

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

AKZENTA PANELEE + PROFILE
GMBH; AKZENTA VERTRIEBS GMBH;
and W. CLASSEN GMBH & CO. KG,

Plaintiffs,

v.

SHAW INDUSTRIES GROUP, INC.;
VÄLINGE INNOVATION AB (f/k/a
VÄLINGE ALUMINIUM AB); and
DARKO PERVAN, an individual,

Defendants.

Civil Action No. 2:10-CV-16-TJW-CE

JURY TRIAL REQUESTED

**PLAINTIFFS' FIRST AMENDED
COMPLAINT AND COUNTERCLAIM ON REPLY**

Plaintiffs Akzenta Paneele + Profile GmbH, Akzenta Vertriebs GmbH, and W. Classen GmbH & Co. KG (collectively referred to as "Plaintiffs") file this first amended complaint and counterclaim on reply against Defendants Shaw Industries Group, Inc. ("Shaw"), Välinge Innovation AB (f/k/a Välinge Aluminium AB) ("Välinge"), and Darko Pervan ("Pervan"), an individual and, in addition to all claims previously asserted, allege as follows:

NATURE OF THE CLAIMS

1. This is an action for patent infringement of Plaintiffs' U.S. Patent No. 7,451,578 ("the '578 patent") and U.S. Patent No. 6,505,452 ("the '452 patent"). Plaintiffs assert the '578 patent and the '452 patent against Shaw, Välinge, and Pervan for making, using, offering to sell, or selling a laminate-flooring product sold under the trade name "VersaLock®AG," or inducing others to infringe and/or contributing to the direct infringement of others.

2. Plaintiffs seek relief under the Declaratory Judgment Act that Välinge's U.S. Patent No. 7,634,884 ("the '884 patent") and U.S. Patent No. 6,532,709 ("the '709 patent") are invalid and/or not infringed.

3. Plaintiffs also seek relief under the Declaratory Judgment Act that the '884 patent is unenforceable because the inventors, Välinge, their agents, and/or their attorneys engaged in inequitable conduct during the prosecution of the '884 patent.

4. Plaintiffs further seek relief against Välinge and Pervan for false advertising under the Lanham Act, 15 U.S.C. § 1125 et seq.

5. Finally, Plaintiffs seek relief against Välinge and Pervan under Texas state law for business disparagement, tortious interference with prospective business relations, defamation, and unfair competition.

THE PARTIES

6. Akzenta Paneele + Profile GmbH is a corporation organized and existing under the laws of Germany, having its principal place of business at Werner-von-Siemens-Strasse 18-20, 56759 Kaisersesch, Federal Republic of Germany.

7. Akzenta Vertriebs GmbH is a corporation organized and existing under the laws of Germany, having its principal place of business at Werner-von-Siemens-Strasse 18-20, 56759 Kaisersesch, Federal Republic of Germany.

8. W. Classen GmbH & Co. KG is a corporation organized and existing under the laws of Germany, having its principal place of business at Werner-von-Siemens-Strasse 18-20, 56759 Kaisersesch, Federal Republic of Germany.

9. Upon information and belief, Shaw is a corporation organized and existing under the laws of the State of Georgia, having its principal place of business at 616 E. Walnut Ave., P.O. Drawer 2128, Dalton, Georgia 30722.

10. Upon information and belief, Shaw may be served through its registered agent, Frederick L. Hooper, III at 616 Walnut Ave, P.O. Drawer 2128, Dalton, Georgia 30722.

11. Upon information and belief, Välinge is a corporation organized and existing under the laws of Sweden, having its principal place of business at Prästavägen 513 S 260 40 Viken, Sweden.

12. Upon information and belief, Pervan resides at Kyrkogränden 1, S 260 40 Viken, Sweden.

JURISDICTION AND VENUE

13. This action arises under the patent laws of the United States, 35 U.S.C. § 1 et seq., the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, as well as the Lanham Act, 15 U.S.C. § 1125(a). This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a), 1367, 1391(d), 2201, 2202.

14. This action also arises under Texas state law, including Texas state law for business disparagement, tortious interference with prospective business relations, defamation, and unfair competition. This Court has subject matter jurisdiction over these claims under 28 U.S.C. § 1367 because Plaintiffs' Texas state-law claims arise out of the same facts and circumstances as their federal claims.

15. This Court has personal jurisdiction over Shaw because Shaw has established minimum contacts with the forum such that the exercise of personal jurisdiction over Shaw will

not offend traditional notions of fair play and substantial justice.

16. The Court also has personal jurisdiction over Shaw because Shaw has admitted that it is subject to personal jurisdiction in Texas. (ECF No. 32 ¶ 15.)

17. This Court has personal jurisdiction over Välinge because Välinge has knowingly and actively engaged in acts that have and will aid and abet the direct infringement of the '578 patent and/or the '452 patent by the Defendants in the Eastern District of Texas.

18. This Court also has personal jurisdiction over Välinge because Välinge has disseminated false or misleading advertising into the Eastern District of Texas that has resulted in business and economic harm to the Plaintiffs.

19. The Court also has personal jurisdiction over Välinge because Välinge has admitted to personal jurisdiction in this action. (ECF No. 33 ¶¶ 16-17.)

20. Välinge's misconduct, that is the subject of the claims alleged in this first amended complaint, occurred in Texas and in this district, and has caused Plaintiffs to suffer damages and other losses in, for example, Texas and this district.

21. This Court has personal jurisdiction over Pervan because, on information and belief, he has knowingly and actively engaged in acts that have and will aid and abet the direct infringement of the '578 patent and/or the '452 patent by the Defendants in the Eastern District of Texas.

22. This Court also has personal jurisdiction over Pervan because he has disseminated or caused the dissemination of false or misleading advertising into the Eastern District of Texas that has resulted in business and economic harm to the Plaintiffs.

23. Pervan's misconduct, that is the subject of the claims alleged in this first amended complaint, occurred in Texas and in this district, and has caused Plaintiffs to suffer damages and other losses in, for example, Texas and this district.

24. Venue is proper in the Eastern District of Texas under 28 U.S.C. §§ 1391 and 1400(b).

25. Venue is also proper because Shaw and Vålinge have agreed to venue in this district. (ECF No. 32 ¶ 19; ECF No. 33 ¶ 19.)

FACTUAL BACKGROUND

26. On November 18, 2008, the United States Patent and Trademark Office ("Patent Office") duly and legally issued the '578 patent, entitled "Panel and Fastening System for Such a Panel." A copy of the '578 patent is attached as Exhibit A.

27. The '578 patent lists Akzenta Paneele + Profile GmbH as the assignee.

28. Plaintiffs Akzenta Paneele + Profile GmbH and W. Classen GmbH & Co. KG own all right, title, and interest in the '578 patent, including the right to use and enforce the '578 patent.

29. On January 14, 2003, the Patent Office duly and legally issued the '452 patent, entitled "Panel and Fastening System for Panels." A copy of the '452 patent is attached as Exhibit B.

30. The '452 patent lists Akzenta Paneele + Profile GmbH as the assignee.

31. Plaintiffs Akzenta Paneele + Profile GmbH and W. Classen GmbH & Co. KG own all right, title, and interest in the '452 patent, including the right to use and enforce the '452 patent.

32. Plaintiffs are one of the leading manufacturers, distributors, and sellers of laminate flooring in the world. Plaintiffs manufacture, sell, and distribute laminate-flooring products throughout the United States, the State of Texas, and this district.

33. Plaintiffs' products include, among others, a laminate-flooring product sold under the trade name Megaloc. The introduction of the Megaloc product revolutionized the laminate-flooring industry because the Megaloc patented system provided end users with a glue-free and easy-to-use system for laying laminate flooring. As a result, Megaloc has enjoyed a considerable degree of commercial success.

34. Plaintiff Akzenta Vertriebs GmbH has and has had, for all relevant time periods in the past, an exclusive license to practice the inventions claimed in the '578 patent and the '452 patent, which, among other things, permits Akzenta Vertriebs GmbH to market, distribute, and sell Megaloc products in the United States.

35. Shaw is in the business of manufacturing and/or selling laminate-flooring products and competes with Plaintiffs in certain markets and products.

36. Upon information and belief, Shaw makes, uses, offers to sell, and/or sells a laminate-flooring product under the trade name VersaLock®AG. Shaw, either directly or through intermediaries (including distributors, retailers, and others), ships, distributes, offers for sale, sells, and advertises this product within the United States, the State of Texas, and the Eastern District of Texas. Shaw has purposefully and voluntarily placed its VersaLock®AG product into the stream of commerce with the expectation that it will be purchased by consumers in the Eastern District of Texas. Shaw's product has been and will continue to be purchased by consumers in the Eastern District of Texas.

37. Shaw has posted on its website an installation video that teaches, among other things, end users how to install the VersaLock®AG product. On information and belief, end users in the United States, the State of Texas, and this district can access the website.

38. Upon information and belief, Shaw, either directly or through intermediaries, offers to sell and/or sells VersaLock®AG to Brown-West, L.L.C. d/b/a Carpet One Floor & Home (“Carpet One”), including but not limited to Carpet One located at 1206 East End Boulevard South, Marshall, Texas.

39. Upon information and belief, Carpet One sold VersaLock®AG products to end users, including but not limited to end users in this district.

