Paper No. 21

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Ex parte ERIK BACH et al.

Appeal No. 1999-2765
Application No. 08/752,396

ON BRIEF

Before COHEN, NASE, and JENNIFER D. BAHR, Administrative Patent Judges.

NASE, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1 to 3, 8 and 9. Claims 4 to 7 and 10, the only other claims pending in this application, have been objected to as depending from a non-allowed claim.[1]

[1] The examiner and the appellants have referred to these claims as having been allowed. However, since these claims depend from a non-allowed claim, the proper designation for these claims is that they are objected to.

We AFFIRM.

BACKGROUND

The appellants' invention relates to a toy building. A copy of the claims under appeal is set forth in the appendix to the appellants' brief.

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

Hunts	5,647,181	July 15, 1997 (filed Oct. 11, 1994)
Heilig[2]	AT 133,178	Dec. 15, 1932

Claims 1 to 3, 8 and 9 stand rejected under 35 U.S.C. § 103 as being unpatentable over Hunts in view of Heilig.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellants regarding the above-noted

[2] In determining the teachings of Heilig, we will rely on the translation provided by the USPTO. A copy of the translation is attached for the appellants' convenience.

rejection, we make reference to the answer (Paper No. 20, mailed May 21, 1999) for the examiner's complete reasoning in support of the rejection, and to the brief (Paper No. 19, filed April 9, 1999) for the appellants' arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellants' specification and claims, to the applied prior art references, and to the respective positions articulated by the appellants and the examiner. As a consequence of our review, we make the determinations which follow.

In accordance with 37 CFR § 1.192(c)(7), we have selected claim 1 as the representative claim from the appellants' grouping of claims 1 to 3, 8 and 9 to decide the appeal on this rejection under 35 U.S.C. § 103. See page 3 of the appellants' brief.

Claim 1 on appeal reads as follows:

> A toy building comprising:
> a bracing structure (1), said bracing structure (1) comprising columns (3) and girders (4) which locate walls and room divisions of the toy building;
> at least one substantially planar wall element (5); and
> a plurality of fittings,
> wherein said bracing structure (1) and said at least one wall element (5) are provided with complementary coupling means (6, 7) for releasable coupling of said at least one wall element (5) to said bracing structure; and
> wherein said at least one wall element (5) and said fittings (8) are provided with complementary coupling means (9, 10) for mounting of said fittings (8) on said at least one wall element (5).

In rejecting claims under 35 U.S.C. § 103, the examiner bears the initial burden of presenting a case of obviousness. See In re Rijckaert, 9 F.3d 1531, 1532, 28 USPQ2d 1955, 1956 (Fed. Cir. 1993). A case of obviousness is established when the teachings of the prior art itself would appear to have suggested the claimed subject matter to one of ordinary skill in the art. See In re Bell, 991 F.2d 781, 783, 26 USPQ2d 1529, 1531 (Fed. Cir. 1993). In considering the question of the obviousness of the claimed invention in view of the prior art relied upon, we are guided by the basic principle that the question under

35 U.S.C. § 103 is not merely what the references expressly teach but what they would have suggested to one of ordinary skill in the art at the time the invention was made. See Merck & Co., Inc. v. Biocraft Laboratories, Inc., 874 F.2d 804, 807, 10 USPQ2d 1843, 1846 (Fed. Cir.), cert. denied, 493 U.S. 975 (1989) and In re Keller, 642 F.2d 413, 425, 208 USPQ 871, 881 (CCPA 1981). That is, the question of obviousness cannot be approached on the basis than an artisan having ordinary skill would have known only what they read in the references, because such artisan is presumed to know something about the art apart from what the references disclose. See In re Jacoby, 309 F.2d 513, 516, 135 USPQ 317, 319 (CCPA 1962). It is not necessary that suggestion or motivation be found within the four corners of the references themselves; a conclusion of obviousness may be made from common knowledge and common sense of the person of ordinary skill in the art without any specific hint or suggestion in a particular reference. See In re Bozek, 416 F.2d 1385, 163 USPQ 545 (CCPA 1969). Further, in an obviousness assessment, skill is presumed on the part of the artisan, rather than the lack thereof. In re Sovish, 769 F.2d 738, 226 USPQ 771 (Fed. Cir.

1985). We are bound to consider the disclosure of each reference for what it fairly teaches one of ordinary skill in the art, including not only the specific teachings, but also the inferences which one of ordinary skill in the art would reasonably have been expected to draw therefrom. See In re Boe, 355 F.2d 961, 148 USPQ 507 (CCPA 1966); and In re Preda, 401 F.2d 825, 159 USPQ 342 (CCPA 1968).

With this as background, we analyze the prior art applied by the examiner in the rejection of the claims on appeal.

