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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte BERNARD PAUL JOSEPH THIERS

Appeal 2019-001954
Application 15/659,964
Technology Center 3600

Before CHARLES N. GREENHUT, WILLIAM A. CAPP, and
LEE L. STEPINA, *Administrative Patent Judges*.

CAPP, Administrative Patent Judge.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant¹ seeks our review under 35 U.S.C. § 134(a) of the final rejection of claims 1–10 as unpatentable under 35 U.S.C. § 103(a) over Moriau (US 6,006,486, iss. Dec. 28, 1999) and Searer (US 5,570,554, iss. Nov. 5, 1996). We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

¹ We use the word “Appellant” to refer to “Applicant” as defined in 37 C.F.R. § 1.42(a). Appellant identifies Flooring Industries Limited, SARL, as the Applicant and real party in interest. Appeal Br. 2.

THE INVENTION

Appellant's invention relates to floor covering panels. Spec. ¶ 5.
Claim 1, reproduced below, is illustrative of the subject matter on appeal.

1. A floor covering panel for forming a floor covering,
wherein the panel has a first pair of opposite edges and a
second pair of opposite edges;
wherein at least the first pair of edges is provided with
coupling parts made in one piece of the material of the panel,
said coupling parts being configured such that two of such
panels can be coupled to each other in a same plane so as to
form said floor covering, and provide an interlocking in a
direction perpendicular to said plane of the coupled floor panels
and in a direction perpendicular to said edges and parallel to the
plane of the floor covering;
wherein said coupling parts include a tongue and a groove
for providing the interlocking in the direction perpendicular to
the plane of the floor covering, said groove being bordered by
an upper lip and a lower lip, said lower lip extending distally
beyond the upper lip;
wherein said coupling parts further include locking parts for
providing the interlocking in the direction perpendicular to said
edges and parallel to said plane, said locking parts comprising a
locking part at said lower lip and a locking part at the lower
side of the tongue, said locking parts defining locking surfaces,
said locking surfaces of two of such panels being in contact
when coupled to each other;
wherein said coupling parts are configured such that in a
coupled condition of two of said panels said lower lip is bent
downwards, and creates a force forcing the coupled panels
towards each other; and wherein said panel at said first pair of
edges comprises upper edges, each of these upper edges being
provided with a bevel, resulting in that the panels are forced
against each other at a level mainly below said bevels.

OPINION

Appellant argues claims 1–10 as a group. Appeal Br. 12–17. We select claim 1 as representative. *See* 37 C.F.R. § 41.37(c)(1)(iv).

The Examiner finds that Moriau discloses the invention substantially as claimed, except for the bevel limitation, for which the Examiner relies on Searer. Final Action 2–3. The Examiner concludes that it would have been obvious to a person of ordinary skill in the art at the time the invention was made modify Moriau with bevels as taught by Searer. *Id.* at 4. According to the Examiner, a person of ordinary skill in the art would have done this to achieve a desired aesthetic result, facilitate joining, and prevent wear on the edges of the panels. *Id.*

Appellant argues that a person of ordinary skill in the art would not have modified Moriau by Searer. Appeal Br. 12. Appellant argues that “the concept” of Moriau is to realize a flat decorative surface with the top surfaces of two coupled panels being as closed as possible held together with pretension and without gaps between the panels. *Id.* at 13. According to Appellant, this results in limiting penetration of dirt and humidity. *Id.*

Moriau prevents penetration of dirt and humidity between the floor panels by requiring an upper edge 15 of a first panel to be in constant contact with an upper edge 16 of the coupled second panel, so as to present a top protective layer 56 of the first panel to be firmly abutted to the top protective layer 56 of the adjoining panel upon coupling of the panels.

Id. at 14. Appellant argues that Moriau teaches that it is a “must” that panels fit tightly against each other without gaps and that, therefore, Moriau “teaches away” from floor panels with bevels. *Id.* at 14–15.

Appellant also argues that the Examiner’s proposed modification changes the principle of operation of Moriau. *Id.* at 15, 17, Reply Br. 6.