40. Shaw infringes and continues to infringe the ’578 patent and/or the ’452 patent.

41. Välinge conducts research and development on flooring systems and methods of installing flooring.

42. Upon information and belief, Shaw makes, uses, offers to sell, sells, or imports products sold under the trade name VersaLock®AG through a license with Välinge.

43. VersaLock®AG’s packaging states that it is “[p]roduced under license from Välinge Innovation AB.”

44. Upon information and belief, Välinge provides active technical assistance to Shaw so that Shaw can make, use, sell, offer to sell, or import VersaLock®AG products within the United States.

45. Upon information and belief, Pervan provides active technical assistance to Shaw so that Shaw can make, use, sell, offer to sell, or import VersaLock®AG products within the United States.

46. Välinge has infringed and continues to infringe the '578 patent and/or the '452 patent.

47. Välinge has induced others to infringe and/or contributed to others direct infringement and continues to induce and/or contribute to others direct infringement of the '578 patent and/or the '452 patent.

48. Pervan has infringed and continues to infringe the '578 patent and/or the '452 patent.

49. Pervan has induced others to infringe and continues to induce others to infringe the '578 patent and/or the '452 patent.

50. On December, 22 2009, the Patent Office issued the '884 patent, entitled "Mechanical Locking System for Panels and Method of Installing Same." A copy of the '884 patent is attached as Exhibit C.

51. On its face, the '884 patent lists Pervan and Marcus Bergelin ("Bergelin") as the inventors.

52. Välinge's Amended Counterclaim alleges that the '884 patent is assigned to Välinge Innovation AB. (ECF No. 33 ¶ 33.)

53. Välinge's Amended Counterclaim alleges that Plaintiffs' Megaloc product infringes the '884 patent. (ECF No. 33 ¶ 34.)

54. On March 18, 2003, the Patent Office issued the '709 patent, entitled "Locking System and Flooring Board." A copy of the '709 patent is attached as Exhibit D.

55. On its face, the '709 patent lists Pervan as the sole inventor.

56. Välinge's Amended Counterclaim alleges that the '709 patent is assigned to Välinge Innovation AB. (ECF No. 33 ¶ 40.)

57. Välinge's Amended Counterclaim alleges that Plaintiffs' Megaloc product infringes the '709 patent. (ECF No. 33 ¶ 41.)

58. On December 29, 2009, Välinge posted a news article ("the Välinge news article") on its website entitled "Information regarding Classen patents related to fold down locking systems."

59. The Välinge news article states, among other things, that: (1) "Välinge has a patent that specifically protect[s] a Megaloc version"; (2) "Välinge has however recently obtained a patent in US (US 7,634,88[4]) that specifically protects a locking system with a snap tab on the fold panel similar to a Megaloc system"; (3) "None of the Välinge fold down systems infringes Classen patents"; (4) "Classen has not even been able to get a patent that protects their Megaloc"; and (5) "Välinge is determined to use its comprehensive patent portfolio against all other patent holders that use their patents against Välinge or its licensees in an unjustified way."

60. The reference to "Classen" in the Välinge news article refers to one or more of the Plaintiffs in this First Amended Complaint and Counterclaim on Reply.

61. Upon information and belief, Pervan drafted, caused to be drafted, or authored the Välinge news article.

62. Upon information and belief, Pervan is and was at all relevant times the President, CEO, officer, director, and/or part of the management team at Välinge.

63. The Välinge news article gives rise to a case or controversy concerning the validity and enforceability of Välinge's '884 patent, constitutes false advertising under the Lanham Act, and violates Texas state law.

COUNT I: INFRINGEMENT OF THE '578 PATENT

64. Plaintiffs reallege and incorporate by reference each paragraph above.

65. Shaw, in violation of 35 U.S.C. § 271, has infringed and continues to infringe the '578 patent.

66. Plaintiffs, under 35 U.S.C. § 284, may recover damages adequate to compensate for Shaw's infringement.

67. Plaintiffs have been, and continue to be, damaged and irreparably harmed by Shaw's infringement, which will continue unless this Court enjoins Shaw.

68. Shaw's infringement of the '578 patent has been and continues to be deliberate, willful, and knowing.

69. The Court should declare this an exceptional case under 35 U.S.C. § 285, entitling Plaintiffs to recover treble damages and attorney's fees.

COUNT II: INDIRECT INFRINGEMENT OF THE '578 PATENT

70. Plaintiffs reallege and incorporate by reference each paragraph above.

71. Shaw, Välinge, and Pervan, in violation of 35 U.S.C. § 271(b), indirectly infringe by knowingly aiding and abetting others to infringe the '578 patent.

72. Shaw and Välinge, in violation of 35 U.S.C. § 271(c), indirectly infringe by knowingly contributing to others direct infringement of the '578 patent.

73. Shaw and Välinge have contributed and continue to contribute to others direct infringement of the '578 patent knowing that no substantial noninfringing uses exist for VersaLock®AG panels.

74. Plaintiffs, under 35 U.S.C. § 284, may recover damages adequate to compensate for Shaw's, Välinge's, and Pervan's infringement.

75. Plaintiffs have been, and continue to be, damaged and irreparably harmed by Shaw's, Välinge's, and Pervan's infringement, which will continue unless this Court enjoins Shaw, Välinge, and Pervan.

76. Shaw's, Välinge's, and Pervan's infringement of the '578 patent has been and continues to be deliberate, willful, and knowing.

77. The Court should declare this an exceptional case under 35 U.S.C. § 285, entitling Plaintiffs to recover treble damages and attorney's fees.

COUNT III: INFRINGEMENT OF THE '452 PATENT

78. Plaintiffs reallege and incorporate by reference each paragraph above.

79. Shaw, in violation of 35 U.S.C. § 271, has infringed and continues to infringe the '452 patent.

80. Plaintiffs, under 35 U.S.C. § 284, may recover damages adequate to compensate for Shaw's infringement.

81. Plaintiffs have been, and continue to be, damaged and irreparably harmed by Shaw's infringement, which will continue unless this Court enjoins Shaw.

82. Shaw's infringement of the '452 patent has been and continues to be deliberate, willful, and knowing.

83. The Court should declare this an exceptional case under 35 U.S.C. § 285, entitling Plaintiffs to recover treble damages and attorney's fees.

COUNT IV: INDIRECT INFRINGEMENT OF THE '452 PATENT

84. Plaintiffs reallege and incorporate by reference each paragraph above.

85. Shaw, Välinge, and Pervan, in violation of 35 U.S.C. § 271(b), indirectly infringe by knowingly aiding and abetting others to infringe the '452 patent.

86. Shaw and Välinge in violation of 35 U.S.C. § 271(c), indirectly infringe by knowingly contributing to others direct infringement of the '452 patent.

87. Shaw and Välinge have contributed and continue to contribute to others direct infringement of the '452 patent knowing that no substantial noninfringing uses exist for VersaLock®AG panels.

88. Plaintiffs, under 35 U.S.C. § 284, may recover damages adequate to compensate for Shaw's, Välinge's, and Pervan's infringement.

89. Plaintiffs have been, and continue to be, damaged and irreparably harmed by Shaw's, Välinge's, and Pervan's infringement, which will continue unless this Court enjoins Shaw, Välinge, and Pervan.

90. Shaw's, Välinge's, and Pervan's infringement of the '452 patent has been and continues to be deliberate, willful, and knowing.

91. The Court should declare this an exceptional case under 35 U.S.C. § 285, entitling Plaintiffs to recover treble damages and attorney's fees.

**COUNT V: DECLARATORY JUDGMENT OF
NONINFRINGEMENT OF THE '884 PATENT**

92. Plaintiffs reallege and incorporate by reference each paragraph above.

93. Välinge has asserted the '884 patent against Akzenta Paneele + Profile GmbH and W. Classen GmbH & Co. KG. Välinge maintains—and Plaintiffs deny—that the '884 patent covers Plaintiffs' Megaloc products.

94. Plaintiffs' Megaloc products do not infringe any valid claim of the '884 patent.

95. Thus, Plaintiffs have not infringed and will not infringe the '884 patent by making, using, selling, offering for sale, marketing, or importing any Megaloc products.

96. Plaintiffs and Välinge have adverse legal interests, and there is a substantial controversy between Plaintiffs and Välinge of sufficient immediacy and reality to warrant the issuance of a declaratory judgment regarding the noninfringement of the '884 patent.

97. Plaintiffs are entitled to a judicial declaration that any making, using, selling, offering for sale, marketing, or importing of their Megaloc products do not infringe the '884 patent.

**COUNT VI: DECLARATORY JUDGMENT
OF INVALIDITY OF THE '884 PATENT**

98. Plaintiffs reallege and incorporate by reference each paragraph above.

99. The '884 patent has one independent claim and eleven dependent claims.

100. The Välinge news article states, among other things, that: “Välinge has a patent that specifically protect[s] a Megaloc version”; “Välinge has however recently obtained a patent in US (US 7,634,88[4]) that specifically protects a locking system with a snap tab on the fold panel similar to a Megaloc system”; and “Välinge is determined to use its comprehensive patent

portfolio against all other patent holders that use their patents against Välinge or its licensees in an unjustified way.”

101. An actual case or controversy has arisen between Plaintiffs and Välinge regarding the validity of the '884 patent.

102. An actual case or controversy has arisen between Plaintiffs and Pervan regarding the validity of the '884 patent.

103. A declaration of rights is both necessary and appropriate to establish that the '884 patent is invalid under 35 U.S.C. §§ 101 et seq. including §§ 101, 102, 103, 112, and/or 116.

