

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 SNORRI T. INGVARSSON,
ROGER H. KOCH, and
STUART S.P. PARKIN*

Appeal No. 2006-1439
Application No. 10/195,178

ON BRIEF

Before PAK, JEFFREY T. SMITH, and FRANKLIN, Administrative Patent Judges.
JEFFREY T. SMITH, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the Examiner's final rejection of claims 1, 3, and 6.¹ We have jurisdiction under 35 U.S.C. § 134.

¹ According to appellants, Brief, page 2, claim 2 is objected to as dependent upon a rejected base claim. Claims 4 and 5 stand objected to under 37 CFR §1.75(c). As such these claims are not on review by the Board.

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Claims 1, 3, and 6 stand rejected under 35 U.S.C. § 102(b) as anticipated by Masumoto.² We reverse.

The initial inquiry in determining the propriety of the Examiner's § 102(b) rejection is to correctly construe the scope of the claimed subject matter. *Gechter v. Davidson*, 116 F.3d 1454, 1457, 1460 n.3, 43 USPQ2d 1030, 1032 n.3 (Fed. Cir. 1997); *In re Paulsen*, 30 F.3d 1475, 1479, 31 USPQ2d 1671, 1674 (Fed. Cir. 1994). In proceedings before the U.S. Patent & Trademark Office (USPTO), claims must be interpreted by giving words their broadest reasonable meaning in their ordinary usage, taking into account the written description found in the specification.

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

Applying these principles, we note that appealed claim 1 recites:

1. A method for increasing damping of a magnetic material within a magnetic device, said magnetic material comprising an alloy, said method comprising adding to said alloy at least one transition metal selected from the group consisting of 4d transition metals and 5d transition metals in an atomic concentration of about 4% to about 15% of said alloy, wherein said alloy comprises at least one of Ni-Fe, Co-Fe, and Ni-Co.

² Masumoto et al. (Masumoto) U.S. Patent No. 4,204,887 May 27, 1980

The claimed invention is directed to a method for treating a magnetic material within a magnetic device. In the *Background of the Invention*, Appellants state that the present invention relates to damping of magnetization changes in magnetic materials. Particularly in high speed magnetic devices, which includes spin valves and magnetic tunnel junctions (MTJ). (Specification, page 1). The specification further discloses that it is desirable to adjust the magnetization damping in magnetic devices to reduce magnetic oscillations after switching magnetic direction. (Specification, pages 1-2). The discussion in the detail description portion of the specification specifies that magnetic test structures are utilized (specification, page 3) and the damping is measured in terms of the Gilbert damping parameter. (Specification, page 4). Thus, upon careful consideration of the specification as a whole, it appears that the phrase “increasing damping of a magnetic material within a magnetic device” is properly interpreted as a specifically increasing magnetization damping of a magnetic material within a magnetic device.³ Utilizing this interpretation of the claimed subject matter, we turn to the Examiner’s stated rejection.

³ This interpretation equally applies to independent claim 6, which specifies

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The Examiner has asserted that Masumoto teaches a method of improving the damping capacity of alloys. The Examiner has determined that Masumoto discloses a Co-Fe alloy and improves the vibration damping by the addition of 4d transition metals including niobium, molybdenum, and tantalum in amounts that fall within the claimed range. (Answer, pages 3-4). We note the Examiner has not stated that the alloy of Masumoto is magnetic and is within a magnetic device as required by the claims. Throughout the present record, the Appellants have argued, "Masumoto does not teach or suggest magnetic materials or increasing damping of magnetic materials in a magnetic device." (Brief, page 5).⁴ As such, the Appellants have challenged the Examiner to establish on this record that Masumoto's Co-Fe alloy is magnetic. The Examiner's response to this argument appearing on page 6 of the Answer merely states that a Fe-Co alloy is taught in each of Masumoto's examples. The indication that a Fe-Co alloy is present in the examples is not an affirmative statement that the

"increasing damping of said magnetic material."

⁴ Appellants also repeat this argument on brief, page 7 and reply brief, pages 3 and 5.

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alloy disclosed in the reference is magnetic. Moreover, the Examiner has not established that Masumoto employs the disclosed alloy in a magnetic device as required by the independent claims. See *Scripps Clinic & Research Found. v. Genentech, Inc.*, 927 F.2d 1565, 1576, 18 USPQ2d 1001, 1010 (Fed. Cir. 1991). (In order for a claimed invention to be anticipated under § 102, all of elements of the claimed invention must be found in a single reference.)

Under these circumstances, we cannot conclude that the Examiner has met the minimum threshold of establishing anticipation under 35 U.S.C. § 102. Therefore, the Examiner's rejection of claims 1, 3, and 6 under § 102 is reversed.

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For the foregoing reasons and those set forth in the Brief, we determine that the Examiner's conclusion of anticipation is not supported by the facts. Accordingly, the Examiner's rejection of claims 1, 3, and 6 over Masumoto is reversed.

REVERSED

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CHUNG K. PAK)
Administrative Patent Judge)
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) BOARD OF PATENT
JEFFREY T. SMITH) APPEALS
Administrative Patent Judge) AND
) INTERFERENCES
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