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D E C I S I O N
of 12 December 2002

Case Number: T 1174/01 - 3.2.3

Application Number: 96904383.5

Publication Number: 0817898

IPC: E04F 15/18

Language of the proceedings: EN

Title of invention:

Method for laying a floor covering as well as floor panels to be used for such a method

Applicant:

Forbo-Krommenie B.V.

Opponent:

-

Headword:

-

Relevant legal provisions:

EPC Art. 52, 54, 56, 84, 113(2), 123(2)

Keyword:

"Novelty (claim 1 of the main request: No)"

"Auxiliary request: Article 123(2) in combination with Article 84 (not allowed)"

"No complete text of the patent application"

Decisions cited:

-

Catchword:

-



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Boards of Appeal

Chambres de recours

Case Number: T 1174/01 - 3.2.3

D E C I S I O N
of the Technical Board of Appeal 3.2.3
of 12 December 2002

Appellant: Forbo-Krommenie B.V.
Industrieweg 12
NL-1566 JP Assendelft (NL)

Representative: Eisenführ, Speiser & Partner
Martinistrasse 24
D-28195 Bremen (DE)

Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 21 February 2001
refusing European patent application
No. 96 904 383.5 pursuant to Article 97(1) EPC.

Composition of the Board:

Chairman: C. T. Wilson
Members: J. du Pouget de Nadaillac
M. K. S. Aúz Castro

Summary of Facts and Submissions

I. The appeal is directed against the decision dated 21 February 2001 of an examining division of the EPO, which refused the European patent application No. 96 904 383 (publication EP-A-0 817 898) on the grounds that claim 4 on file was not clear and that its subject-matter was not new having regard to the references D10 and D12 cited by the examining division:

D10: GB-A-1 590 540

D12: JP-A-06307065 (Patent abstracts)

The appellant, applicant of the patent application, filed the notice of appeal and paid the appeal fee on 16 April 2001. Together with the statement of grounds of appeal, which was received on 20 June 2001, he submitted a new set of eleven claims as main request.

II. Claim 1 of this set reads as follows:

"Floor covering particularly for uneven subfloors comprising two superimposed layers of panels (base and top panels) from chipboard, plywood, or HDF or MDF board, the panels of at least one layer being provided with an adhesive coating on their faces contacting the panels of the other layer, the sides of adjacent panels within the same layer forming tight joints, and the joints of the one layer being staggered by approximately 1/4 to 1/2 distance in relation to the joints of the other layer."

Claim 9 reads as follows:

"Method for laying a floor covering particularly on an uneven subfloor, by first covering the subfloor with a layer of base panels from chipboard, plywood, or HDF or MDF board such that the sides of adjacent panels abut each other and form tight joints, whereupon a layer of top panels from chipboard, plywood, or HDF or MDF is laid on the upper faces of the panels forming likewise tight side joints between adjacent panels, at least said upper faces of the base panels carrying an adhesive coating, and said joints of the top panels being staggered by approximately 1/4 to 1/2 distance in relation to the joints of the base panel, and finally pressing down said top panels onto said base panels, whereby a virtually unbreakable bond between the panels of the two layers is obtained."

- III. In a communication, dated 21 May 2002 attached to the summons to oral proceedings scheduled for 12 December 2002, the board expressed its provisional opinion, that the subject-matter of claim 1 did not seem to be new and claim 9 to involve an inventive step having regard to the disclosure of D2 (GB-A-1 400 922), cited in the search report.

- IV. In response thereto, the appellant filed on 11 November 2002, at 16.22, two new auxiliary requests regarding claim 1.

Claim 1 according to the auxiliary request 1 reads as follows:

"Floor covering comprising multiple superimposed layers of panels, the panels of one layer being provided with an adhesive coating on their faces contacting the

panels of another layer, the joints of the one layer being staggered in relation to the joints of another layer,

characterized in that the non-resilient floor covering particularly for uneven subfloors consists of two panel layers (base and top panels) from chipboard, plywood, or HDF or MDF board, the sides of adjacent panels within the same layer forming tight joints, and the joints of the top panel layer being staggered in two horizontal directions perpendicular to each other, by approximately 1/4 to 1/2 distance in relation to the joints of the base panel layer."

Claim 1 according to the auxiliary request 2 reads as follows:

"Intermediate floor covering provided on top with a linoleum and/or other elastic top floor covering, particularly for application to uneven subfloors, comprising the combination of two superimposed surface layers of base and top panels respectively which are covered on top by said linoleum and/or other elastic top floor covering, the two component surface layers, which do remain easily separable after having been installed upon the subfloor, being interconnected by means of an adhesive surface layer applied upon one of these two layers facing the opposite layer wherein the side edges of adjacent panels in the base panel surface layer and the side edges of adjacent panels in the top surface layer are both abuttingly placed against each other to maintain a tight interconnecting joint, one and the other in such a way that the base interconnecting joints within the base surface layer are mutually set off with respect to the top interconnecting joints within the top surface layer by approximately 1/4 to 1/2 distance to prevent the extent of visibility of certain marks in relief from joints lying underneath it to appear from the combined

interconnected base and top surface layers through the top floor covering during longtime floor setting."

No adapted description was filed for any of the three sets of claims, nor a full set of claims for each of the auxiliary requests.

