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Datasheet for the decision of 3 January 2014

Case Number: T 2299/11 - 3.2.03

Application Number: 06111115.9

Publication Number: 1691004

IPC: E04F15/02, E04C2/20, A47G27/02

Language of the proceedings: EN

Title of invention:
Flooring with mechanically lockable rectangular floorboards

Applicant:
Välinge Innovation AB

Headword:

Relevant legal provisions:
EPC Art. 111, 56

Keyword:

Decisions cited:

Catchword:

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Case Number: T 2299/11 - 3.2.03

D E C I S I O N
of Technical Board of Appeal 3.2.03
of 3 January 2014

Appellant: (Applicant)	Välinge Innovation AB Prästavägen 513 263 65 Viken (SE)
Representative:	Åkesson, Sten Jan-Åke Awapatent AB Box 1066 251 10 Helsingborg (SE)
Decision under appeal:	**Decision of the Examining Division of the European Patent Office posted on 21 June 2011 refusing European patent application No. 06111115.9 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman: U. Krause
Members: Y. Jest
K. Garnett

Summary of Facts and Submissions

I. By its decision dated 21 June 2011 the examining division refused European patent application No. 06111115.9 on the grounds that the subject-matter of claim 1 filed with letter of 26 November 2010 and received on 29 November 2010 lacked inventive step in view of the combination of document D13 with any one of D1, D2, D4, D5, D7 and D8.

II. The applicant (hereinafter "the appellant"), lodged the appeal on 8 August 2011 and paid the appeal fee on the same day.

In the statement of grounds received on 28 October 2011 the appellant requested that the decision of the examining division to refuse the application be set aside and that a patent be granted on the basis of:
- the set of claims filed with letter of 26 November 2010 during the examination proceedings (main request), or
- the amended set of claims filed with the grounds of appeal dated 28 October 2011 (auxiliary request).

III. In its communication dated 18 September 2013 annexed to the summons to oral proceedings, the board gave its preliminary opinion as follows:
- the board would confirm the ground for refusing claim 1 of the main request filed with letter of 26 November 2010, namely lack of inventive step in view of the combination of D13 with D1 or D2;
- because the nature and extent of the amendments made to claim 1 of the auxiliary request had substantially changed the basis for the discussion of inventive step, under Article 111 EPC the board would consider

remitting the case to the examining division for examination of the amended set of claims.

IV. Request

With letter dated 10 December 2013 the appellant withdrew its main request and the request for oral proceedings.

The appellant now requests that the case be remitted to the examining division for further prosecution on the basis of the set of claims filed as an auxiliary request with the letter dated 28 October 2011.

V. Claim 1 of that request reads as follows:

"A flooring, which comprises rectangular floorboards (1,1') with long sides (4a, 4b) and short sides (5a, 5b), said floorboards being joined in a herringbone pattern, long side (4a) to long side (4b) and long side to short side (5b,5a),
wherein said long sides (4a, 4b) have pairs of opposing first mechanical connecting means comprising a tongue (10) and a tongue groove (9) for locking-together said floorboards vertically (Dl),
whereby the flooring comprises second mechanical connecting means comprising an upwardly projecting locking element (8) on one long side cooperating with a locking groove (12) on the other long side of an adjacent floorboard for locking together said floorboards horizontally (D2),
whereby said first and second mechanical connecting means allow locking-together said floorboards (1,1') both horizontally and vertically (D2 and Dl respectively) by inward angling whereby the tongue (10)

is received in the tongue groove (9) and the locking element enters the locking groove (12), and
whereby said projecting locking element (8) is integrated with the floorboard, and said projecting locking element (8) is integrated in a first long edge portion, and the locking groove (12) is arranged in a second opposite long edge portion,
wherein at least one of the short sides (5a,5b) of the floorboards is provided with connecting means (9,10) for vertical and/or horizontal locking,
wherein the flooring comprises two different types of floorboards (A and B respectively), and
wherein the connecting means (9,10) of one type of floorboard (A) along one pair of opposite edge portions on at least one of said short sides are arranged in a mirror-inverted manner relative to the corresponding connecting means (9,10) along the same pair of opposite edge portions on at least one of said short sides of the other type of floorboard (B),
characterised in that
said connecting means (9,10) at the short sides (5a,5b) are designed for locking together one of said short sides (5b) to one of said long sides (4b), both horizontally and vertically (Dl and D2 respectively), and
wherein the connecting means (9,10) at the short sides (5a, 5b) are designed for locking together another one of said short sides (5a) to another one of said long sides (4a) only horizontally (Dl)."

VI. By fax of 13 December 2013 the board informed the appellant that the oral proceedings appointed for 13 January 2014 were cancelled.

Reasons for the Decision

1. The appeal is admissible.

2. Claim 1

Claim 1 as amended combines the features of claims 1, 3 and 4 of the set of claims filed with letter of 26 November 2010 and based on originally filed claims 1 to 3 in combination with the following feature derivable according to the appellant (see letter dated 27 April 2009, last paragraph of page 1) from the drawings:
"whereby said projecting locking element (8) is integrated with the floorboard, and said projecting locking element (8) is integrated in a first long edge portion, and the locking groove (12) is arranged in a second opposite long edge portion".

The features now added to claim 1 relate to the type of connecting means between the short and long edge sides, and according to the appellant constitute an essential characteristic of the invention which was not obvious having regard to the cited prior art.

The board further notes that the examining division stated at the end of its decision (see "Remarks as obiter dictum") that the characterising features of dependent claim 4 filed with letter dated 26 November 2010 were neither known nor trivial per se.
The board understands that statement to mean that the ground of refusal, namely lack of inventive step, might not apply to amended claim 1 currently on file.

3. The board confirms its preliminary opinion that in view of the nature and extent of the amendments made to claim 1, and in the light of the provisional opinion expressed by the examining division, the set of claims of the sole request now on file should be examined by the examining division (Article 111 EPC).

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.

2. The case is remitted to the examining division for further prosecution.

The Registrar: The Chairman:

C. Spira U. Krause

Decision electronically authenticated