

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. 12

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte PHILIP L. HOWER and LARRY WOFFORD

Appeal No. 2004-0619
Application No. 10/061,140

ON BRIEF

Before GARRIS, OWENS, and TIMM, Administrative Patent Judges.
GARRIS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on an appeal from the final rejection of claims 1-5, 9-11 and 14-17. The only other claims remaining in the application, which are claims 7, 8, 13, 19 and 20, stand objected to by the Examiner but otherwise allowable.

The subject matter on appeal relates to a method of manufacturing a metal-oxide-semiconductor transistor structure and to the transistor structure itself. This appealed subject matter is adequately illustrated by independent claim 1 which reads as follows:

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1. A method of manufacturing a metal-oxide-semiconductor transistor structure, comprising:

forming a plurality of dielectric isolation regions in a semiconductor substrate;

forming a first dielectric layer outwardly from the semiconductor substrate;

forming a polysilicon layer outwardly from the first dielectric layer;

etching a portion of the polysilicon layer to form a gate;

forming at least one notch in a first side of the gate;

etching a portion of the first dielectric layer to expose the semiconductor substrate;

forming an n⁺ source region in the semiconductor substrate adjacent the first side of the gate;

forming an n⁺ drain region in the semiconductor substrate adjacent a second side of the gate; and

forming at least one p⁺ substrate contact region proximate the notch and adjacent the n⁺ source region.

The references set forth below are relied upon by the Examiner in the § 102 and § 103 rejections before us:

Shirai	5,422,505	June 6, 1995
Burr	6,110,783	Aug. 29, 2000

Claims 1-3 and 14-16 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Burr; claims 4 and 17 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Burr; and claims 5

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and 9-11 stand rejected under § 103 as being unpatentable over Burr in view of Shirai.¹

We refer to the brief and to the answer for a complete exposition of the contrary viewpoints expressed by the Appellants and by the Examiner concerning the above noted rejections.

OPINION

We will sustain each of these rejections for the reasons expressed in the answer and below.

It is well settled that, during examination proceedings, claims are given their broadest reasonable interpretation consistent with the specification. In re Hyatt, 211 F.3d 1367, 1372, 54 USPQ2d 1664, 1667 (Fed. Cir. 2000).

With this legal principle in mind, the Examiner has found that the method and structure defined by independent claims 1 and 14 respectively, including the notch feature defined by these claims, are indistinguishable from the method and structure, including

¹On page 2 of the brief, the Appellants state that "[c]laims 1-5, 7-11, 13-17, 19 and 20 stand or fall together." In light of this statement, we will focus on representative independent claim 1 in our disposition of this appeal. For completeness, however, we also will consider and respond to the Appellants' comments regarding the § 103 rejections of other appealed claims. See In re McDaniel, 293 F.3d 1379, 1383, 63 USPQ2d 1462, 1464-66 (Fed. Cir. 2002).

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the notch feature thereof, disclosed by Burr. Citing Comark Communications v. Harris Corp., 156 F.3d 1182, 1187, 48 USPQ2d 1001, 1005 (Fed. Cir. 1998) the Appellants argue that "[t]he term notch is an amorphous term of the type described by the Court in Comark" (brief, page 3). The Appellants then argue that "[f]ollowing the Court in Comark it is clear that for a term as amorphous as the term notch, reading the claims in light of the specification requires looking to the specification to ascertain the meaning of the term" and that "[a]s described above the notch described in the specification and shown in Figures 1A, 3B and 5A is neither described not [sic, nor] shown in the Burr patent and claims 1, 9, and 14 are allowable over the cited patent" (brief, page 4). We perceive no persuasive merit in the Appellants' argument.

Contrary to the Appellants' contention, the term notch is in no way ambiguous or amorphous. The record before us including the Burr patent and the Appellants' own disclosure reflects that "notch" has an art-recognized meaning which is consistent with its dictionary definition. Moreover, the aforementioned contention is not supported, as the Appellants seem to believe, by the fact that the subject specification and the Burr patent both use this term in describing notches which differ from one another. Rather, this

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fact merely reflects that different types of notches exist (e.g., just as different types of other art recognized features, such as transistors, exist).

In effect, it is the Appellants' fundamental argument that limitations from their specification should be read into the appealed claims. Ironically, this same argument was advanced and rejected in Comark Communications v. Harris Corp., 156 F.3d at 1187, 48 USPQ2d at 1005. In that case, as here, the term in question had a clear and well-defined meaning, and the specification did not at all aid in an interpretation of the term. Rather, the specification in that case, like the subject specification, merely disclosed details regarding the feature under consideration which the court refused to read into the claims before it. Analogously, we likewise will not read into the claims before us limitations which appear only in the Appellants' specification.

On page 4 of the brief, the Appellants also advance the following argument:

In addition where the specification of a patent describes a single embodiment the corresponding claims are limited to this embodiment, Winner International Royalty Corp.[v. Wang], 202 F.3d 1340, 53 USPQ 2d 1580 (Fed. Cir. 2000). In the specification on appeal the only embodiment of the notch

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described is that of a notch in a side of the gate structure. Following the Courts holding in Winner, claims 1, 9, and 14 are therefore limited as such and the examiner is incorrect in trying to broaden the meaning of the term notch to include that described in the Burr patent.

However, there is nothing in the Winner decision which requires that claims in an application be limited to a sole disclosed embodiment. Instead, as previously explained, during examination proceedings, claims are to be given their broadest reasonable interpretation consistent with the specification. In re Hyatt, 211 F.3d at 1372, 54 USPQ2d at 1667. Furthermore, contrary to the implication of the Appellants' aforequoted argument, the notch of Burr, like the Appellants' notch, is "in a side of the gate structure" (brief, page 4), namely, the left side as viewing Figure 1A of the patent.

For the reasons expressed above and in the answer, it is our determination that the Examiner has established a prima facie case of anticipation which the Appellants have failed to successfully rebut. We shall sustain, therefore, the Examiner's § 102 rejection of claims 1-3 and 14-16 as being anticipated by Burr. See In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992).

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Regarding the § 103 rejection of claims 4 and 17, the Appellants state that "[a]s described above the Burr patent does not contain a description of a notch according to the claims of the instant invention" and that "[a]s such no amount of routine experimentation would result in the limitations described in claims 4 and 17" (brief, page 4). These statements are not persuasive of nonobviousness since they are premised on the Appellants' incorrect belief that the notch feature of the independent claims on appeal distinguishes from the notch feature of Burr. Similarly, there is no persuasive merit in the Appellants' remark concerning the § 103 rejection of claims 5 and 9-11, namely, that "[t]he description of a notch as required by all the claims of the instant invention is neither taught nor described in the Burr or Shirai patents" (brief, page 5).

Under these circumstances, we also will sustain the Examiner's § 103 rejections of claims 4 and 17 as being unpatentable over Burr and of claims 5 and 9-11 as being unpatentable over Burr in view of Shirai.

The decision of the Examiner is affirmed.

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

AFFIRMED

BRADLEY R. GARRIS)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
TERRY J. OWENS)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
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