

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

UNITED STATES PATENT AND TRADEMARK OFFICE

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Ex parte SURENDRA SINGH

Appeal No. 2005-0366
Application No. 09/877,050

ON BRIEF

Before KRASS, BLANKENSHIP and NAPPI, Administrative Patent Judges.

KRASS, Administrative Patent Judge.

ON REQUEST FOR REHEARING

This is a request for rehearing, from the examiner, based on alleged errors in our decision of May 23, 2005.

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The examiner alleges that our reversal of the rejection of claims 18, 19, 21, 22, and 25 under 35 U.S.C. § 102 as anticipated by Blouke was incorrect as our decision was based on "a misinterpretation of the conductivity type of channel regions in Blouke..." (Request for Rehearing-page 1).

We have carefully reviewed our decision in view of the examiner's remarks and we agree with the examiner that we erroneously found that the conductivity type of Blouke's channel 16 is p+. Our decision was based on an erroneous understanding of the disclosure that the area being formed by implantation of P+ ions (column 6, lines 4-5) meant that the channel itself was of p+ conductivity. On reconsideration, and in view of the examiner's argument and the disclosure provided by Blouke's claim 1, we amend our decision to reflect our new finding that the channel region 16 in Blouke is of n-conductivity type.

We find such in view of the examiner's convincing argument that p+ ions are well known in the art as the usual n-conductivity type dopant in silicon and in view of appellant's apparent acquiescence in this position (pages 4 and 6 of the Reply to Examiner's Request for Rehearing, filed May 12, 2006). Moreover, claim 1 of Blouke does recite an "n-type buried channel..."

In view of this revelation, we find, with regard to instant claim 18, that Blouke discloses a substrate 10 of a first

conductivity type (p) and a channel 16 of a second conductivity type (n) formed in the substrate. Moreover, pinning layer 26 of Blouke appears to be equivalent to the claimed "first gate region," with this "first gate region" being of the first conductivity type (p) because it is formed by implantation of B+ ions (column 6, lines 56-57) and it is well known that such B+ ions are the usual p-conductivity type dopant in silicon. This "first gate region" covers a "first area." Note in Figure 14 of Blouke that the region 26 on the left side of the drawing covers the left-side region of the device. This first gate region 26 is formed in a first active gate channel 25 and channel 16 constitutes a first active gate channel 25 formed in a first portion (i.e., left-side) of the substrate 10. This left-side, or "first portion" of channel 16 is defined to be in the "first portion" (i.e., left-side) of the substrate 10. A "first contact" 28 in Blouke's Figure 14 is connected to the "first gate region" 26 and this contact covers "a fraction" of the first area (left-side of substrate 10).

To the right of the first gate region 26 and first active gate channel 25 in Figure 14 of Blouke, is a second gate region 26 and a second active gate channel 25. These are formed in a "second" portion (i.e., right-side) of the substrate 10, and the second active gate channel 25 is of the second (n) conductivity type because it is formed in channel 16 which is of the second conductivity type. Also, the second gate region is of the first conductivity type as it is formed by implantation of B+ ions, and the second gate region is formed in the second active gate channel 25. The second gate region covers a "second area" (i.e., the right side in Figure 14). There is also a "second contact" 28 connected to the second gate region and it covers a "fraction" of the "second area." Moreover, the second active gate channel (25 on the right-side of substrate 10) is "spaced by a first gap from the first active gate channel" (note the spacing in Figure 14 of Blouke's disclosure). Finally, gate 20 in Blouke is a "first gate electrode insulatively spaced from and disposed over the first gap, the first gate electrode being spaced from and overlaying an edge of the first gate region and an edge of the second gate region," as claimed.

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Thus, the examiner does appear to have established a prima facie case of anticipation of the subject matter of instant claim 18.

Appellant argues that we should refer to appellant's Figure 9, showing a clear dichotomy between active gate regions 25 and 35, rather than Figure 10, which the examiner appears to use in determining the meaning of the claimed terms. We are not persuaded of non-anticipation by this argument. An anticipation rejection is based on what the prior art shows vis a vis the instant claimed subject matter. Thus, it is the disclosure of Blouke, rather than instant Figures 9 and 10, which is the main focus of our analysis. Appellant attempts to show that a proper claim interpretation requires reference to instant Figure 9 to show the separate first and second active gate regions set forth in claim 18. Appellant cites Phillips v. AWH Corp., 415 F.3d 1303, 1323, 75 USPQ2d 1321, 1334 (Fed. Cir. 2005) (*en banc*) as support for his position. While Phillips does appear to stress that the specification, more than dictionary definitions, should be emphasized in claim interpretation, we do not find that case

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to require interpretation of the instant claims as covering only Figure 9, rather than also Figure 10, of the instant application. If the plain and ordinary meaning of the claim terms reads on the disclosure of Blouke, as we find it does, it matters not what particular embodiment of appellant's disclosure appellant intends the claims to read on. We compare the instant claim terms to what is described in the prior art. We do not compare drawings of the prior art with particular drawings in appellant's application for it is the claim language, not appellant's drawings, which defines the metes and bounds of the property right appellant seeks to protect.

Thus, since we find, for the reasons *supra*, that Blouke does, indeed, anticipate the subject matter of claim 18, we will sustain the examiner's rejection of this claim under 35 U.S.C. § 102.

We are also unpersuaded by appellant's argument that active gate channels 24 and 25 in Blouke are formed in channel 16 and not formed in substrate 10. We agree with the examiner that if an element A is formed in an element B and element B is formed in

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an element C, then it naturally follows that element A is also formed in element C. Thus, if channels 24 and 25 are formed in channel 16, and channel 16 is formed in substrate 10, then it follows that channels 24 and 25 are also formed in substrate 10, albeit they are also in channel 16.

We will sustain the rejection of claim 18, and of claims 19, 21, 22, and 25, dependent thereon (since these claims are not separately argued by appellant) under 35 U.S.C. § 102 and, alternatively, under 35 U.S.C. § 103.

Thus, we amend our decision of May 23, 2005 as follows:

We reverse the rejection of claims 5, 8, 9, 18, 20, 21, 23, and 24 under 35 U.S.C. § 102 as anticipated by Nishizawa. We reverse the rejection of claims 19, 22, and 25 under 35 U.S.C. § 103 as unpatentable over Nishizawa and Hynecek. We sustain the rejection of claims 18, 19, 21, 22, and 25 under 35 U.S.C. § 102 and, alternatively, under 35 U.S.C. § 103. Accordingly, the examiner's decision is affirmed-in-part.

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No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

Thus, we have reconsidered our decision in accordance with the examiner's Request for Rehearing, taking into consideration appellant's Reply to the Examiner's Request for Rehearing, and the examiner's request is granted, with appropriate changes made in our decision in accordance therewith.

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GRANTED

AFFIRMED - IN - PART

ERROL A. KRASS)
Administrative Patent Judge)
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) BOARD OF PATENT
HOWARD B. BLANKENSHIP)
Administrative Patent Judge) APPEALS AND
)
) INTERFERENCES
)
ROBERT NAPPI)
Administrative Patent Judge)

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MILLEN, WHITE, ZELANO & BRANIGAN, P.C.
2200 CLARENDON BLVD.
SUITE 1400
ARLINGTON, VA 22201