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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte MICHAEL E. BUCKWALTER, MICHAEL W. LOHR,
DIKE S. STOE, and MARK C. ZEAMER

Appeal 2015-002037
Application 11/338,092
Technology Center 1700

Before CHUNG K. PAK, TERRY J. OWENS, and JEFFREY R. SNAY,
Administrative Patent Judges.

SNAY, *Administrative Patent Judge.*

DECISION ON APPEAL¹

Appellants² appeal under 35 U.S.C. § 134(a) from the Examiner's decision rejecting claims 1–3, 5, 6, 8, 12, 21, 25, 26, 29, and 31–39.³ We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

¹ We cite to the Specification (“Spec.”) filed Jan. 24, 2006; Final Office Action (“Final Act.”) mailed Mar. 28, 2014; Examiner’s Answer (“Ans.”); and Appellants’ Appeal Brief (“App. Br.”) and Reply Brief (“Reply Br.”).

² Appellants identify Armstrong World Industries, Inc., as the real party in interest. App. Br. 2.

³ Claims 4, 16, 17, and 29–40 were withdrawn from consideration and are not before us.

BACKGROUND

The subject matter involved in this appeal relates to patterned sheet flooring. Spec. 1. Claims 1 and 31 are illustrative and reproduced from the Claims Appendix of the Appeal Brief as follows:

1. A flooring system comprising:
 - a first flooring sheet and a second flooring sheet, each of the first and second flooring sheets comprising a pattern design that is an ink printed non-geometric pattern, a longitudinal edge, a removable selvage edge portion adjacent the longitudinal edge, a non-removable portion adjacent the removable selvage edge portion, and wherein the removable selvage edge portions comprises at least a portion of the pattern design;
 - each of the first and second flooring sheets comprising a plurality of pattern match indicators embedded in the pattern design adjacent the longitudinal edge, the plurality of pattern match indicators located entirely in the removable selvage edge portion;
 - the removable selvage edge portion of the first flooring sheet overlapping the removable selvage edge portion of the second flooring sheet at a seam there between such that the plurality of pattern match indicators of the first flooring sheet are spaced apart from the plurality of pattern match indicators of the second flooring sheet and are collinear thereto so that the pattern designs of the first and second flooring sheets are aligned at the seam; and
 - wherein upon the first and second flooring sheets being cut along the seam, the removable selvage edges portion of the first and second flooring sheets are removed from the non-removable portions of the first and second flooring sheets.

31. A flooring sheet comprising:
 - a pattern design that is a printed non-geometric pattern;
 - a longitudinal edge;
 - a removable selvage edge portion adjacent to the longitudinal edge, the removable selvage edge portion having a first width measured perpendicular to the longitudinal edge;

a non-removable portion adjacent the removable selvage edge portion; and

a plurality of pattern match indicators embedded in the pattern design adjacent the longitudinal edge, the plurality of pattern match indicators located entirely in the removable selvage edge portion and having a second width measured perpendicular to the longitudinal edge, the second width being less than the first width.

Claims 2, 3, 5, 6, 8, 12, 21, 25, 26, 29 depend from claim 1. Claims 32–39 depend from claim 31.

REJECTIONS

The Examiner maintained the following grounds of rejection:⁴

- I. Claims 1–3, 5, 6, 8, 12, 21, 25, 26, and 29 stand rejected under 35 U.S.C. § 112, first paragraph.
- II. Claims 1–3, 5, 6, 8, 12, 21, 25, 26, and 29 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Sabater⁵ and Buckwalter,⁶ alternatively further in view of Brickey.⁷
- III. Claims 31–39 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Sabater, alternatively in view of Brickey.

⁴ Final Act. 2–25; Ans. 2–22. Additional rejections under 35 U.S.C. § 112, second paragraph, were withdrawn. *See* Advisory Action, mailed Jun. 12, 2014, at ¶ 3 (“Applicant amended claims to overcome 35 USC 112, second paragraph rejections of record.”).

⁵ US 8,201,377 B2, issued Jun. 19, 2012 (“Sabater”).

⁶ US 6,673,177 B2, issued Jan. 6, 2004 (“Buckwalter”).

⁷ US 2006/0127155 A1, published Jun. 15, 2006 (“Brickey”).