**COUNT VII: DECLARATORY JUDGMENT
OF UNENFORCEABILITY OF THE '884 PATENT**

104. Plaintiffs reallege and incorporate by reference each paragraph above.

105. On March 19, 2008, Välinge's attorney, Travis D. Boone of the law firm Buchanan Ingersoll & Rooney PC, filed U.S. Patent Application No. 12/051,656 (“the '656 U.S. application”), which issued as the '884 patent on December 22, 2009.

106. The '884 patent, entitled “Mechanical Locking System for Panels and Method of Installing Same,” states that the '656 U.S. application is a continuation of U.S. Patent Application No. 11/092,748 (“the '748 U.S. application”) and a continuation of U.S. Application No. 11/575,600, filed as Application No. PCT/SE2005/001586 on October 21, 2005.

107. The '884 patent lists Pervan and Bergelin as the inventors.

108. Upon information and belief, Välinge, Pervan, Travis D. Boone, and/or David R. Kemeny (also of the law firm Buchanan Ingersoll & Rooney PC) directed the prosecution of the '884 patent.

109. Upon information and belief, Pervan was involved in the prosecution of the '884 patent.

110. On January 10, 2006, Vålänge's attorneys, Malin Larsson and/or Sten Jan-Åke Åkesson of the law firm AWAPATENT AB, filed International Application PCT/SE2006/000033, which published as WO 2006/104436 A1 on October 5, 2006.

111. WO 2006/104436 A1 is entitled "Mechanical Locking System for Floor Panels and a Method to Disconnect Floor Panels" and claims priority to the '748 U.S. application. WO 2006/104436 A1 lists Pervan as the inventor.

112. The '748 U.S. application was filed on March 30, 2005.

113. The European Patent Office received PCT/SE2006/000033 for entry into the European phase of patent prosecution on September 14, 2007. The European Patent Office assigned it European Application No. 06700664 ("the '664 European application").

114. Upon information and belief Vålänge, Pervan, Malin Larsson, and/or Sten Jan-Åke Åkesson directed the prosecution of the '664 European application.

115. Upon information and belief, Pervan participated in the prosecution of the '664 European application.

116. Both the '664 European application and the '884 patent indicate that they are related to the '748 U.S. application.

117. The originally filed claims in the '656 U.S. application (the application that issued as the '884 patent) are substantially similar to the originally filed claims in the '664 European application.

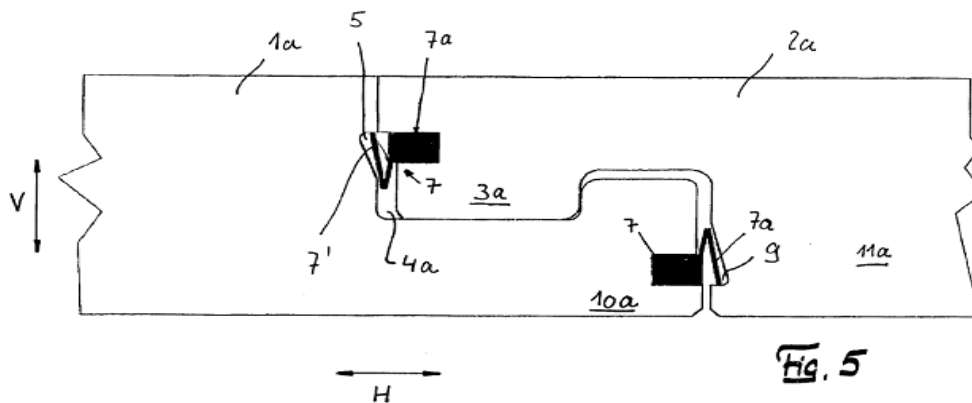
118. On July 6, 2009, the European Patent Office sent a Communication to Välinge in connection with the '664 European application, which attached a supplementary partial European search report ("Search Report") and a search opinion. A copy of the July 6, 2009 Communication and its attachments is attached as Exhibit E.

119. The Search Report identified certain prior-art references, including EP 1 420 125 A ("EP '125"). A copy of EP '125 (with an English translation) is attached as Exhibit F.

120. EP '125 is prior art under 35 U.S.C. § 102(b) to the alleged invention claimed in the '884 patent.

121. EP '125 generally discloses a mechanically connectable flooring system.

122. Figure 5 of EP '125 (shown below) illustrates a preferred embodiment.



123. The Search Report indicates that EP '125 is a "category Y document."

124. The Search Report explains that a category Y document is one that is "particularly relevant if combined with another document of the same category."

125. In the July 6, 2009 search opinion accompanying the Search Report, the European Patent Office stated that, among other things, at least claims 1, 3, 5-7, 10-11, and 14 of the '664 European application lacked an inventive step in view of EP '125.

126. Upon information and belief, Valinge knew of the existence of EP '125 before December 22, 2009.

127. Upon information and belief, Pervan knew of the existence of EP '125 before December 22, 2009.

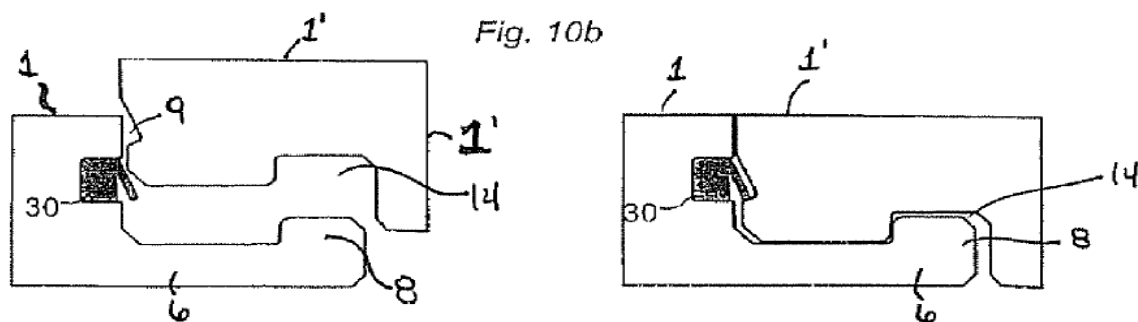
128. Upon information and belief, Bergelin knew of the existence of EP '125 before December 22, 2009.

129. Upon information and belief, Buchanan Ingersoll & Rooney PC knew of the existence of EP '125 before December 22, 2009.

130. Upon information and belief, Travis D. Boone knew of the existence of EP '125 before December 22, 2009.

131. Upon information and belief, David R. Kemeny knew of the existence of EP '125 before December 22, 2009.

132. In the '884 patent, one of the alleged embodiments is depicted in Figure 10b.



133. Upon information and belief, the claims in the '656 U.S. application on or about July 6, 2009 were substantially similar to the claims in the '664 European application on or about July 6, 2009.

134. For example, on or about July 6, 2009, claims 1 and 7-10 of the '656 U.S. application were substantially similar to claims 1 and 11-13 of the '664 European application. The chart below illustrates examples of the similarities between the July 6, 2009 claims of the '656 U.S. application and the July 6, 2009 claims of the '664 European application.

Claims in the '656 U.S. Application on or About July 6, 2009	Substantially Similar Claims in the '664 European Application on or About July 6, 2009
1. A set of <u>floor panels which are mechanically connectable to each other along one pair of adjacent edges</u> , each of said floor panels comprising:	1. A flooring system, comprising a plurality of <u>floor panels (1,1') which are mechanically connectable to each other along one pair of adjacent edges</u> ,
a flexible <u>tongue</u> on a first edge of the panel; a tongue <u>groove</u> on a second opposite edge of the panel for receiving the flexible tongue of an adjacent panel <u>for mechanically locking together said adjacent edges at right angles to a principal plane of the panels thereby forming a vertical mechanical connection between the panels</u> ;	said floor panel being provided with <u>tongue (10) and groove (9) formed in one piece with the panels for mechanically locking together said adjacent edges at right angles to the principal plane of the panels, thereby forming a vertical mechanical connections (D1) between the panels</u> ,
the tongue groove is formed in a core of the panel; a <u>locking element formed in one piece with the panel at the first edge and a locking groove at the opposite second edge, the locking</u>	said panels being provided with a first <u>locking element (8) at one first edge formed in once piece with the panel and a locking groove (14) at an opposite second edge, the locking groove</u>

Claims in the '656 U.S. Application on or About July 6, 2009	Substantially Similar Claims in the '664 European Application on or About July 6, 2009
<p>groove being open towards a rear side of <u>the panel</u>;</p>	<p>being open towards a rear side or front side of <u>the panel</u> characterized in that each panel being provided with a second locking element (15), formed of a <u>separate material</u> and connected to the locking groove (14), said second locking element (15) being positioned behind the tongue (10), or partly in the part of the tongue (10) being outside a vertical plane (VP) of the joint edge,</p>
<p>the locking element and the locking groove form a horizontal <u>mechanical connection</u>, the locking element having a substantially vertical locking surface that is adapted to directly contact a substantially vertical locking surface of the locking groove for <u>locking the panels to each other horizontally parallel to the principal plane and at right angles to the joined first and second edges</u>;</p>	<p>the first and second locking element form a <u>mechanical connections locking the panels to each other horizontally (D2) parallel to the principal plane and at right angles to the joint edges</u>,</p>
<p>the flexible tongue being <u>resilient</u> and formed of a <u>separate material</u> than the core, and</p>	<p>the second locking element (15) is flexible and <u>resilient</u> such that <u>two panels, can be</u></p>