Appellant concludes that the Examiner's proposed combination is the product of improper hindsight reasoning. *Id.*

In response, the Examiner first addresses Appellant's argument that a non-beveled top surface is a "must" requirement of Moriau. Ans. 3. According to the Examiner, Moriau's goal of reducing gaps between adjacent panels does not preclude using bevels as part of the contour of the upper surface. *Id.* at 4. In that regard, the Examiner notes that Moriau relies upon the structure of its coupling element, not the contours of its upper surface, to achieve a tight, gapless, connection. Ans. 4. The Examiner further notes that Appellant confuses the concept of beveling the top edges of floor boards with "gaps" between the boards. *Id.* The Examiner "considers the bevel to be contour of the upper surface, not a gap." *Id.* The Examiner further finds that, as modified, Moriau's upper surface, at the bevel, would have tight connection without gaps, which is achieved by its coupling structure. *Id.*

With respect to Appellant's "principle of operation" argument, the Examiner responds by stating: "The modification of a bevel at the upper surface does not change the structure or function of the coupling elements, therefore it does not change the principle of operation of the floor panel system of Moriau." *Id.*

In reply, Appellant re-emphasizes that Moriau describes laminated floor panels with a fiberboard core. Reply Br. 2-3. Appellant directs our attention to top layer 56 that protects underlying core 8 from moisture penetration. *Id.* at 3. Appellant argues that Searer is directed to wood flooring, alleging that it makes no mention of laminate flooring. *Id.* at 4. From this, we understand that Appellant contends that Searer's wood does

not need the same level of protection from moisture penetration as the fiberboard core of Moriau. Appellant argues that modifying the laminated floor panel of Moriau to include a bevel would necessarily remove a portion of protective top layer 56 and thereby expose the fiberboard core. *Id.* at 4–5. Appellant also disputes the Examiner’s finding that bevels are not “gaps.” *Id.* at 5.

At the outset, we find Appellant’s argument based on equating bevels with gaps unpersuasive. A beveled edge does not create a “gap” between adjacent panels, it merely lowers the point of contact between the vertical sides of the panels to a point that is below the plane of the upper surface of the floor.

Moriau is directed to floor panels with integrated mechanical locking elements. Moriau, Abstract. Although Moriau is intended for “so-called laminated floors,” it expressly states that it can also be applied to “other kinds of floor covering.” *Id.* at col. 1, ll. 8–10. The Examiner relies on Moriau for its teaching on mechanical locking systems, there being no limitation in claim 1 with respect to the core material used in the claimed floor panel. Final Action 2–3, Claims App., claim 1.² Beveling the top edges of Moriau’s floor panels does not change the principal of operation with respect to Moriau’s locking mechanism. *See* Moriau, Figs. 2–4. If anything, beveling the top edges facilitates making the connection between adjacent floor panels. *Id.*

² Further in this regard, we note that Appellant’s Specification discloses that, although the invention concerns floor panels, it is not limited to laminate floor panels. *See* Spec. ¶ 5.

We also find unpersuasive Appellant’s argument that beveling Moriau’s top edge would expose the core to moisture for at least two reasons. First, the proposed combination does not require or include a fiberboard core. *See* Moriau, col. 1, l. 10 (“other kinds of floor covering”). Second, Appellant’s argument is predicated on an unwarranted assumption that modified Moriau would be manufactured by first applying a protective top coat and then beveling the panels to remove a portion of the top coat at the edges. Appellant fails to consider the possibility that Moriau’s protective top coat could be applied after the beveling step is completed.

Finally, we find Appellant’s hindsight argument unpersuasive. The Examiner’s reason to make the proposed combination is based on rational underpinning. Final Action 4 (“to achieve a predictable and desired aesthetic, to facilitate joining, and to prevent undo wear on the edges of the panels”). The Examiner’s reasoning obviates Appellant’s hindsight argument. *See In re Cree, Inc.*, 818 F.3d 694, 702 n.3 (Fed. Cir. 2016) (Explaining that a hindsight argument is of no moment where the Examiner provides a sufficient, non-hindsight reason to combine the references).

In view of the foregoing discussion, we sustain the Examiner's unpatentability rejection of claims 1–10.

CONCLUSION

In summary:

Claims Rejected	§	Reference(s)	Affirmed	Reversed
1–10	103	Moriau, Searer	1–10	

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