

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 18

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte WILLIAM P. WARTHEN and JOHN B. MANLY, JR.

Appeal No. 97-4048
Application 08/371,934¹

ON BRIEF

Before CALVERT, FRANKFORT and McQUADE, Administrative Patent Judges.

FRANKFORT, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 18, 19 and 20, and from the examiner's refusal to allow claims 21 and 22 as amended subsequent to the

¹Application for patent filed January 12, 1995. According to appellants, this application is a divisional of application 08/110,055, filed August 30, 1993.

Appeal No. 97-4048
Application 08/371,934

final rejection in a paper filed April 19, 1996 (Paper No. 8). Claims 1 through 17 and 23 have been canceled. Claims 24 through 26, the only other claims remaining in the application, stand allowed.

The subject matter on appeal is directed to a method for cutting a piled fabric such as carpet or carpet tiles. Independent claims 18 and 19 are representative of the subject matter on appeal and a copy of those claims may be found in the Appendix to appellants' brief.

The prior art references relied upon by the examiner in rejecting the appealed claims are:

Rummer	4,041,818	Aug. 16, 1997
MacDonald	5,209,148	May 11, 1993

Claim 18 stands rejected under 35 U.S.C. § 102(e) as being anticipated by MacDonald.

Claim 19, 21 and 22 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Rummer.

Appeal No. 97-4048
Application 08/371,934

Claim 20 stands rejected under 35 U.S.C. § 102(b) as anticipated by or, in the alternative, under 35 U.S.C. § 103 as obvious over Rummer.

The full text of the examiner's rejections and response to the arguments presented by appellants appears in the examiner's answer (Paper No. 14, mailed January 7, 1997).

Rather than reiterate each of the points of argument advocated by appellants, we make reference to the appeal brief (Paper No. 13, filed October 29, 1996) for a complete statement of appellants' position.

OPINION

As a preliminary matter, we note that on page 3 of the brief appellants have indicated that "[c]laim 18 stands or falls separately from claims 19-22 which stand or fall together." Accordingly, in our discussions below we consider that claims 20 through 22 will stand or fall with claim 19,

Appeal No. 97-4048
Application 08/371,934

and thus limit our comments regarding the appealed rejections to independent claims 18 and 19.

In reaching our decision on the issues raised in this appeal, we have carefully considered appellants' specification and claims, the applied references, and the respective viewpoints expressed by appellants and the examiner. As a consequence of our review, we have made the determination that the examiner's rejections of the claims on appeal will be sustained. Our reasoning follows.

Like the examiner, we consider that claim 18 on appeal is readable on the carpet cutting method disclosed in MacDonald. As explained on pages 5 and 6 of the answer, the cutting of the carpet in MacDonald includes the steps of a) bending the pile elements of the carpet piece (24) downward toward the base portion of the carpet along a line to be cut (i.e., via movement of the portion of arm 14 and extension member 32 thereof located immediately in front of cutting blade 20' in the direction of movement of the cutting blade 20' along the

Appeal No. 97-4048
Application 08/371,934

line to be cut), and b) cutting through the pile elements bent in step a) and the underlying base portion in a direction generally normal to said base portion along said line to be cut, thereby partially shearing the pile elements bent downward in step a) along said

line to be cut such that a two-sided cut is formed wherein the pile elements adjacent to one side of the cut remain substantially unsheared. As has been noted by the examiner (answer, page 6), claim 18 does not necessarily require that the pile elements remain bent during the cutting step, but only that the pile elements which are cut in step b) are those which were bent in step a), which pile elements may now remain partially bent or have returned to their upright position.