Claims in the '656 U.S. Application on or About July 6, 2009	Substantially Similar Claims in the '664 European Application on or About July 6, 2009
<p>cooperates with the tongue groove; wherein <u>two of the panels can be mechanically joined together by displacement of said two panels vertically towards each other, while at least a part of the flexible tongue is resiliently displaced horizontally until said adjacent edges of the two panels are brought into engagement with each other vertically and the tongue is then displaced towards its initial position against the tongue groove.</u></p>	<p><u>mechanically joined by displacement of said two panels horizontally towards each other, while at least a part of the second locking element at said second edge is resiliently displaced vertically, until said adjacent edges of the two panels are brought into engagement with each other horizontally and the second locking element at said second edge is displaced towards its initial position against the first locking element at the first edge.</u></p>
<p>7. The set of floor panels as claimed in claim 1, wherein the flexible tongue <u>is made of polymer material.</u></p>	<p>11. A flooring system as claimed in any one of the claims 1-10, characterised in that the second locking element (15) <u>is made of polymer material.</u></p>
<p>8. The set of floor panels as claimed in claim 1, wherein the flexible tongue is of a <u>moulded or extruded polymer material reinforced with glass fibre.</u></p>	<p>12. A flooring system as claimed in claim 11, characterized in that the second locking element (15) is made of a <u>moulded or extruded polymer material reinforced with glass fibre.</u></p>
<p>9. The set of floor panels as claimed in claim 7, wherein <u>the polymer material is a</u></p>	<p>13. A flooring system as claimed in any one of claims 11-12, characterised in that <u>the polymer</u></p>

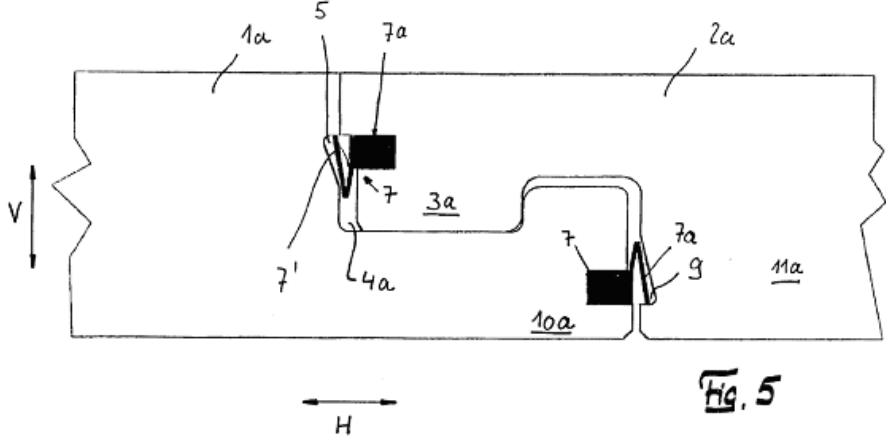
Claims in the '656 U.S. Application on or About July 6, 2009	Substantially Similar Claims in the '664 European Application on or About July 6, 2009
<u>thermoplastic material.</u>	<u>material is a thermoplastic material.</u>
10. The set of floor panels as claimed in claim 8, wherein <u>the polymer material is a thermoplastic material.</u>	13. A flooring system as claimed in any one of claims 11–12, characterised in that <u>the polymer material is a thermoplastic material.</u>

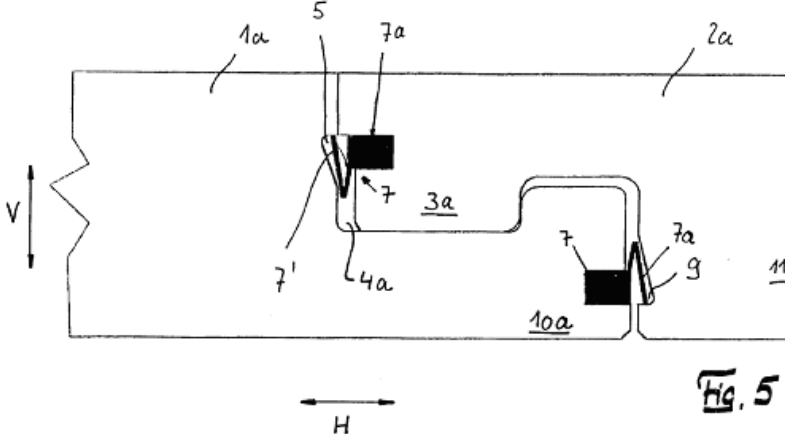
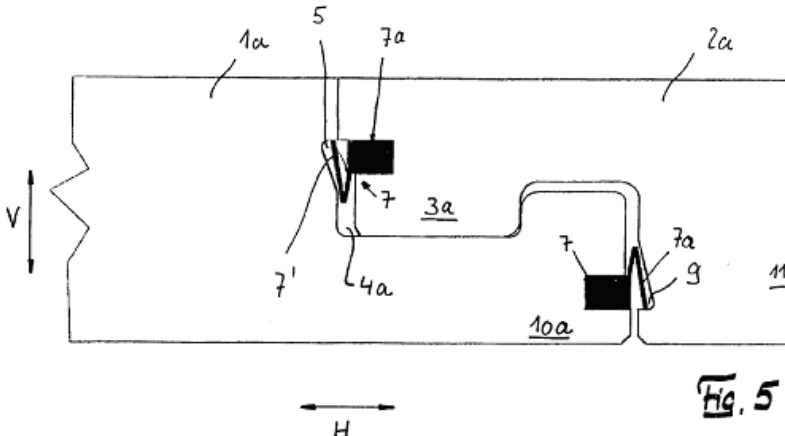
135. EP '125 is material to the '884 patent because it was cited by the European Patent Office in rejecting claim 1 of the '664 European application.

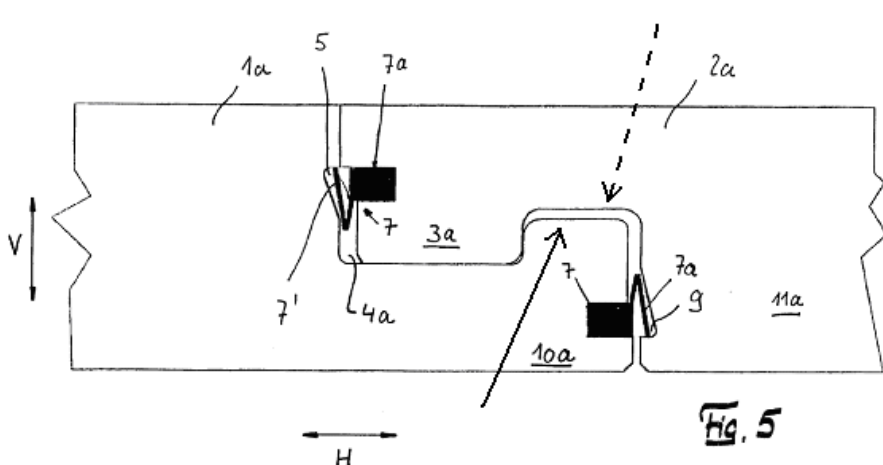
136. EP '125 is material to the '884 patent because under 37 C.F.R. § 1.56 it establishes a prima facie case of unpatentability and/or a reasonable examiner would have considered it important in determining the patentability of the '884 patent's claims.

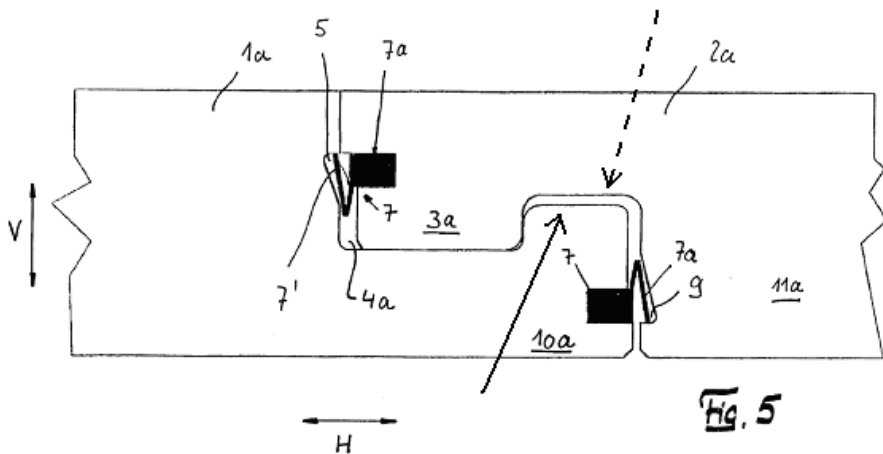
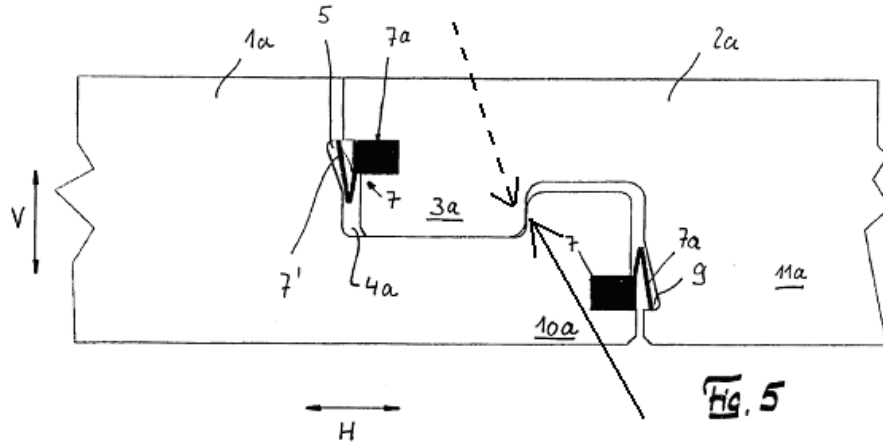
137. The chart below compares the claims of the '884 patent to the disclosures found in EP '125, and demonstrates a prima facie case of unpatentability and how a reasonable examiner would have evaluated the claims in the '656 U.S. application (the application that led to the '884 patent) had the Examiner been presented with EP '125.