IV. Claims 1–3, 5, 6, 8, 12, 21, 25, 26, and 29 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Kraft,⁸ Sabater, and Buckwalter.⁹

V. Claims 31–39 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Kraft and Sabater.

DISCUSSION

I

With regard to Rejection I, the Examiner’s sole basis for finding that the rejected claims lack adequate written description was that the term “system” recited in claim 1 “does not appear to have support in the originally filed specification.” Final Act. 3. Appellants persuasively argue that the specification’s description of “multiple flooring sheets . . . that are positioned adjacent to each other to form a flooring installation” conveys to a person of ordinary skill that the inventors possessed the recited “system” aspect of the claimed invention at the time of filing. App. Br. 5–6. Accordingly, we will not sustain Rejection I.

II

Claim 1 and each claim depending therefrom requires that respective pattern match indicators are configured such that, upon overlapping selvage edge portions of adjacent flooring sheets with the pattern match indicators

⁸ US 2003/0041543 A1, published Mar. 6, 2003 (“Kraft”).

⁹ The Examiner mistakenly listed canceled claim 20 instead of rejected claim 21 in captioning this ground of rejection, Final Act. ¶¶ 53, 71, and mistakenly included claim 20 in captioning Rejection II, *id.* at ¶ 14. Appellants do not raise any issue in connection with the foregoing errors, and acknowledge that claim 21 is included in the claims subject to Rejections II and IV. *See* App. Br. 4.

collinear about a seam therebetween, the pattern designs of the adjacent flooring sheets are aligned at the seam. With regard to Rejection II, the Examiner found that Buckwalter discloses flooring sheets configured such that respective selvage edge portions may be overlapped across a seam “so that [upon removing the selvage edge portions] the pattern designs of the first and second flooring sheets are aligned at the seam.” Final Act. 6 (citing Buckwalter col. 12, ll. 33–37). The above-mentioned passage in Buckwalter regards vinyl flooring and refers to the described technique as “a conventional double-cut seam method.” Buckwalter at col. 12, Example 6. In light of Buckwalter’s teaching, the Examiner found that one of ordinary skill would have had reason to “overlap the first and second flooring sheets of Sabater . . . in order to ensure identical pieces and accurate cutting of the seams.” Final Act. 6. Appellants correctly point out that Sabater discloses rigid flooring planks, App. Br. 7, and argue that Buckwalter’s double-cut seam technique is inapplicable to the sizing and installation of rigid flooring planks, *id.* at 11. Generally, Sabater discloses flooring planks that include decorative motifs, portions of which are arranged along edges of each flooring plank such that “a periodic flooring pattern larger than an individual plank can be formed by placing identical planks adjacent to one another.” Sabater, Abstract. Those edge portions of decorative motif “may be used as an [sic] alignment marks ensuring consistent alignment of adjacent flooring planks.” *Id.* at col. 11, ll. 2–5.

We agree that the Examiner did not present any finding or technical reasoning addressing why one of ordinary skill would have configured Sabater’s alignment marks to permit Buckwalter’s double-cut seam technique to be applied to Sabater’s rigid flooring planks. Nor is it apparent

how Buckwalter's overlapping and cutting technique for vinyl flooring sheets would be applicable to Sabater's rigid planks.

For that reason, we will not sustain Rejection II.

III

Claim 31 and each claim depending therefrom requires a "plurality of pattern match indicators located entirely in the removable selvage edge portion" of the recited flooring sheet, and having "a width measured perpendicular to the longitudinal edge" that is less than the width of the selvage edge. With regard to Rejection III, the Examiner acknowledged that Sabater "fails to teach the plurality of pattern match indicators located entirely in the removable selvage edge," and found that it would have been obvious "to include alignment marks on any edge, including the longitudinal edge and arrive at the presently claimed invention." Final Act. 11.