Hunts' invention relates to doll houses, play houses, sheds and the like, and more particularly to those that are provided in kit form for simplified assembly. Hunts teaches (column 1, lines 31-41) that the basic concept of his invention is that it provides specially configured panel edges preferably about all peripheral edges of a plurality of rigid, sheet-like panels and a variety of correspondingly configured panel connector members arranged to engage each panel edge in a positively locking, yet releasable, snap-fit connection, to provide a panel connection system in which panels can be

secured together in locking engagement with each other into any desired arrangement of interconnected walls, floors and roofs to form extremely rigid building structures with a virtually limitless variety of rooms, levels and floor plans. Hunts further teaches (column 1, lines 49-55) that an object of his invention is the provision of a panel connection system in which doll houses and the like can be assembled and disassembled easily, and may also be "remodeled" and changed in whole or in part without requiring complete disassembly of the existing structure.

As shown in Figures 1, 2 and 4, the construction system of Hunts includes panels, designated generally at 10. These panels may be used as floors 12, plain walls 14, roof panels 16, window wall panels 18, door wall panels 20, stairwell panels (not shown), and others as may be desired. Hunts discloses (column 3, lines 1-4) that the panels 10 used in his construction system are formed of rigid sheet material such as plastic, plywood, metal and the like, and include a first component 22 (groove 24 and connector tongue 28) of the friction lock, snap-fit panel connector of this system.

Elongated panel connector members, indicated generally at 30, provide the second, corresponding component of a friction lock, snap fit connector of Hunts' system. As seen in Figures 4-6, the panel connector members 30 comprise a longitudinally elongated base member 32 which includes a hollow center portion 34 and outwardly projecting, coextensive, snap fit lock members 36 configured to receive and frictionally engage the grooves 24 of the connector tongue portion of a panel to secure the panel thereto in a positive snap fit attachment. The snap fit lock members 36 each comprise a pair of stiffly resilient, spaced apart, opposite arm members 38, 38' projecting outwardly from the base member, the arms configured at their outer terminal ends with at least one inwardly facing locking detent 40 configured to frictionally engage the locking groove 24 provided on one or both faces of a panel 10. Additionally, and as seen best in Figures 7a-7c, it is important that the space 42 defined between the opposite arm members 38, 38' inwardly of
the detents 40 is configured to matingly correspond to the particular surface configuration of the connector tongue 28 of the panel. In this manner there is achieved a fully mating,

frictional, capturing engagement of the entire surface area along the length of the groove 24 and the connector tongue 28 of a panel in addition to the positive snap-fit locking of the panel therein by the tensioned engagement of the locking detents 40 with the lock grooves 24 provided by the stiffly resilient arm
members. Accordingly, with a panel 10 and a connector member 30 thus engaged, unintended relative pivotal, axial and separational movement therebetween is virtually eliminated, and results in an extremely rigid, strong joint.

Heilig discloses a modular toy. As shown in Figures 1-3, the toy includes a floor 2 with perforations 3, four corner pillars 4, a ceiling 5 with perforations (not shown), and a plurality of side walls 6 with perforations 8. Heilig teaches (translation, p. 2) that suitable pieces of furnishings 9 are provided with pins 10 to be placed in the perforations "on the bottom." Heilig further teaches (translation, p. 2) that the perforations 8 in the side walls "accommodate transverse beams or the like."

After the scope and content of the prior art are determined, the differences between the prior art and the claims at issue are to be ascertained. Graham v. John Deere Co., 383 U.S. 1, 17-18, 148 USPQ 459, 467 (1966).

Based on our analysis and review of Hunts and claim 1, it is our opinion that the only differences are as follows: (1) a plurality of fittings, and (2) the complementary coupling means for mounting of the fittings on the at least one wall element.

With regard to these differences, it is our opinion that it would have been obvious at the time the invention was made to a person having ordinary skill in the art to provide the construction system of Hunts with perforations in the floor and wall panels to mount furnishings, transverse beams or the like as suggested and taught by Heilig for the self-evident advantages thereof (e.g., securing the furnishings and transverse beams in position in a doll house).

The argument advanced by the appellants (brief, pp. 3-6) is unpersuasive for the reasons set forth by the examiner (answer, pp. 4-7) which we hereby incorporate by reference. It is our view that Hunts discloses the recited complementary coupling means for releasable coupling of the at least one wall element to the bracing structure since the claimed bracing structure is readable on the structure shown in Figure 1 absent the uppermost panel 10 and the recited wall element is readable on the uppermost panel 10 when that panel is connected to the already built structure. Furthermore, the recited fittings are readable on Heilig's transverse beams and the complementary coupling means for mounting of the fittings on the at least one wall element is readable on the perforations 8 in walls 6 and the pins of the transverse beams which engage the perforations 8.

For the reasons set forth above, the decision of the examiner to reject claim 1, and claims 2, 3, 8 and 9 which fall therewith, under 35 U.S.C. § 103 is affirmed.

CONCLUSION

To summarize, the decision of the examiner to reject claims 1 to 3, 8 and 9 under 35 U.S.C. § 103 is affirmed.

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

AFFIRMED

IRWIN CHARLES COHEN Administrative Patent Judge	)	
JEFFREY V. NASE Administrative Patent Judge	)	BOARD OF PATENT APPEALS AND INTERFERENCES
JENNIFER D. BAHR Administrative Patent Judge	)	

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