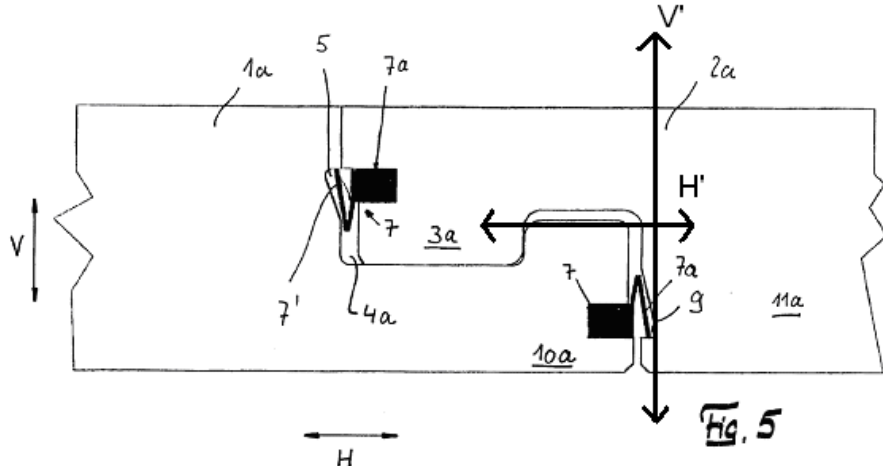
Claims in the '884 Patent	Disclosure in EP '125
1. A set of floor panels which are mechanically connectable to each other along one pair of adjacent edges, each of said floor panels	EP '125 discloses a device for locking floor panels. (<i>See</i> Ex. F [0001].) The floor panels contain a groove on at least one edge and a tongue (corresponding to the groove) on the opposite edge. (<i>See id.</i>) The tongues and grooves also contain recesses. The use of the tongues, grooves, and recesses permit the panels to be connected along their edges. (<i>See id.</i>) As illustrated by figure 5 of EP '125 below, the

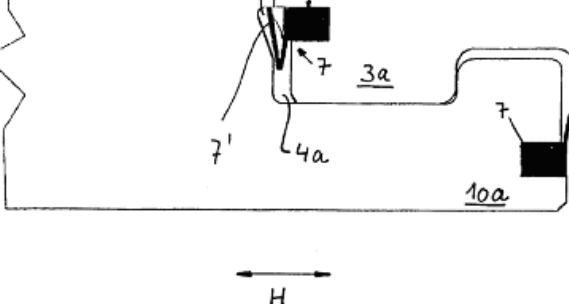
Claims in the '884 Patent	Disclosure in EP '125
comprising:	<p>floor panels (1a and 2a) are mechanically connectable to each other along a pair of adjacent edges.</p>  <p>(Id. fig. 5.)</p>
<p>a flexible tongue on a first edge of the panel;</p> <p>a tongue groove on a second opposite edge of the panel for receiving the flexible tongue of an adjacent panel for mechanically locking together said adjacent edges at right</p>	<p>As illustrated by figure 5 of EP '125 below, EP '125 discloses a flexible tongue (7a) on a first edge of the panel (1a); a tongue groove (9) on a second opposite edge of the panel (2a) for receiving the flexible tongue (7a) of an adjacent panel (1a) for mechanically locking together the adjacent edges at right angles to a principal plane of the panels thereby forming a vertical mechanical connection between the panels. (See <i>id.</i> [0012].)</p>

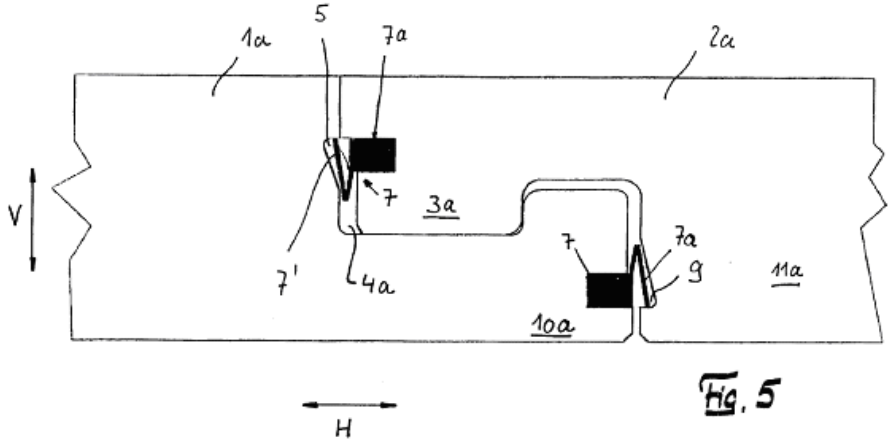
Claims in the '884 Patent	Disclosure in EP '125
<p>angles to a principal plane of the panels thereby forming a vertical mechanical connection between the panels;</p>	 <p>(Id. fig. 5.)</p>
<p>the tongue groove is formed in a core of the panel;</p>	<p>EP '125 discloses tongue grooves formed in the core of the panel. Specifically, EP '125 teaches milling the core of a wood panel to form tongue grooves or recesses, including tongue grooves or recesses 5 and 9. (<i>Id.</i> [0012], [0014].) Figure 5 of EP '125 below illustrates tongue grooves (5 and 9) formed in a core of the panel.</p>  <p>(Id. fig. 5.)</p>

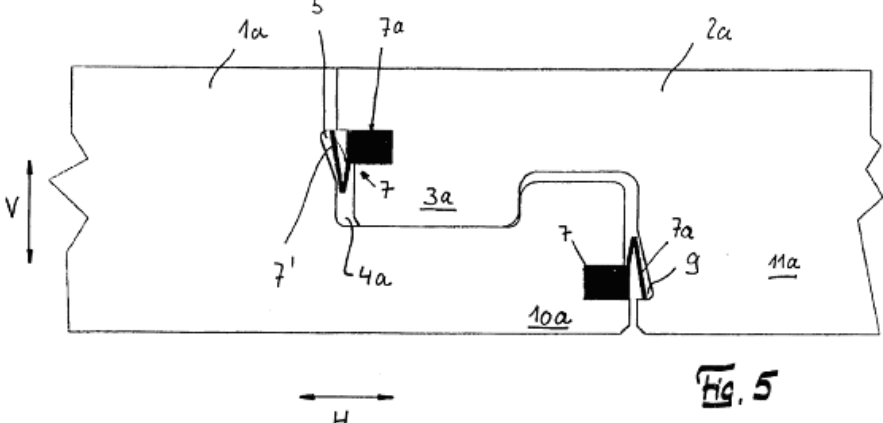
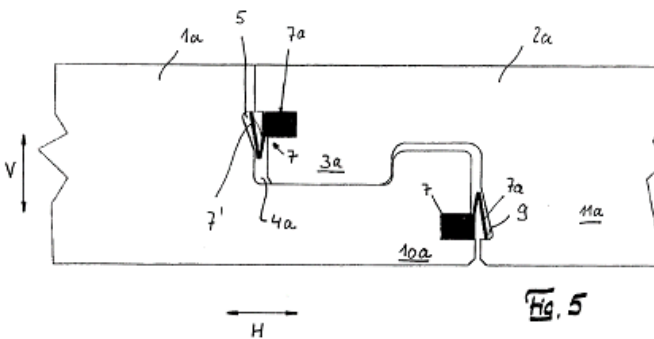
Claims in the '884 Patent	Disclosure in EP '125
<p>a locking element formed in one piece with the panel at the first edge and a locking groove at the opposite second edge, the locking groove being open towards a rear side of the panel that faces a subfloor;</p>	<p>As illustrated by figure 5 of EP '125 below, EP '125 discloses a locking element formed in one piece with the panel at the first edge (denoted by the inserted arrow) and a locking groove at the opposite second edge, the locking groove being open towards a rear side of the panel that faces the subfloor (denoted by the inserted dashed arrow).</p>  <p>(Id. fig. 5.)</p>
<p>the locking element and the locking groove form a horizontal mechanical connection,</p>	<p>EP '125 states that the locking element at the first edge (denoted by the inserted arrow) and the locking groove at the opposite second edge (denoted by the inserted dashed arrow) of figure 5 (below) form a horizontal mechanical connection. (<i>See id.</i> [0012]) (“[T]he panels 1a, 2a are not joined together by pushing horizontally, but rather by positioning vertically. In the case of this type of profile the panels 1a, 2a are locked in the horizontal direction H by means of the tongue and groove joint.”).</p>

