

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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. 14

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte STEVEN A. CORDES, PETER A. GRUBER, JAMES L. SPEIDELL,
and THOMAS G. FERENCE

Appeal No. 2004-0704
Application No. 10/131,803

ON BRIEF

Before WARREN, OWENS, and DELMENDO, Administrative Patent Judges.

DELMENDO, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on an appeal under 35 U.S.C. § 134 (2003) from the examiner's final rejection of claims 23 through 26 (final Office action mailed Mar. 26, 2003, paper 6), which are all the claims pending in the above-identified application.

The subject matter on appeal relates to an electronic substrate. Further details of this appealed subject matter are recited in representative claim 23 reproduced below:

23. An electronic substrate comprising:
a substrate formed of a substantially insulating material,
at least one surface groove in said substrate filled with a conductive metal, and
at least one aperture in said substrate filled with said conductive metal providing electrical communication to said at least one surface groove.

The examiner relies on the following prior art reference as evidence of unpatentability:

Kitamura et al. (Kitamura)	5,480,048	Jan. 2, 1996
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Claims 23 through 26 on appeal stand rejected under 35 U.S.C. § 102(b) as anticipated by Kitamura. (Examiner's answer mailed Sep. 23, 2003, paper 12, pages 3-4.)

We affirm.¹

Kitamura describes an insulation film 107 (corresponding to the appellants' recited "substrate formed of a substantially insulating material"), which is part of a multilayer wiring board. (Column 6, line 59 to column 7, line 43; Figures 1a-1h.) Kitamura further teaches a horizontal wiring conductor 101, which defines a filled surface groove on the insulation film 107, and a vertical via conductor 102, which defines a filled

¹ The appellants state: "The rejection of claims 23-26 are contested as a group." (Appeal brief filed Aug. 26, 2003, paper 11, p. 4.) Accordingly, we select claim 23 from the group of rejected claims and decide this appeal as to the examiner's ground of rejection on the basis of this claim alone. See 37 CFR § 1.192(c)(7) (1995) (effective Apr. 21, 1995).

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aperture in the insulation film 107 and is in electrical communication with the horizontal wiring conductor 101.

Given this disclosure in the prior art, we agree with the examiner that, prima facie, Kitamura discloses each and every limitation of the invention recited in appealed claim 23. In re Schreiber, 128 F.3d 1473, 1477, 44 USPQ2d 1429, 1431 (Fed. Cir. 1997).

While Kitamura's combination of the insulation film 107, horizontal wiring conductor 101, and vertical via conductor 102 is produced by a method that may be different from the appellants' disclosed method, the appellants fail to identify any evidence establishing that the claimed product and the prior art combination differ structurally. In this regard, when a product recited in a product-by-process claim reasonably appears to be the same as or obvious from a product of the prior art, the burden is on the applicants to show that the prior art product is in fact different from the claimed product, even though the products are made by different processes. In re Thorpe, 777 F.2d 695, 697, 227 USPQ 964, 966 (Fed. Cir. 1985).

The appellants argue (appeal brief, pages 5-6):

It is clear from both Figs. 1A-1E and the description by Kitamura that the horizontal wiring conductors 101 are first provided on a top surface of the substrate 100. There is no groove formed in the substrate, let alone a groove formed in the substrate

and is filled with a conductive metal such as that taught by the present invention.

The appellants then urge that "Kitamura [] does not teach at least one surface groove in a substrate" and that "[t]he base substrate 100 of Kitamura [] is clearly shown with a smooth top surface." (Id. at page 6.)

The appellants' position lacks merit. While Kitamura does not state that insulation film 107 is a "substrate," we note that the present specification places no limitation on the type of substantially insulating material that may be used to form the "substrate." Nor does the present specification limit the structure of the "substrate" in any way. Absent any special definition in the specification,² we construe the term "substrate" to encompass or read on Kitamura's insulation film 107.³

² See, e.g., In re Morris, 127 F.3d 1048, 1054, 44 USPQ2d 1023, 1027 (Fed. Cir. 1997).

³ The appellants contend that Kitamura's insulation film 107 "is not a substrate[] and cannot be interpreted as such in the common sense of semiconductor structures." (Appeal brief, p. 8.) The appellants, however, fail to point to any evidence in the record to substantiate this unsupported allegation. It has long been held that mere lawyer's arguments and conclusory statements, which are unsupported by factual evidence, are entitled to little probative value. In re Geisler, 116 F.3d 1465, 1470, 43 USPQ2d 1362, 1365 (Fed. Cir. 1997); In re De Blauwe, 736 F.2d 699, 705, 222 USPQ 191, 196 (Fed. Cir. 1984); In re Wood, 582 F.2d 638, 642, 199 USPQ 137, 140 (CCPA 1978); In re Lindner, 457 F.2d 506, 508-09, 173 USPQ 356, 358 (CCPA 1972).

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Because the appellants have not successfully rebutted the examiner's prima facie case of anticipation, we affirm the examiner's rejection under 35 U.S.C. § 102(b) of appealed claims 23 through 26 as anticipated by Kitamura.

The decision of the examiner is affirmed.

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

AFFIRMED

Charles F. Warren)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
Terry J. Owens)	
Administrative Patent Judge)	APPEALS AND
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