Appellants argue that Sabater's "pattern match indicators form a permanent part of the decorative motif and are critical to the formation of a continuous pattern across multiple floor planks." App. Br. 8. For that reason, Appellants contend, arbitrarily assigning a removable selvage edge portion to Sabater's flooring plank, such that the disclosed alignment marks formed by the end portions of the decorative motif would be removed with the selvage edge, "would destroy the intended technical purpose of the Sabater system." *Id.* at 9. We agree. As Appellants correctly point out, Sabater's decorative motif necessarily includes edge portions which, upon alignment with corresponding alignment marks of an adjoining plank, create a continuous pattern across the adjacent flooring planks. *Id.* at 9; Sabater col. 3, ll. 22–29 (" . . . at least one of a surface texture and decorative motif is

substantially aligned between adjacent flooring planks such that substantially continuous embossed-in-registration patterns are formed across the interlocked flooring planks.”). In light of these teachings in Sabater, we are persuaded that the Examiner failed to articulate a reason why one of ordinary skill would have modified Sabater’s flooring planks to include alignment marks or other pattern match indicators that are located entirely within a selvage edge.¹⁰

Accordingly, we also will not sustain Rejection III.

IV

In reaching Rejection IV, the Examiner principally relied on Kraft, and found that one of ordinary skill would have had reason to modify Kraft’s patterned flooring sheets to include edge-located alignment marks, in light of Sabater, and to configure such alignment marks to facilitate pattern alignment upon overlapping and removing a selvage edge, in light of Buckwalter. Final Act. 15–17. Appellants present two arguments against this ground of rejection. First, Appellants contend that Sabater’s pattern match indicators form part of the flooring sheet design and, for that reason, “at best, suggest incorporating the pattern match indicators of Sabater in to [sic] Kraft so that they form a permanent part of the flooring sheets of Kraft.

We find Appellants’ argument unpersuasive. Kraft discloses flooring sheets that “can have a matching pattern along the seam.” Kraft ¶ 21. To

¹⁰ The Examiner’s alternative reliance on Brickey for the similar proposition that it was known to provide flooring sheets with pattern match indicators embedded in the pattern design at the edges of the flooring sheets, Final Act. 12, neither addresses nor cures the deficiency noted with regard to modifying Sabater.

that end, Kraft teaches that the adjoining sheets “are advantageously *cut* to have a seam that lines up with the pattern.” *Id.* at ¶ 53 (emphasis added). Buckwalter similarly teaches the overlapping and double-cut seam method for the purpose of matching patterns of adjacent flooring tiles. Buckwalter col. 12, ll. 33–38. Viewing these teachings collectively, we are persuaded that a preponderance of the evidence supports the Examiners finding that one of ordinary skill in the art would have had reason to provide edge-located alignment marks, such as those taught by Sabater, in an intended selvage edge in the manner recited in claim 1. *See In re Keller*, 642 F.2d 413, 425 (CCPA 1981) (“The test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art.”).

Appellants additionally incorporate their argument made in connection with Rejection II, namely, that Buckwalter’s overlapping double-cut seam technique would not be applicable to Sabater’s rigid flooring planks. App. Br. 10–11, 13. Given that the alternative ground of rejection set forth in Rejection IV involves application of Buckwalter’s technique to Kraft’s flooring sheets, and not to Sabater’s planks, we find Appellants’ argument unpersuasive of error.

For the foregoing reasons, we sustain Rejection IV.

V

Appellants’ sole argument against Rejection V is that “no permissible combination of Sabater and Brickey renders obvious claim 31.” App. Br. 14. Brickey is not relied upon in connection with Rejection V. Appellants

do not particularly argue against the combination of Kraft and Sabater with regard to this ground of rejection.

Accordingly, we also sustain Rejection V.

SUMMARY

Rejection I of claims 1–3, 5, 6, 8, 12, 21, 25, 26, and 29 under 35 U.S.C. § 112, first paragraph, is not sustained.

Rejection II of claims 1–3, 5, 6, 8, 12, 21, 25, 26, and 29 as unpatentable over Sabater, Buckwalter, and alternatively further in view of Brickey is not sustained.

Rejection III of claims 31–39 as unpatentable over Sabater or the combination of Sabater and Brickey is not sustained.

Rejection IV of claims 1–3, 5, 6, 8, 12, 21, 25, 26, and 29 as unpatentable over Kraft, Sabater, and Buckwalter is sustained.

Rejection V of claims 31–39 as unpatentable over Kraft and Sabater is sustained.

DECISION

The Examiner's decision rejecting claims 1–3, 5, 6, 8, 12, 21, 25, 26, 29, and 31–39 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.

AFFIRMED