

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 26

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte JOHN L. McCLINTON

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Appeal No. 97-1445  
Application No. 08/202,254<sup>1</sup>

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ON BRIEF

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Before STAAB, McQUADE, and BAHR, Administrative Patent Judges.  
BAHR, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 7 through 10, 12, 16 through 28 and 46 through 56, which are all of the claims pending in this application.<sup>2</sup> The amendment after final rejection filed

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<sup>1</sup> Application for patent filed February 25, 1994.

<sup>2</sup> Claims 1 through 6, 11, 13 through 15 and 29 through 45 were canceled in Paper No. 7.

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August 13, 1996 was not entered (see advisory action, Paper  
No. 17).

We AFFIRM-IN-PART.

BACKGROUND

The appellant's invention relates to a wall corner composite comprising at least one curvilinear masonry building unit. An understanding of the invention can be derived from a reading of exemplary claim 19, which appears in the appendix to the appellant's brief.

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

|           |           |               |
|-----------|-----------|---------------|
| Kaplan    | 4,041,670 | Aug. 16, 1977 |
| Rinninger | 4,572,699 | Feb. 25, 1986 |
| Gillet    | 4,769,961 | Sep. 13, 1988 |

The following rejections are before us for review.

Claims 7, 16, 18 and 19 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Kaplan.

Claims 8 through 10, 12 and 20 through 28 stand rejected under 35 U.S.C. § 103 as being unpatentable over Kaplan.

Claim 17 stands rejected under 35 U.S.C. § 103 as being unpatentable over Kaplan in view of Gillet.

Claims 46 through 56 stand rejected under 35 U.S.C. § 103 as being unpatentable over Kaplan in view of Rinninger.

The complete text of the examiner's rejections and response to the argument presented by the appellant appears in the answer (Paper No. 20, mailed December 9, 1996), while the complete statement of the appellant's argument can be found in the brief (Paper No. 19, filed September 25, 1996).<sup>3</sup>

OPINION

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

The appellant has not included a statement in the brief that claims 7, 16, 18 and 19 do not stand or fall together and has not included any argument in the brief explaining why these claims are believed to be separately patentable. Therefore, and in accordance with 37 CFR § 1.192(c)(7), we

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<sup>3</sup> On August 13, 1996, the appellant filed an amendment after final rejection along with a first appeal brief taking into account the amendment filed therewith. The examiner refused entry of the amendment in an advisory action mailed September 3, 1996. In response to the advisory action, the appellant filed a new appeal brief on September 25, 1996 which reflects the fact that the amendment filed August 13, 1996 was not entered.

shall decide the appeal of these claims on the basis of representative claim 19, with claims 7, 16 and 18 standing or falling therewith.

Kaplan (Figure 9) discloses a building wall corner comprising four curvilinear building blocks (102), shown in greater detail as curvilinear block (40) in Figure 4. The curvilinear building block comprises an outer curvilinear surface (41) opposite an inner surface (42), top and bottom surfaces and two side ends (39). The curvilinear building block is provided with "yin yang elements" (44) comprising female recesses and complementary male projections for interlocking adjacent building blocks to one another. Kaplan discloses that the interlocking arrangement of the building blocks permits them to be assembled without the use of mortar (column 1, lines 13 through 22 and column 2, lines 61 through 68).

The appellant asserts that Kaplan does not anticipate independent claim 19 because Kaplan does not disclose a wall corner composite which includes at least one curvilinear building unit that is joinable to another masonry building

unit with mortar (brief, pages 7 and 8). In response, the examiner argues:

The expression "joinable" is interpreted as being capable of joining and the limitation "said faces of said at least one curvilinear masonry building unit are joinable to another masonry building unit with mortar" does not positively recite the mortar as a part of the wall corner. Although the curvilinear unit (102) of Kaplan [is] joined with other units by interlocking connections, it is certainly capable of receiving mortar in the interlocking connections because the mortar would further enhance the rigidity of the wall [answer, pages 6 and 7].