- V. By a second letter received on the same day at 15.30 by fax, the appellant informed the board that he would not attend the oral proceedings and requested "the board to re-enter written proceedings and to hand down its decision in writing".

By a fax sent the same day at 17.28 the board advised the appellant that the oral proceedings were maintained and that the absence of a complete set of documents for grant of a patent would result in the dismissal of the appeal for this reason alone.

As announced, the appellant did not appear at the oral proceedings of 12 December 2002 and, in accordance with Rule 71 (2) EPC, the proceedings were continued without him.

- IV. The written arguments of the appellant can be summarised as follows:

D2 concerns a sprung floor for sport centres comprising four layers, and not two layers. The last lines of the description refer solely to the second embodiment disclosed, namely that of Figures 3 and 4, in which the floor is composed of individual prefabricated floor elements, and this passage only specifies that the resilient foam boards of the supporting floor may be handled separately from the two chip boards layers forming the overfloor and the underfloor. There is further no mention of "tight joints" in this prior art; an "edge-abutting relationship" as mentioned on page 1,

lines 33 to 35, is only one prerequisite for forming a tight joint.

- V. The appellant requested the decision under appeal to be set aside and the European patent application No. 96 904 383.5 to be granted on the basis of claim 1 of either the main request or one of the auxiliary requests 1 and 2.

Reasons for the decision

1. The appeal is admissible.

Main request

2. D2 discloses a floor covering comprising a first layer (underfloor) of panels of chipboard on which another layer (overfloor), also made of chipboard, is laid and adhesively secured thereto. The sides of adjacent panels of each layer form tight joints and the joints of the one layer lie centrally of the panels of the other layer, so that it can be said that the joints of the one layer are staggered by approximately 1/4 to 1/2 distance in relation to the joints of the other layer, see in particular the second embodiment of D2 according to its Figures 3 and 4.

The first argument of the appellant, that this prior art related to sprung floor covering for sport centres made of four layers, is not relevant, since claim 1 does not exclude such an application and also, with the verb "comprises", additional layers, as is disclosed by

the description itself of the patent application in suit which mentions a supporting insulating foam layer and a top decorative layer (see also Guidelines, C-III, 4.13).

The description of the patent in suit also discloses that rectangular panels with straight sides can be used and that the sides of the panels **butt against each other to form tight joints** (page 3, lines 12 to 14, of the original description), no further conditions beyond "abutting" edges being specified to form the tight joints. In D2, the panels also have each of their boards in edge-abutting relationship (column 1, lines 33 to 35) and the figures clearly show straight edges, so that no difference from the disclosure of the patent application can be seen.

For these reasons, the subject-matter of claim 1 according to the main request is not new (Articles 52 and 54 EPC).

Auxiliary requests

3. Claim 1 according to each of these two auxiliary requests does not meet the requirements of Article 123(2) EPC, particularly combined with Article 84 EPC:

No support for the term "non-resilient", which appears in claim 1 of the first auxiliary request, can be found in the patent application as originally filed. In contrast, the first page of the description mentions "elastic floor covering" and the rest of the description foresees, as already mentioned above, an insulating foam layer and a top elastic layer, which are mentioned in the dependent claims 4 and 12 as originally filed. The wording of claim 1, in which the floor covering is variously defined as "comprising

multiple superimposed layers of panels" and "consists of two panel layers" is not clearly consistent with, nor supported by the description, in which the floor covering is described as having two superimposed panels but many layers.

It is not clear from the wording of claim 1 according to the second auxiliary request to which elements of the floor covering the expression " which do remain easily separable" applies. Since it immediately follows the mention of the "two component surface layers", namely the base panel layer and the top panel layer, it must be interpreted as concerning the separation of these two layers. However, these two layers are stated in the description to be glued together in such a way, that a virtually unbreakable bond is obtained. Therefore, this expression as interpreted above has no basis in the description as originally filed.

4. In addition, the new claims 1 according to these auxiliary requests of the appellant are each directed to a floor covering. In contrast, the description of the patent application as originally filed indicates that the invention concerns a method for laying a floor covering as well as floor panels to be used for such method. Therefore, a discrepancy appears between the description as originally filed and the subject-matter of the new claims, so that the description of the patent application should have been amended in this respect at least.

However, the appellant has submitted neither new pages of the description nor a complete set of claims, so that the requirements of Article 113(2) EPC are not met, the board having no complete text of the European patent application at its disposal (see also T 917/95, not published).

Thus, the request of the appellant to grant a patent cannot succeed.

5. The board sees no reason to continue the proceedings in writing as requested by the appellant, taking into account that this request was made at a very late stage, namely during the afternoon preceding the day of the oral proceedings, for which the board had prepared the case and planned to terminate it by a final decision, all the more since it was the appellant who had asked for oral proceedings. When new claims are submitted just one month before the date of oral proceedings, as was the case in the present appeal proceedings, the board expects to discuss these claims during the scheduled oral proceedings, so that there is no need usually to react to the filing of the claims. Here, with the very late statement from the appellant that he would not participate in the oral proceedings, the board in view of Article 113(1) EPC has immediately reacted by sending the above mentioned fax in order to inform the appellant of the objection under Article 113(2) EPC, so that he could still react, either by attending the oral proceedings or by sending completed documents.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

A.Counillon

The Chairman:

C.T.Wilson