Appellants' assertion (brief, page 4) that the disclosure of MacDonald (col. 6, lines 16-19) concerning the size of the cutting blade would preclude the blade 20' from performing the partial shearing feature recited in claim 18, is unpersuasive. MacDonald merely indicates that the blades (20, 20') do not

Appeal No. 97-4048
Application 08/371,934

"appreciably extend into the carpet pile," not that they do not extend into the carpet pile at all. Given that the blade 20' can extend into the carpet pile to some extent, we must agree with the examiner (answer, page 7) that the blade (20') moving along the line to be cut will inevitably cut some of the pile elements which were bent by the immediately preceding portion of the extension element (32) in MacDonald. In contrast to appellants'

position that MacDonald fails to disclose in any manner the formation of a two-sided cut wherein the pile elements adjacent to one side of the two-sided cut remain substantially unsheared (brief, page 4), we note that there will clearly be pile elements "adjacent" to one side of the two-sided cut seen in Figure 1 of MacDonald, and in fact, "adjacent" to both sides of the cut, which remain substantially unsheared. As an example, we note that in appellants' own Figure 5 there are clearly shown pile elements "adjacent" cut edge (69), as well as pile elements "adjacent" cut edge (67), which are substantially unsheared,

Appeal No. 97-4048
Application 08/371,934

and that similar substantially unsheared pile elements would also be "adjacent" the two sides of the cut in MacDonald.

Thus, having considered appellants' arguments and having given claim 18 its broadest reasonable interpretation consistent with appellants' specification, we conclude that the subject matter of claim 18 on appeal is anticipated by MacDonald. Accordingly, the examiner's rejection of claim 18 under 35 U.S.C. § 102(e) as being anticipated by MacDonald is sustained.

We next review the examiner's rejection of claim 19 as being anticipated by Rummer. Rummer discloses a system and method

(e.g., col. 5, lines 1-24) for cutting a carpet web into sample pieces, with each of the sample pieces having chamfered edges so as to avoid unraveling of the nap (col. 1, lines 16-19). For the reasons advanced by the examiner on pages 8 and 9 of the answer,

we are in agreement that claim 19 on appeal is readable on the chamfer cutting stroke in Rummer. Accordingly, we incorporate

Appeal No. 97-4048
Application 08/371,934

the examiner's reasoning on pages 8 and 9 of the answer as our own and sustain the rejection of claim 19 under 35 U.S.C.

§ 102(b) based on Rummer.

Appellants' argument on pages 4 and 5 of their brief appears to misapprehend the examiner's position regarding the reading of claim 19 on Rummer. In this regard, we note that it is only the chamfer cutting stroke of Rummer which the examiner relies upon to meet the steps of appellants' claim 19, and not the later movement of the cutting blade therein from the angled to the vertical position, as appellants seem to believe.

With respect to the above-noted rejections, we observe that the law of anticipation does not require that the reference specifically teach what the appellants have disclosed and are

claiming but only that the claims on appeal "read on" something disclosed in the reference, i.e., all limitations of the claim or claims are found in the reference. See Kalman

Appeal No. 97-4048
Application 08/371,934

v. Kimberly Clark Corp., 713 F.2d 760, 218 USPQ 871 (Fed. Cir. 1983). As explained supra, in the present case, all the limitations of appellants' claims 18 and 19 are found respectively in MacDonald and Rummer, and thus claims 18 and 19 are clearly anticipated thereby.

Based on the foregoing, it is clear that appellants' arguments for patentability have not been persuasive of error on the examiner's part. Accordingly, the examiner's rejection of claim 18 under 35 U.S.C. § 102(e) based on MacDonald is sustained, as is the examiner's rejection of claim 19 under 35 U.S.C. § 102(b) based on Rummer. Given the grouping of claims herein, pursuant to 37 CFR § 1.192(c)(7), and as noted above, claims 20 through 22 are considered to fall with claim 19. It also follows from the above determinations that the examiner's alternative rejection of claim 20 under 35 U.S.C. § 103 based on Rummer is likewise sustained.

Accordingly, the decision of the examiner is affirmed.

Appeal No. 97-4048
Application 08/371,934

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED

IAN A. CALVERT)	
Administrative Patent Judge)	
)	
)	
)	BOARD OF PATENT
CHARLES E. FRANKFORT)	APPEALS AND
Administrative Patent Judge)	INTERFERENCES
)	
)	
JOHN P. McQUADE)	
Administrative Patent Judge)	

vsh

Appeal No. 97-4048
Application 08/371,934

Terry T. Moyer
P.O. Box 1927
Spartanburg, SC 29304