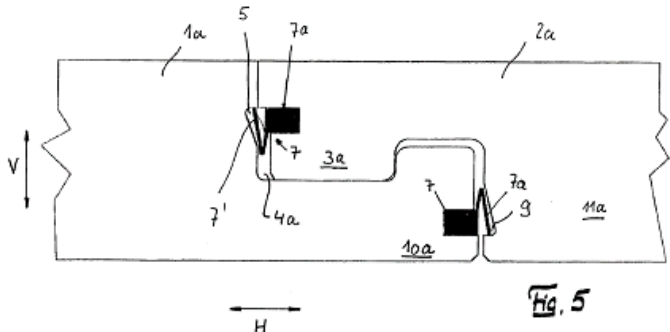
Claims in the '884 Patent	Disclosure in EP '125
	 <p>(Id. fig 5.)</p>
<p>the locking element having a substantially vertical locking surface that is adapted to directly contact a substantially vertical locking surface of the locking groove for locking the panels to each other horizontally parallel to the principal plane and at right</p>	<p>As illustrated in figure 5 of EP '125 below, the locking element at the first edge has a substantially vertical locking surface (denoted by the inserted arrow) that is adapted to directly contact a substantially vertical locking surface of the locking groove (denoted by the inserted dashed arrow).</p>  <p>(Id. fig 5.)</p>

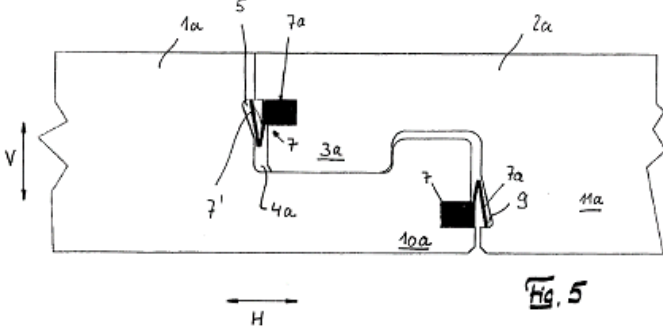
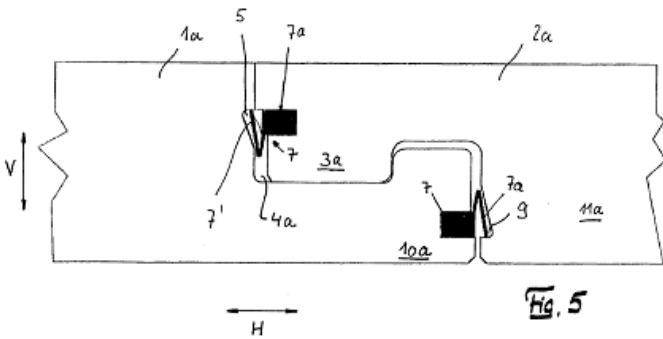
Claims in the '884 Patent	Disclosure in EP '125
<p>angles to the joined first and second edges;</p>	<p>In addition, the horizontal mechanical connection (denoted by the inserted double arrow H') is parallel to the principal plane (denoted by the double arrow H) and at a right angle to the joined first and second edges (denoted by the inserted double arrow V').</p>  <p>(Id. fig 5.)</p>
<p>the flexible tongue being resilient and formed of a separate material than the core, and cooperates with the tongue groove;</p>	<p>EP '125 discloses a flexible tongue (7a) on a first edge that is formed of a separate material other than the wood-based core, i.e., formed of plastic. (<i>See id.</i> [0001], [0008].) The flexible tongue (7a) on the first edge cooperates with the tongue groove (9) on the second edge as shown in figure 5 of EP '125 below.</p>

Claims in the '884 Patent	Disclosure in EP '125
	 <p>(Id. fig 5.)</p>
<p>wherein two of the panels can be mechanically joined together by displacement of said two panels vertically towards each other, while at least a part of the flexible tongue is resiliently displaced horizontally until said adjacent edges of the two panels are brought</p>	<p>EP '125 teaches mechanically joining the panels together through vertical displacement of the panels towards one another. (<i>See id.</i> [0012].) EP '125 also discloses a flexible tongue that: (1) deflects and/or compresses during engagement of the panels; and (2) springs back towards its initial position once the panels have been joined together. (<i>See id.</i> [0005], [0012].)</p>

Claims in the '884 Patent	Disclosure in EP '125
<p>into engagement with each other vertically and the tongue is then displaced towards its initial position against the tongue groove,</p>	
<p>and wherein the flexible tongue has an inner part mounted in a sideward open groove in the first edge and a protruding part,</p>	<p>As illustrated by figure 5 of EP '125 below, the tongue of the first edge has both an inner part (7) mounted in a sideward open groove and a protruding part (7a).</p>  <p>(Id. fig 5.)</p>
<p>the inner part is fixed in the sideward open groove and</p>	<p>As illustrated in figure 5 of EP '125 below, the inner part (7) of the tongue is fixed in and fills the volume of the sideward-open groove.</p>

Claims in the '884 Patent	Disclosure in EP '125
substantially fills the volume of the sideward open groove.	 <p>(Id. fig 5.)</p>
2. The set of floor panels as claimed in claim 1, wherein the part of the tongue which is resiliently displaced is the protruding part.	<p>EP '125 states that the protruding flexible portion of the tongue “springs back into the horizontal direction H” when the tongue dips into the groove, i.e. the part of the tongue that is resiliently displaced is the protruding part. (Id. [0012]-[0013].) Figure 5 of EP '125 illustrates how the protruding part of the tongue located on the first panel (7a) is resiliently displaced during engagement of the panels.</p>  <p>(Id. fig 5.)</p>
3. The set of floor	EP '125 teaches the use of upside-down V-shaped (“Λ”) flexible

Claims in the '884 Patent	Disclosure in EP '125
<p>panels as claimed in claim 2, wherein the protruding part is bendable around a center point located at an upper part of the protruding part.</p>	<p>tongues. (<i>Id.</i> [0006].) As illustrated in figure 5 of EP '125 below, the protruding part of the Λ-shaped-flexible tongue bends around a center point located at the upper part of the protruding part during the mechanical-connection process.</p>  <p>(<i>Id.</i> fig 5.)</p>
<p>4. The set of floor panels as claimed in claim 2, wherein the protruding part comprises a first locking surface at a lower point of the protruding part and the tongue groove in the second edge comprises</p>	<p>As illustrated by figure 5 of EP '125 below, the protruding part of the flexible tongue on the first edge (7a) contains a first locking surface at the lowest point of the protruding part. In addition, the tongue groove (9) on the second edge contains a second locking surface at its lower outer part such that the first and second locking surfaces vertically lock the panels together. (<i>See id.</i> [0013].)</p>

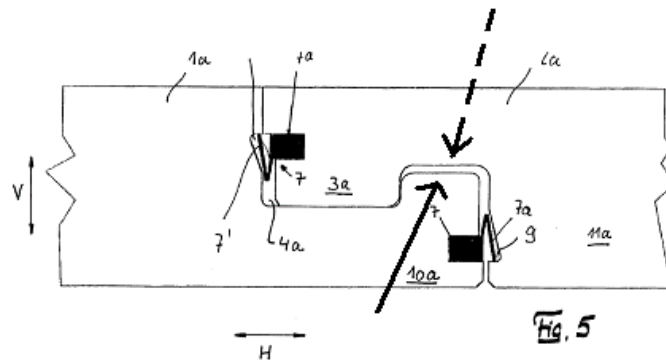
Claims in the '884 Patent	Disclosure in EP '125
<p>a second locking surface at its lower outer part and the first and the second locking surfaces are configured to cooperate to obtain the vertical locking.</p>	 <p>(Id. fig 5.)</p>
<p>5. The set of floor panels as claimed in claim 2, wherein the protruding part has a sliding surface which extends downwards.</p>	 <p>(Id. fig 5.)</p>
<p>8. The set of floor panels as claimed in claim 1, wherein the flexible tongue is made of polymer material.</p>	<p>EP '125 teaches that the flexible tongue may be made of injection-molded plastic. (<i>See id.</i> [0008].)</p>

Claims in the '884 Patent	Disclosure in EP '125
9. The set of floor panels as claimed in claim 8, wherein the polymer material is a thermoplastic material.	EP '125 teaches that the flexible tongue may be made of injection-molded plastic. (<i>See id.</i> [0008].) Injection molding is a process used to make thermoplastic materials.

138. EP '125 discloses information that is not cumulative to the information presented by Välinge, Pervan, Travis D. Boone, and/or David R. Kemeny to the Examiner during the prosecution of the '656 U.S. application and it is material within the meaning of 37 C.F.R. § 1.56 because it refutes a position taken by the applicants during prosecution of the '656 U.S. Application.

