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D E C I S I O N
of 8 May 2000

Case Number: T 1090/97 - 3.2.3

Application Number: 94830365.6

Publication Number: 0637659

IPC: E04F 15/022, B32B 21/13

Language of the proceedings: EN

Title of invention:
Flooring strips consisting of a layer of inexpensive woody material acting as the base for a row of top quality wooden segments

Applicant:
MARGARITELLI - S.P.A.

Opponent:
-

Headword:
-

Relevant legal provisions:
EPC Art. 52(2)(c), 82, 54, 56

Keyword:
"Patentable inventions - aesthetic creations"
"Unity - dependent claims"
"Novelty (yes)"
"Inventive step - known element"

Decisions cited:
-

Catchword:
-

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Case Number: T 1090/97 - 3.2.3

D E C I S I O N
of the Technical Board of Appeal 3.2.3
of 8 May 2000

Appellant: MARGARITELLI - S.P.A.
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Decision under appeal: **Decision of the Examining Division 2.3.03.108 of the European Patent Office dated 6 June 1997 refusing European patent application No. 94 830 365.6 pursuant to Article 97(1) EPC.**

Composition of the Board:

Chairman: C. T. Wilson
Members: F. Brösamle
J. P. Seitz

Summary of Facts and Submissions

I. With decision of 6 June 1997 the examining division refused European patent application No. 94 830 356.6 according to Article 97(1) EPC since the independent claims did not comply with Articles 52(2)(b) and 82 EPC, and did not define novel or inventive subject-matter in the light of

D1: DE-A-3 919 514

D2: WO-A-89/01857

II. Against the above decision the applicant - appellant in the following - appealed on 18 July 1997 paying the appeal fee in due time and filing the statement of grounds of appeal on 25 September 1997.

III. Following oral proceedings before the board held on 10 February 2000, in which the board decided to continue the proceedings in writing, the appellant filed claims 1 to 4 and an amended description with pages 1 to 7, received on 17 April 2000, to overcome the board's objections raised in the Communication pursuant to Article 11(2) RPBA of 13 August 1999 and in the oral proceedings.

IV. Claim 1 reads as follows (linguistically amended i.e. introduction of "an" before "adjacent row" at the end of claim 1):

"1) A method of flooring using individual strips (1) of the type consisting of a layer of low-cost wooden material (2) acting as the base for a row of elements in top quality wood (3) positioned one after the other,

said strips (1) being laid in end-to-end relationship in rows to produce a perfectly continuous and regular pattern in which no lines of abutment of adjacent strips in any row coincide with lines of abutment of adjacent strips in an adjacent row."

V. The appellant requested to set aside the impugned decision and to grant a patent on the basis of:

- claims 1 to 4, received on 17 April 2000;

- description pages 1 to 7, received on 17 April 2000;

- Figures 1 to 7 as originally filed.

VI. With respect to the prior art disclosed in (D1) and (D2) the appellant essentially argued as follows:

- in (D1) prefabricated strips consisting of low-cost wooden material acting as the base for a row of top quality wood positioned one after the other are assembled side by side to obtain a board, see Figure 1 thereof;

- when a similar board is abutted against a first board in order to obtain a complete flooring irregular lengths of these boards are abutted **on one line**;

- this line of abutment is not only clearly visible, but also rather constitutes a line of discontinuity;

- (D2) deals with panels being composed of low-cost base material and of knotfree top quality wooden strips without, however, paying attention to the questions linked to the abutment of individual strips and to discontinuities between neighboured strips;

- summarizing, claim 1 defines novel and inventive subject-matter with respect to the above prior art.

Reasons for the Decision

1. The appeal is admissible.

2. *Amendments*

2.1 Claim 1 is now based on a **method** of flooring instead of "a wooden flooring strip ..." according to EP-A1-0 637 659 and its claim 1.

2.2 Since EP-A1-0 637 659 clearly does not only disclose an individual strip "1" but rather deals with the issue of how these individual strips can advantageously be laid on a support area (floor) nothing has been added that was not originally disclosed when changing the patent-category of claim 1, Article 123(2) EPC.

2.3 Claim 1 makes it clear that specific attention is necessary by the floor-maker **to avoid discontinuities** between neighboured strips since claim 1 prescribes that the abutments **do not coincide**, see Figures 3 and 6 of EP-A1-0 637 659.

