

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 31

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte KATSUMI NAKAMURA

Appeal No. 2002-0647
Application No. 09/122,094

HEARD: March 20, 2002

Before BARRETT, GROSS, and LEVY, Administrative Patent Judges.
GROSS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1 and 2.

Appellant's invention relates to a semiconductor device having a trench. Claim 1 is illustrative of the claimed invention, and it reads as follows:

1. A semiconductor device comprising:
 - a semiconductor substrate having main surface;
 - a trench having an opening on said main surface and a bottom portion in said semiconductor substrate respectively;
 - an insulating film being provided on an inner wall of said trench and a portion of said main surface around said opening;
 - and

specification. Specifically, the examiner contends (Answer, page 3) that since Uenishi's dx is 0.2 μm , and Figure 1 shows the edge of the head of gate electrode 8 extending over a portion of element 15, and thus further than dx from the wall of the trench, the edge of the head is more than 0.2 μm from the inner wall of the trench, as recited in claim 1. Appellant, on the other hand, asserts (Brief, pages 6-9) that the relative dimensions in Uenishi's drawings are inconsistent with those disclosed, and that, consequently, the drawings are clearly not drawn to scale and cannot be relied upon. We have to agree with appellant.

The examiner argues (Answer, page 5) that "[t]he figures are part of the specification, and can be relied upon as part of the *explicit* teachings set forth." However, where the patentee does not disclose that the drawings are drawn to scale, the drawings are illustrative, not determinative. "Absent any written description in the specification of quantitative values, arguments based on measurement of a drawing are of little value. ***In re Chitayat***, 56 CCPA 1343, 408 F.2d 475, 161 USPQ 224 (1969)." ***In re Wright***, 569 F.2d 1124, 1127, 193 USPQ 332, 335 (CCPA 1977).

Nowhere does Uenishi suggest that the head portion of the gate electrode overlaps element 15. Notwithstanding the examiner's assertions at page 7 of the Answer, none of the horizontal dimensions shown in Figure 1, for example, have the

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disclosed relationships with each other. Therefore, there is no reason to believe that the horizontal length of the head portion is drawn to scale relative to the space dx. Without a definite overlap between the head of the gate electrode and element 15 in Uenishi, the examiner cannot establish the claimed relative dimensions. Thus, the examiner fails to present a *prima facie* case of obviousness, and we cannot sustain the rejection of the claims.

CONCLUSION

The decision of the examiner rejecting claims 1 and 2 under 35 U.S.C. § 103 is reversed.

REVERSED

LEE E. BARRETT)	
Administrative Patent Judge)	
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)	
)	
)	BOARD OF PATENT
ANITA PELLMAN GROSS)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
)	
)	
)	
STUART S. LEVY)	
Administrative Patent Judge)	

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OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C.
1940 DUKE STREET
ALEXANDRIA, VA 22314