139. For example, Välinge, Pervan, Travis D. Boone, and/or David R. Kemeny argued to the Examiner that prior-art references U.S. Patent Nos. 1,809,393 (Rockwell), 2,026,511 (Storm), 2,740,167 (Rowley), 2,865,058 (Andersson), 3,579,947 (Tibbals), 5,618,602 (Nelson), 5,899,038 (Stoppiana), 6,385,936 (Schneider), 6,505,452 (Hannig (I)), 6,601,359 (Olofsson), 6,647,689 (Pletzer), 6,647,690 (Martensson (I)), 6,854,235 (Martensson (II)), U.S. Application No. 2003/0180091 (Stridsman), U.S. Application No. 2004/0211143 (Hannig (II)), U.S. Application No. 2007/0028547 (Grafenauer), WO 2003/083234 (Pervan), WO 2003/087497 (Moebus), WO 2004/020764 (Windmoller), and EP 0 974 713 (Thiers) did not disclose a locking element formed in one piece with the panel at the first edge and a locking groove at the opposite second edge facing the subfloor. (*See, e.g.*, July 9, 2009 Accelerated Examination Support Document at 5-55.)

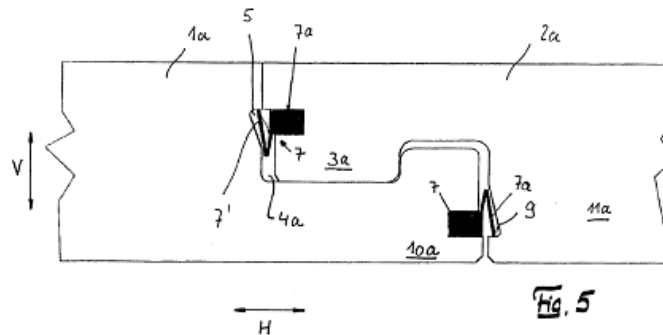
140. Figure 5 of EP '125 (below) discloses a locking element formed in one piece with the panel at the first edge (denoted by the inserted arrow) and a locking groove at the opposite second edge facing the subfloor (denoted by the inserted dashed arrow).



141. In addition, Valinge, Pervan, Travis D. Boone, and/or David R. Kemeny argued to the Examiner that prior-art references U.S. Patent Nos. 1,809,393 (Rockwell), 2,026,511 (Storm), 2,740,167 (Rowley), 2,865,058 (Andersson), 3,579,947 (Tibbals), 5,618,602 (Nelson), 5,899,038 (Stoppiana), 6,385,936 (Schneider), 6,505,452 (Hannig (I)), 6,601,359 (Olofsson), 6,647,689 (Pletzer), 6,647,690 (Martensson (I)), 6,854,235 (Martensson (II)), U.S. Application No. 2003/0180091 (Stridsman), U.S. Application No. 2004/0211143 (Hannig (II)), U.S. Application No. 2007/0028547 (Grafenauer), WO 2003/083234 (Pervan), WO 2003/087497 (Moebus), WO 2004/020764 (Windmoller), and EP 0 974 713 (Thiers) did not disclose a flexible tongue having an inner part mounted in a sideward open groove in the first edge and a protruding part, wherein the inner part is fixed in the sideward open groove, and wherein the part of the tongue which is resiliently displaced is the protruding part. (*See, e.g.*, July 9, 2009 Accelerated Examination Support Document at 5-55.)

142. Figure 5 of EP '125 (below) discloses a flexible tongue with a protruding part (7a) and an inner part (7) mounted in a sideward open groove in the first edge. In addition, the inner

part (7) of the flexible tongue disclosed in figure 5 of EP '125 fills the volume of the sideward-open groove.

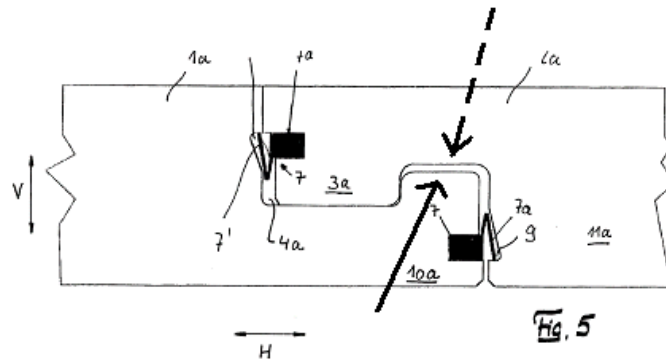


143. On October 10, 2009 the Examiner provided the following reasons for allowing the '656 U.S. application to issue:

The following is an examiner's statement of reasons for allowance: the prior art of record (in particular Martensson and Hanning [sic] references) fails to disclose the claimed invention in combination where the flexible tongue substantially fills the volume of the sideward open groove (per Martensson) or that the locking groove being open towards a rear side of the panel that faces a subfloor, with the other limitations (per Hanning) [sic].

(Oct. 10, 2009 Notice of Allowability at 3.)

144. EP '125 is not cumulative to the information considered by the Examiner because, as shown in figure 5 of EP '125 below, it discloses a locking element formed in one piece with the panel at the first edge (denoted by the inserted arrow) and a locking groove at the opposite second edge facing the subfloor (denoted by the inserted dashed arrow).



145. EP '125 is not cumulative to the information considered by the Examiner because it discloses a flexible tongue with a protruding part (7a) and an inner part (7) mounted in a sideward open groove in the first edge wherein the inner part (7) fills the volume of the sideward-open groove.

146. Upon information and belief, Välinge, Pervan, Malin Larsson, and/or Sten Jan-Åke Åkesson were aware of the prior-art references identified in the search report, including but not limited to EP '125 before December 22, 2009—the day the '884 patent issued, effectively closing prosecution.

147. Välinge, Pervan, Malin Larsson, and/or Sten Jan-Åke Åkesson had an affirmative duty to inform Travis D. Boone and David R. Kemeny about the existence of EP '125 in connection with the prosecution of the '884 patent, but on information and belief, failed to do so.

148. Upon information and belief, the failure of Välinge, Pervan, Malin Larsson, and/or Sten Jan-Åke Åkesson to identify EP '125 to Travis D. Boone and David R. Kemeny was made knowingly and with the intent to deceive the Patent Office.

149. Upon information and belief, the failure of Välinge, Pervan, Malin Larsson, and/or Sten Jan-Åke Åkesson to identify EP '125 to Travis D. Boone and David R. Kemeny constitutes inequitable conduct rendering the '884 patent unenforceable.

150. Upon information and belief, Välinge, Pervan, Bergelin, Travis D. Boone, and/or David R. Kemeny had an affirmative duty to identify EP '125 to the Patent Office in connection with the prosecution of the '884 patent, but failed to do so.

151. On October 7, 2009, a second Information Disclosure Statement was filed in connection with the prosecution of the '884 patent and it did not cite or mention EP '125.

152. On October 7, 2009, a third Information Disclosure Statement was filed in connection with the prosecution of the '884 patent and it did not cite or mention EP '125.

153. On October 7, 2009, a Supplemental Examination Support Document was filed in connection with the prosecution of the '884 patent and it did not cite or mention EP '125.

154. Upon information and belief, the failure of Välinge, Pervan, Bergelin, Travis D. Boone, and/or David R. Kemeny to identify EP '125 was made knowingly and with the intent to deceive the Patent Office.

155. Upon information and belief, the failure of Välinge, Pervan, Bergelin, Travis D. Boone, and/or David R. Kemeny to identify EP '125 to the Patent Office constitutes inequitable conduct rendering the '884 patent unenforceable.

156. An actual case or controversy has arisen between Plaintiffs and Välinge regarding the enforceability of the '884 patent.

157. A declaration of rights is both necessary and appropriate to establish that the '884 patent is unenforceable due to Välinge's, Pervan's, Bergelin's, Travis D. Boone's, David R. Kemeny's, Malin Larsson's, and/or Sten Jan-Åke Åkesson's inequitable conduct.

**COUNT VIII: DECLARATORY JUDGMENT
OF NONINFRINGEMENT OF THE '709 PATENT**

158. Plaintiffs reallege and incorporate by reference each paragraph above.

159. Välinge has asserted the '709 patent against Akzenta Paneele + Profile GmbH and W. Classen GmbH & Co. KG. Välinge maintains—and Plaintiffs deny—that the '709 patent covers Plaintiffs' Megaloc products.

160. Plaintiffs' Megaloc products do not infringe any valid claim of the '709 patent.

161. Thus, Plaintiffs have not infringed and will not infringe the '709 patent by making, using, selling, offering for sale, marketing, or importing any of their Megaloc products.

162. Plaintiffs and Välinge have adverse legal interests, and there is a substantial controversy between Plaintiffs and Välinge of sufficient immediacy and reality to warrant the issuance of a declaratory judgment regarding the noninfringement of the '709 patent.

163. Plaintiffs are entitled to a judicial declaration that any making, use, sale, offer for sale, marketing, or importation of their Megaloc products do not infringe the '709 patent.

**COUNT IX: DECLARATORY JUDGMENT
OF INVALIDITY OF THE '709 PATENT**

164. Plaintiffs reallege and incorporate by reference each paragraph above.

165. The '709 patent and each of its claims is invalid under 35 U.S.C. §§ 101 *et seq.* 101, 102, 103, 112, and/or 116.

166. Välinge maintains—and Plaintiffs deny—that the '709 patent is valid.

167. An actual case or controversy has arisen between Plaintiffs and Välinge regarding the validity of the '709 patent.

168. A declaration of rights is both necessary and appropriate to establish that the '709

patent is invalid under 35 U.S.C. §§ 101 *et seq.* including §§ 101, 102, 103, 112, and/or 116.

COUNT X: FALSE ADVERTISING UNDER THE LANHAM ACT

169. Plaintiffs reallege and incorporate by reference each paragraph above.

170. Välinge has published false or misleading representations regarding Plaintiffs' Megaloc product in a commercial advertisement.