We agree with the examiner that the claims do not positively recite mortar. During examination, claim limitations are to be given their broadest reasonable reading consistent with the specification. In re Zletz, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989); In re Prater, 415 F.2d 1393, 1404-05, 162 USPQ 541, 550-51 (CCPA 1969); In re Sneed, 710 F.2d 1544, 1548, 218 USPQ 385, 388 (Fed. Cir. 1983). The limitation "joinable to another masonry building unit with mortar" (emphasis added) requires only that the side faces of the building unit be capable of being joined to another masonry building unit with mortar; it does not require

that there actually be mortar joining two adjacent building units. While we acknowledge that Kaplan does not teach or suggest the application of mortar to join adjacent building blocks, we note that it is not necessary that the reference teach what the subject application teaches to anticipate a claim, but only that the claim read on something disclosed in the reference, i.e., that all of the limitations in the claim be found in or fully met by the reference. Kalman v. Kimberly Clark Corp., 713 F.2d 760, 772, 218 USPQ 781, 789 (Fed. Cir. 1983), cert. denied, 465 U.S. 1026 (1984). We, like the examiner, find that the curvilinear building blocks of Kaplan are capable of accepting mortar, either on the yin yang elements (44) or on other portions of the side ends (39), to join adjacent blocks. Therefore, we find that they meet the "joinable to another masonry building unit with mortar" limitation of independent claim 19.

Accordingly, we shall sustain the standing rejection of independent claim 19, and of claims 7, 16 and 18 which stand or fall therewith, under 35 U.S.C. § 102(b) as being anticipated by Kaplan.

With regard to the rejection of claims 8 through 10, 12 and 20 through 28 under 35 U.S.C. § 103 as being unpatentable over Kaplan, the examiner concedes that Kaplan does not specifically disclose that the blocks are glazed with a resinous composition, but argues that the application of a known resinous composition to the wall corner of Kaplan would have been obvious to one of ordinary skill in the art for the advantage of providing stain resistance, as admitted by the appellant on page 2 of the specification (answer, pages 4 and 5). As the appellant has not challenged the examiner's statement, we will accept the examiner's position that the broad concept of applying a resinous glaze composition to a masonry building block of the type disclosed by Kaplan is well known in the art. Consequently, in our opinion, it would have been obvious to one of ordinary skill in the art to apply glaze to the outer curvilinear surface of the curvilinear building block (102) of Kaplan, as this surface is exposed to the environment, as illustrated in Figure 9.

The appellant does assert that "applying a glaze composition to a curvilinear surface is difficult, involves unique problems and would not be obvious to one skilled in the

art" (brief, page 10). We have considered this argument but do not find it persuasive. From our viewpoint, a curved surface as disclosed by Kaplan on the curvilinear building block does not appear very complicated or intricate. It appears to us that one of ordinary skill in the art of producing glazed masonry building blocks of any shape would have been able to vary the glazing process as necessary to apply the glaze composition to a surface of any contour, including a curved contour, without undue experimentation, to glaze the outer curvilinear surface of the building block (102) of Kaplan. As the appellant has provided no evidence or factual rationale to support the assertion that the application of glaze to a curvilinear surface involves unique problems and would thus not have been obvious to one of ordinary skill in the art, we are of the opinion that it would have been obvious to one of ordinary skill in the art of producing masonry building blocks to apply a resinous glaze composition to the exposed curvilinear surface of the Kaplan building block.

The appellant further points out that claims 26 through 28 recite "at least two" curvilinear building block units and,

thus, "stand or fall independently from" claims 8 through 10, 12 and 20 through 25 (brief, page 13). Notwithstanding that 37 CFR

§ 1.192(a)(7) expressly states that merely pointing out differences in what the claims cover is not an argument as to why the claims are separately patentable, we note that Kaplan (Figure 9) does disclose four curvilinear building blocks, thereby meeting the limitation of both "at least one" and "at least two" curvilinear masonry building unit(s).

For the above reasons, we shall sustain the rejection of claims 8 through 10, 12 and 20 through 28 under 35 U.S.C. § 103 as being unpatentable over Kaplan.

