

The opinion in support of the decision being entered today was not written for publication in a law journal and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte LIHUA LI, WEN H. ZHU, TZU-FANG HUANG,
LI QUN XIA and ELLIE YIEH

Appeal No. 2005-2442
Application No. 10/121,284

ON BRIEF

Before KIMLIN, OWENS, and FRANKLIN, Administrative Patent Judges.

FRANKLIN, Administrative Patent Judge.

REQUEST FOR REHEARING¹

Appellants have submitted a Request for Rehearing² of our Decision mailed November 27, 2006 (hereinafter referred to as "Request").

On page 2 of the Request, appellants state that the Board's statement that the examiner's interpretation of an unclear sentence in a reference is a reasonable interpretation is not

¹ We note that the rule governing such a request is now located at 37 CFR § 41.52 (effective September 13, 2004; 69 Fed. Reg. 49960 (August 12, 2004); 1286 Off. Gaz. Pat. Office 21 (September 7, 2004)), and is referred to as a Request for Rehearing.

² Appellants refer to the filing as a Request for Reconsideration.

sufficient to show that the reference actually teaches or suggests the subject matter of the examiner's interpretation. Appellants also argue that the Board errs in relying on Example 4 of Grill for teaching use of trimethylsilane as evidence to support the examiner's position in this regard. We are not convinced of error for the following reasons.

The examiner provides a clear explanation on pages 11-12 of the Answer of why the sentence in Grill suggests to one of ordinary skill in the art the phrase "molecules of methylsilanes mixed with an oxidizing agent." We emphasize that the explanation provided by the examiner, alone (without reference to our comments on Example 4 of Grill), is sufficient to support the examiner's findings. We stated on page 4 of the Decision that the examiner stated that he did not fix any unclear statements within the reference, but rather deduced what the sentence suggests to one of ordinary skill in the art (Answer 11-12). We indicated that we agreed with this statement. The examiner used the correct standard in making the finding that a comma was inadvertently omitted at line 20 of column 3 between "(C₁₀H₃₀O₅Si₅)" and "molecules."³

Our reference to Example 4 of Grill was to point out that Example 4 uses trimethylsilane as the first precursor. The trimethylsilane is used together with a second precursor (BCHD). On page 2 of the Request, appellants minimize this teaching of Example 4 by stating that because Example 4 does not specifically mention an oxidizing agent, it does not support the examiner's position that "molecules of methylsilanes mixed with

³ The standard used by the examiner is what is suggested to one of ordinary skill in the art.

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an oxidizing agent" is a distinct member of a list that also includes molecules with ring structures or precursor mixtures including Si, O, and C. We note that Example 4 is simply indicative that trimethylsilane is a first precursor. Because Example 4 indicates that the first precursor includes trimethylsilane, then molecules of methylsilanes⁴ can support the examiner's interpretation. Also, the disclosure found in column 3 at lines 14 through 27 of Grill sets forth examples of the first precursor. From the examples listed therein, trimethylsilane is not an example according to appellants' interpretation (that "decamethylcyclopenta-siloxane (C₁₀H₃₀O₅Si₅) molecules of methylsilanes" is the proper interpretation, and means the methylsilanes are part of the decamethylcyclopentasiloxane ring structure).

In view of the above, we do not find in the Request any argument convincing us of error in the conclusions we reached in our Decision mailed February 27, 2006. Accordingly, appellants' Request for Rehearing is denied.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a)(1)(iv) (effective Sep. 13, 2004; 69 Fed. Reg. 49960 (Aug. 12, 2004); 1286 Off. Gaz. Pat. Office 21 (Sep. 7, 2004)).

⁴ Trimethylsilane is an example of a methylsilane.

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DENIED

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| EDWARD C. KIMLIN |) | |
| Administrative Patent Judge |) | |
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| TERRY J. OWENS |) | BOARD OF PATENT |
| Administrative Patent Judge |) | APPEALS AND |
| |) | INTERFERENCES |
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| |) | |
| BEVERLY A. FRANKLIN |) | |
| Administrative Patent Judge |) | |

BAF:clm

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