171. Upon information and belief, Pervan has published false or misleading representations regarding Plaintiffs' Megaloc product in a commercial advertisement.

172. Specifically, Välinge and/or Pervan published a news article stating, among other things, that: "Välinge has a patent that specifically protect[s] a Megaloc version"; "Välinge has however recently obtained a patent in US (US 7,634,88[4]) that specifically protects a locking system with a snap tab on the fold panel similar to a Megaloc system"; "None of the Välinge fold down systems infringes Classen patents"; and "Classen has not even been able to get a patent that protects their Megaloc."

173. Välinge and Pervan derive an unfair competitive advantage by giving their laminate-flooring locking system a degree of success, prominence, and credibility that it does not have. The statements in the Välinge news article have deceived or have the capacity to deceive a substantial segment of customers of laminate-flooring products.

174. Välinge's and Pervan's material deception has influenced and will continue to influence purchasing decisions of the laminate-flooring industry as well as consumers of laminate-flooring products.

175. Välinge has caused its false or misleading representations to enter interstate commerce, including the State of Texas and this district.

176. Upon information and belief, Pervan has caused his false or misleading representations to enter interstate commerce, including the State of Texas and this district.

177. Välinge's false or misleading representations violate the Lanham Act, 15 U.S.C. § 1125(a).

178. Pervan's false or misleading representations violate the Lanham Act, 15 U.S.C. § 1125(a).

179. Välinge intentionally and willfully made these false or misleading representations.

180. Upon information and belief, Pervan intentionally and willfully made these false or misleading representations.

181. As a direct result of Välinge's and/or Pervan's actions, Plaintiffs have suffered and will continue to suffer great damage to their business, goodwill, and/or profits.

182. Plaintiffs have no adequate remedy at law. Unless the Court permanently enjoins Välinge and Pervan from making these false or misleading representations, Plaintiffs will continue to suffer irreparable harm.

COUNT XI: BUSINESS DISPARAGEMENT

183. Plaintiffs reallege and incorporate by reference each paragraph above.

184. Välinge and/or Pervan published a news article that stated, among other things, that "None of the Välinge fold down systems infringes Classen patents", and "Classen has not even been able to get a patent that protects their Megaloc."

185. Välinge's news article constitutes a false and defamatory statement of fact about Plaintiffs.

186. Pervan's news article constitutes a false and defamatory statement of fact about Plaintiffs.

187. Vålinge published its news article with malice and without privilege.

188. Pervan published his news article with malice and without privilege.

189. Vålinge's and/or Pervan's news article has resulted in special damages and injury to Plaintiffs, including but not limited to, inducing third parties not to deal with Plaintiffs resulting in direct pecuniary losses to Plaintiffs.

COUNT XII: TORTIOUS INTERFERENCE WITH BUSINESS RELATIONS

190. Plaintiffs reallege and incorporate by reference each paragraph above.

191. Vålinge has committed tortious acts that have prevented business relationships between Plaintiffs and third parties.

192. Pervan has committed tortious acts that have prevented business relationships between Plaintiffs and third parties.

193. Vålinge committed these acts with a conscious desire to prevent the relationships from occurring or knew that the interference was certain or substantially certain to occur as a result of its conduct.

194. Pervan committed these acts with a conscious desire to prevent the relationships from occurring or knew that the interference was certain or substantially certain to occur as a result of his conduct.

195. Plaintiffs have incurred actual harm or damages as a direct result of Vålinge's and/or Pervan's tortious interference.

COUNT XIII: DEFAMATION

196. Plaintiffs reallege and incorporate by reference each paragraph above.

197. Välinge and/or Pervan have published a news article stating, among other things, that “None of the Välinge fold down systems infringes Classen patents”, and “Classen has not even been able to get a patent that protects their Megaloc.”

198. Välinge has published defamatory statements about Plaintiffs.

199. Pervan has published defamatory statements about Plaintiffs.

200. Välinge acted with negligence regarding the truth of the statements about Plaintiffs.

201. Pervan acted with negligence regarding the truth of the statements about Plaintiffs.

202. Välinge’s and Pervan’s statements have damaged Plaintiffs in an amount to be proven at trial.

COUNT XIV: UNFAIR COMPETITION

203. Plaintiffs reallege and incorporate by reference each paragraph above.

204. Unfair competition under Texas state law encompasses all statutory and nonstatutory causes of action arising out of business conduct that is contrary to honest practice in industrial or commercial matters.

205. Välinge has conducted illegal acts that interfered with Plaintiffs’ ability to conduct its business in the United States, the State of Texas, and the Eastern District of Texas.

206. Pervan has conducted illegal acts that interfered with Plaintiffs’ ability to conduct its business in the United States, the State of Texas, and the Eastern District of Texas.

207. Välinge's and Pervan's acts have damaged Plaintiffs in an amount to be proven at trial.

REQUEST FOR JURY TRIAL

208. Plaintiffs request a trial by jury under Federal Rule of Civil Procedure 39.

PRAYER FOR RELIEF

Plaintiffs pray for judgment in its favor and against Defendants as follows:

- (a) That Defendants have infringed, directly or indirectly, one or more claims of the '578 patent or the '452 patent;
- (b) That Defendants infringement be found willful, that this case be deemed exceptional under 35 U.S.C. § 285, that Plaintiffs' damages be trebled, and that Plaintiffs be awarded their attorney's fees and costs;
- (c) That Plaintiffs be awarded damages adequate to compensate Plaintiffs for the Defendants' infringement of the '578 patent and/or the '452 patent, including lost profits, but in no event less than a reasonable royalty;
- (d) That this Court enjoin the Defendants, their officers, directors, principals, agents, servants, employees, successors, assigns, affiliates, and all that are in active concert or participation with them, or any of them, from further infringement of the '578 patent and the '452 patent;
- (e) That the claims of the '884 patent and the '709 be declared invalid and/or not infringed;
- (f) That the claims of the '884 patent be declared unenforceable;
- (g) That Välinge be found to have violated the Lanham Act by making false and/or

misleading representations in an attempt to illegally promote its business concerning: (1) Plaintiffs' laminate-flooring products and their respective intellectual property rights; and (2) Välinge's (or its licensees') laminate-flooring products and their respective intellectual property rights;

- (h) That Pervan be found to have violated the Lanham Act by making false and/or misleading representations in an attempt to illegally promote his business concerning: (1) Plaintiffs' laminate-flooring products and their respective intellectual property rights; and (2) Pervan's (or his licensees') laminate-flooring products and their respective intellectual property rights;
- (i) That this Court enjoin Välinge, its officers (including Pervan), directors, principals, agents, servants, employees, successors, assigns, affiliates, and all that are in active concert or participation with them from making further false or misleading representations in any advertising or promotional materials, including any website or press/news release concerning: (1) Plaintiffs' laminate-flooring products and their corresponding intellectual property rights; and (2) Välinge's or Pervan's (or their respective licensees') laminate-flooring products and their respective intellectual property rights;
- (j) That Välinge and/or Pervan be ordered to compensate Plaintiffs for the damages caused by their false and/or misleading representations;
- (k) That as a result of Välinge's and/or Pervan's willful and deliberate false and/or misleading statements, that Välinge and Pervan be ordered to pay any damages permitted under 15 U.S.C. § 1117, including but not limited to, Defendants'

profits, Plaintiffs' litigation costs, and/or treble damages;

- (l) That Välinge and/or Pervan be ordered to pay damages for business disparagement, tortious interference with prospective business relations, defamation, and unfair competition in an amount to be proven at trial;
- (m) That Plaintiffs be granted pre- and post-judgment interest on their damages;
- (n) That costs and expenses in this action be awarded to Plaintiffs; and
- (o) For such further and other relief as the Court may deem appropriate.

Dated: November 30, 2010

/s/ Richard A. Sayles

Richard A. Sayles (dsayles@swtriallaw.com)
Mark D. Strachan (mstrachan@swtriallaw.com)
SAYLES WERNER
1201 Elm Street, 44th Floor
Dallas, TX 75270
Telephone: (214) 939-8700
Facsimile: (214) 939-8787

Edgar H. Haug (ehaug@flhlaw.com)
David A. Zwally (dzwally@flhlaw.com)
FROMMER LAWRENCE & HAUG LLP
745 Fifth Avenue
New York, NY 10151
Telephone: (212) 588-0800
Facsimile: (212) 588-0500

Mark P. Walters (mwalters@flhlaw.com)
FROMMER LAWRENCE & HAUG LLP
1191 Second Avenue, 20th Floor
Seattle, WA 98101
Telephone: (206) 336-5690
Facsimile: (206) 336-5691

Sam V. Desai (sdesai@flhlaw.com)
FROMMER LAWRENCE & HAUG LLP
1667 K Street, Suite 500
Washington, DC 20006
Telephone: (202) 292-1530
Facsimile: (202) 292-1531

Attorneys for Plaintiffs
Akzenta Paneele + Profile GmbH,
W. Classen GmbH & Co. KG,
and Akzenta Vertriebs GmbH

CERTIFICATE OF SERVICE

I certify that counsel of record have been served with a copy of “the Court’s CM/ECF system according to Local Rule CV-5 on this 30th day of September, 2010.

/s/ Richard A. Sayles

Richard A. Sayles