

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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 SRINIVAS DODDI, LAWRENCE LANE, VI VUONG,
MIKE LAUGHERY, JUNWEI BAO, KELLY BARRY,
NICKHIL JAKATDAR and EMMANUEL DREGE

Appeal No. 2006-0996
Application No. 10/162,516

ON BRIEF

Before HAIRSTON, JERRY SMITH, and SAADAT, Administrative Patent Judges.

JERRY SMITH, Administrative Patent Judge.

ON REQUEST FOR REHEARING

Appellants request that we reconsider our decision of May 15, 2006 wherein we sustained the rejection of claims 1, 6, 8, 9, 13, 27, 29, 38-41, 48, and 54 as unpatentable under 35 U.S.C. ' 102 and the rejection of claims 10 and 11 under 35 U.S.C. § 103.

Appeal No. 2006-0996
Application No. 10/162,516

Both of the examiner's rejections relied on the patent to Lee (U.S. Patent No. 5,835,221). Appellants assert that the Board's decision failed to specify how the Board's conclusion is supported by the disclosure of the Lee reference, either expressly or under the principles of inherency. More particularly, appellants argue that the decision fails to explain the basis for the statement in the decision that "[i]n other words, the wavelengths 2.8eV and 3.3eV were not selected at random, but instead, were selected based on previous observations of spectrum data using a spectrum of wavelengths" [Request, page 2]. Appellants assert that the disclosure in Lee that "2.8 eV and 3.3 eV were selected because traces with observable changes in Δ and Θ over time are also obtained when these wavelengths are monitored" does not expressly disclose previously observing spectrum data using a spectrum of wavelengths. Appellants note that the sentence simply states a factual conclusion and not a previous observation. Appellants also note that previous observations are not inherent in Lee because the selected wavelengths could be based on the material properties of polysilicon rather than on previous observations of spectrum data [id., pages 3-4].

We have reconsidered our decision of May 15, 2006 in light of appellants' comments in the Request for Rehearing, and we find no error therein. We, therefore, decline to make any changes in our prior decision for the reasons which follow. We are not persuaded by appellants' arguments that Lee fails to teach that wavelengths are selected based on previous observations. Lee discloses that a signal is monitored at four different wavelengths. The wavelengths 2.0 eV and 4.0 eV were selected because traces have observable

Appeal No. 2006-0996
Application No. 10/162,516

changes in Δ and Θ as a function of time. The wavelengths 2.8 eV and 3.3 eV were selected because traces with observable changes in Δ and Θ over time are also obtained when these wavelengths are monitored [column 5, lines 18-26]. Even if these observable changes in Δ and Θ are only a function of the inherent properties of the materials used, one does not know what wavelengths to monitor until the property has been previously observed. Note that Lee discloses that "there are other wavelengths which satisfy these parameters" [id., lines 27-28]. We are still of the view that the wavelengths to be selected for monitoring in Lee are only determined after observations are made that identify which wavelengths have the observable changes in Δ and Θ . The act of selecting as taught by Lee is based on some prior knowledge which we interpret to be a prior observation.

We have granted appellants' request to the extent that we have reconsidered our decision of May 15, 2006, but we deny the request with respect to making any changes therein.

Appeal No. 2006-0996
Application No. 10/162,516

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).

REHEARING DENIED

KENNETH W. HAIRSTON)
Administrative Patent Judge)
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) BOARD OF PATENT
JERRY SMITH) APPEALS
Administrative Patent Judge) AND
) INTERFERENCES
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MAHSHID D. SAADAT)
Administrative Patent Judge)

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Appeal No. 2006-0996
Application No. 10/162,516

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