3. *Novelty*

3.1 (D1), see its Figure 1 and its preassembled board or block of adjacent strips, cannot avoid the coincidence of abutments when neighbouring boards or blocks are laid to form a floor system so that the method of claim 1 is not known from (D1).

3.2 This is also true for (D2) which document is relevant for the construction of a single strip but not for a method of flooring using individual strips avoiding detrimental abutment-lines.

3.3 Summarizing, the subject-matter of claim 1 is novel within the meaning of Article 54 EPC.

4. *Article 52(2)(b) EPC*

4.1 Claim 1 relates to a **method** of flooring and achieves a floor system **without discontinuities** since coinciding abutments are excluded. Since a discontinuity in a floor system is a crucial issue to be observed - namely by the fact that moisture can penetrate into the individual strips being a composition of two kinds of wood (cheap base material and expensive top layer of wood) - the discontinuities of the floor system are the weak point of a floor system.

4.2 Should the adhesive fail in the area of the above discontinuities then the coincidence of abutments of neighboured strips is also a point in which detrimental effects **are concentrated**.

4.3 Even if the method of claim 1 as a **side effect** may also have an aesthetic effect the teaching of claim 1 is

clearly technical and not contradictory to the provisions of Article 52(2)(b) EPC.

5. *Article 82 EPC*

In addition to the objection under Article 52(2)(b) EPC the impugned decision dealt with the objection under Article 82 EPC, i.e. lack of unity of invention.

This objection - whether justified or not - has completely been overcome by the appellant by rewording the claims. Claims 2 to 4 are **dependent** claims so that according to the "Guidelines", C-III, 7.8, an objection under Article 82 EPC is no longer to be raised.

6. *Inventive step*

6.1 The drawbacks of the prior art documents are already discussed in above remarks 2.3, 3.1, 3.2, 4.1 and 4.2, namely the occurrence of coinciding abutments with respect to neighbouring strips.

6.2 The objectively remaining **technical** problem to be solved by the invention is therefore to overcome the above drawbacks of the prior art flooring systems.

6.3 The solution to this technical problem is laid down in claim 1; claims 2 to 4 relate to embodiments thereof with respect to the lengths of the top quality strips and to the pattern of natural fibres.

6.4 Neither (D1) nor (D2) whether singly or in combination would lead a skilled person to the method of claim 1 since these documents do not disclose how the problems underlying the claimed invention can be overcome.

6.5 In particular, neither of documents (D1) nor (D2) disclose any indication as to how the person skilled in the art, using preformed flooring strips, can produce a flooring system having a perfectly continuous and regular pattern without having coinciding join lines extending across adjacent strips.

6.6 In (D2) the person skilled in the art is taught how to produce individual strips of irregular pattern which clearly cannot be laid together to form a regular pattern. In (D1) he is taught how to preassemble regular strips into boards or blocks of regular pattern which can then be laid easily end-to-end adjacent to each other to cover large surfaces. But this of course produces exactly the coinciding lines of join or abutment and the consequential weaknesses which the present patent wishes to avoid.

6.7 Summarizing therefore, the method of claim 1 is novel and is based on an inventive step within the meaning of Article 56 EPC. Claim 1 is therefore allowable.

6.8 Claims 2 to 4 relate to embodiments of the method of claim 1 so that they are allowable as dependent claims.

7. Apart from minor linguistic amendments carried out by the board the description is also in order for grant in combination with the drawings as originally filed.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.

2. The case is remitted to the first instance with the order to grant the patent with the following documents:

- claims: 1 to 4, received on 17 April 2000, whereby "an" is inserted before "adjacent row" and "layed" is replaced by "laid";

- description: pages 1 to 7, received on 17 April 2000, with the following amendments:

page 1:
- replace "rows" by "row" in the title and in line 3;
- replace "layed" by "laid" in line 5;
- insert "an" before "adjacent row" in line 9;

page 5: replace "on" by "one" in line 30;

page 6: separate "ofone" and "theitem" in lines 7 and 10 into "of one" and "the item".

- drawing: Figures 1 to 7 as originally filed.

The Registrar: The Chairman:

A. Counillon C. T. Wilson