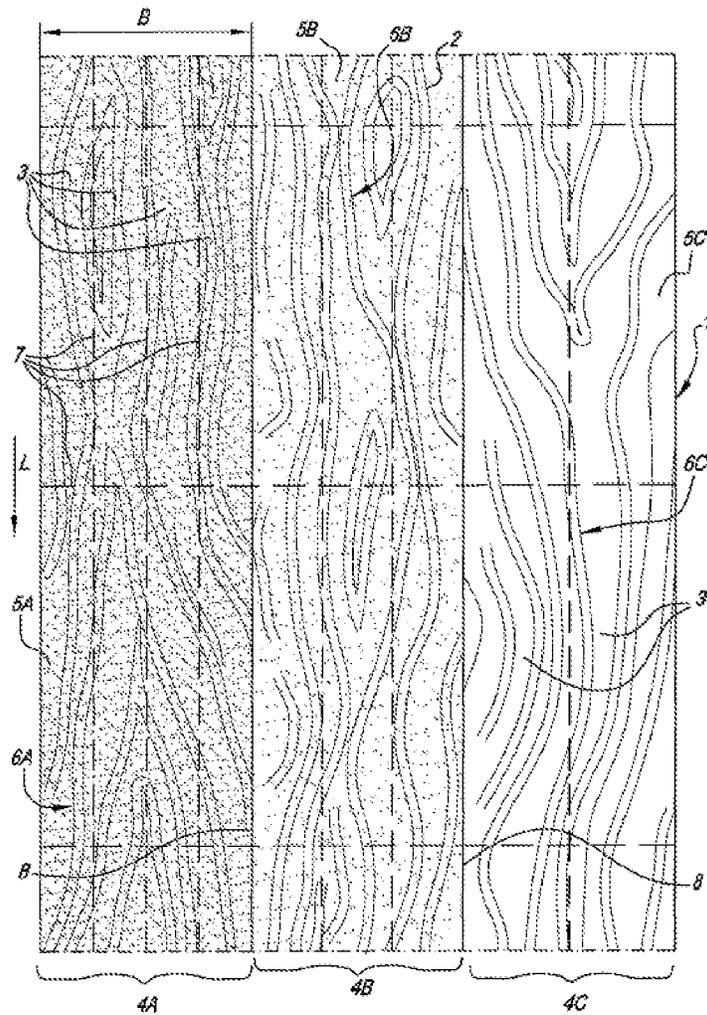


Fig. 1

Figure 1 above illustrates a printed substrate 1 including, *inter alia*, stripes 4A through 4C “of similar or approximately equal tint” or “different tint” (*see, e.g.,* ¶ 28).

The Appellants argue that Durnberger does not disclose different tints that are “equal over the length of” the second first and second stripes, as required by claim 1, because although Durnberger’s Figure 1 discloses a center portion between matching end pieces 4 that is varied in terms of color, lines, and/or structures, Durnberger teaches that the end pieces 4 are

visually identical (Appeal Br. 6) (citing Durnberger’s ¶¶ 21–20, 32, and claims 13, 14). We find the Appellants’ argument unpersuasive for the reasons given by the Examiner (Ans. 4–5).

Specifically, Durnberger’s Figure 1 (re-oriented counter-clockwise by 90°) is reproduced as follows:

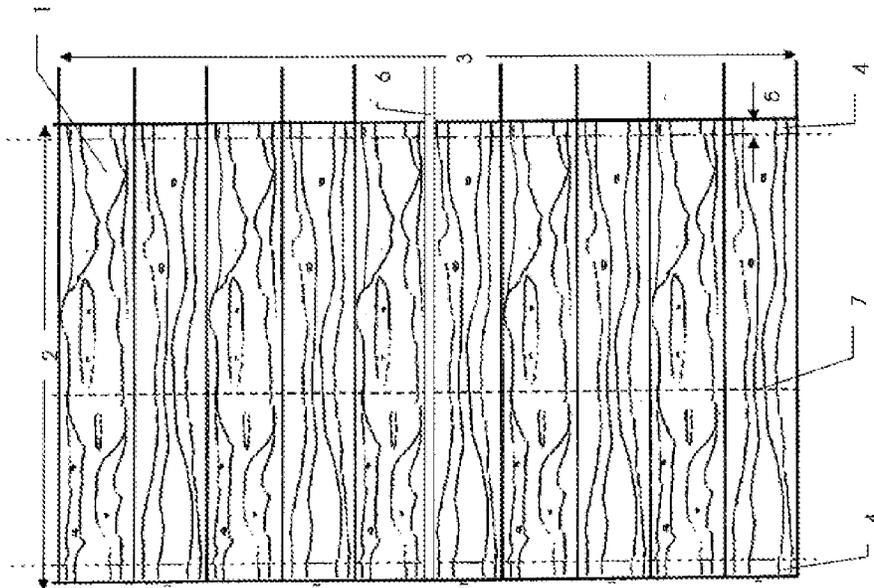


FIG. 1

Durnberger’s Figure 1 depicts decorative paper 1, placed over ten panels, provided with matching pieces 4, which are identical, and visually different center portions between the matching ends 4 (¶¶ 30, 43). As explained by the Examiner (Ans. 4), claim 1 places no further limitation on “the length” of each stripe and, therefore, reads on any length, including a length that corresponds to Durnberger’s visually different center portions as shown in Figure 1. Stated in a slightly different way, claim 1 on appeal, which recites that “the printed decors in the print are grouped in *at least* a first stripe and a second stripe that extend in the longitudinal direction of the flexible material sheet” and “the stripes *extend* with their longitudinal direction in a

longitudinal direction of the printed substrate” (emphases added), fails to exclude Durnberger’s matching ends 4.

For these reasons, we cannot overturn the Examiner’s rejection on the basis of the different tint limitations.

3. *Longitudinal Direction Limitation*

The Appellants argue that “as clearly shown in Fig[ure] 1 of the reference, the decors extend in the *transverse direction* of the printed paper sheet 1[,]” which “is in contrast to claim 1, which recites the orientation of the stripes relative to the printed substrate (not a finished floor panel)” (Appeal Br. 7). The Appellants’ argument lacks merit because, when re-oriented counter-clockwise by 90°, the printed substrate as shown in Durnberger’s Figure 1 is indistinguishable from the printed substrate as recited in claim 1 (*compare* Durnberger’s Figure 1, re-oriented counterclockwise by 90°, *with* Figure 1 of the current application).

4. *Repeating Motif Print Limitation*

The Appellants contend that Durnberger’s Figure 1 shows a print that includes “grain lines [that] extend all the way across the width of the decorative paper 1 without repeating” (Appeal Br. 7–8). We concur with the Examiner that the *design* does not confer patentability (Ans. 5–6).

Moreover, a review of Durnberger’s Figure 1 shows that in the center section between matching pieces 4, the wood grains are spaced apart in a repeatedly narrowing or broadening pattern. When the disputed limitations are construed broadly in a manner consistent with the current Specification, we find that the repeatedly narrowing or broadening pattern shown in Durnberger’s Figure 1 meets the disputed claim limitation.

Appeal 2015-001037  
Application 12/481,041

SUMMARY

The Examiner's final decision to reject claim 1 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)(1).

AFFIRMED