In rejecting claim 17, the examiner relies on the teachings of Gillet (see column 3, lines 14 through 24 and Figures 2 and 3) to provide notches (23) in concrete building blocks for receiving horizontal reinforcement rods (24), when such appear necessary (see answer, page 5). The examiner states that, in view of the teachings of Gillet, it would have been obvious to one of ordinary skill in the art to provide the masonry building block (102) of Kaplan with means (notches 23) for receiving horizontally placed reinforcement rods "to

increase the rigidity of the wall" (answer, page 5). We agree with the examiner. In our opinion, the teachings of Gillet would have suggested to one of ordinary skill in the art at the time of appellant's invention the provision of structure on the building blocks of Kaplan for receiving horizontally placed reinforcement rods to further reinforce the wall in applications where additional reinforcement is deemed necessary.

The appellant argues that Gillet does not suggest joining the building blocks with mortar and thus does not overcome the alleged deficiencies of Kaplan (brief, page 11). We do not find this argument persuasive because, as discussed above, it is our opinion that the claims require only that the blocks be capable of being joined with mortar and that the blocks of Kaplan meet this limitation.

The appellant further argues that "the blocks suggested by Gillet must be carefully arranged relative to each other so as to form a desired angle" as distinguished from the blocks of the appellant's invention, which have angled side faces which will ensure the proper alignment (brief, page 11). This

argument is not persuasive, because it is directed to limitations not appearing in claim 17. See In re Self, 671 F.2d 1344, 1348, 213 USPQ 1, 5 (CCPA 1982).

Since we are in agreement with the examiner that the wall corner of claim 17 would have been obvious to one of ordinary skill in the art based on the combined teachings of Kaplan and Gillet, we shall sustain the examiner's rejection of claim 17 under 35 U.S.C. § 103.

With regard to claims 46 through 56, which require that the masonry building units either form a "non-interlocking" joint or be joinable with other masonry building units to form a "non-interlocking" joint, it is the examiner's position that Rinninger (Figure 12a) evidences that a non-interlocking connection between curvilinear building blocks is well known in the art (answer, page 5). According to the examiner, it would have been obvious to modify the interlocking connections between the units of Kaplan with the non-interlocking joints as taught by Rinninger to reduce the cost of manufacturing the building units (answer, page 6). However, as pointed out by the appellant on page 12 of the brief, Rinninger discloses concrete paving stones "for the paving of gardens and parks,

paths or the like" (column 1, lines 5 through 7) rather than a masonry building unit. The paving stones are merely laid in a single layer on the ground and are not intended to be stacked vertically on one another to form a wall. Consequently, a paving stone is not subjected to the same stresses placed on building units in a vertically extending wall. Given the disparate nature of paved paths and the walls disclosed by Kaplan as discussed above, it is our opinion that one of ordinary skill in the art would not have been led to look to the teachings of a paving block for alternative arrangements for joining the building blocks of Kaplan to construct a wall. Moreover, in view of the teaching by Kaplan of the importance of providing an interlocking relationship between the adjoining building blocks (column 2, last paragraph), we are of the opinion that one of ordinary skill in the art would be discouraged from modifying the blocks of Kaplan to provide a non-interlocking connection between adjacent blocks.

Therefore, we are constrained to reverse the decision of the examiner to reject claims 46 through 56 under 35 U.S.C. § 103 as being unpatentable over Kaplan in view of Rinninger.

CONCLUSION

To summarize, the decision of the examiner to reject claims 7, 16, 18 and 19 under 35 U.S.C. § 102(b) as being anticipated by Kaplan, claims 8 through 10, 12 and 20 through 28 under 35 U.S.C. § 103 as being unpatentable over Kaplan and claim 17 under 35 U.S.C. § 103 as being unpatentable over Kaplan in view of Gillet is affirmed. The decision of the examiner to reject claims 46 through 56 under 35 U.S.C. § 103 as being unpatentable over Kaplan in view of Rinninger, however, is reversed.

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

AFFIRMED-IN-PART

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| LAWRENCE J. STAAB           | ) |                 |
| Administrative Patent Judge | ) |                 |
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|                             | ) | BOARD OF PATENT |
| JOHN P. McQUADE             | ) | APPEALS         |
| Administrative Patent Judge | ) | AND             |
|                             | ) | INTERFERENCES   |
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| JENNIFER D. BAHR            | ) |                 |
| Administrative Patent Judge | ) |                 |

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