

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ROBERT T. NILSSON
and
ROBIN P. ZIEBARTH

Appeal 2007-0738
Application 11/109,274
Technology Center 1700

Decided: October 12, 2007

Before EDWARD C. KIMLIN, BRADLEY R. GARRIS, and
LINDA M. GAUDETTE, *Administrative Patent Judges*.

KIMLIN, *Administrative Patent Judge*.

DECISION ON REQUEST FOR REHEARING

Appellants request rehearing of our Decision of February 13, 2007, wherein we sustained the Examiner's rejection of all the appealed claims under 35 U.S.C. § 102 and 35 U.S.C. § 103.

We have thoroughly reviewed the arguments made by Appellants in their Request, but we are not persuaded that we erred in agreeing with the

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Examiner that the claimed subject matter is unpatentable over the DiChiara patent.

We remain of the opinion that the claims on appeal only require that there be a uniform distribution of boron within some portion of the porous body. Significantly, the language of the appealed claims does not require a uniform distribution of boron throughout the entirety of the ceramic body.

Appellants pose the question “how does the board justify re-writing the words to a non-specific ‘a uniform distribution within the body’ when the words themselves unambiguously say, ‘the boron source is uniformly distributed within the ceramic body’” (Request 2, first para.). The answer is found in our Decision, i.e., the claim language “boron is uniformly distributed within the porous ceramic body” can be reasonably interpreted as a uniform distribution of boron throughout a certain thickness of the ceramic body but not throughout the entire thickness of the body. It is not so much that there is a clear distinction between the words “throughout” and “within” but, rather, that the appealed claims encompass a uniform distribution of boron throughout or within only a particular portion or thickness of the ceramic body.

Appellants maintain that “by logic, if it is ‘throughout’ the body, it is ‘within’ the body; otherwise, where is it?” (Request 2, second para.) However, the converse of this statement demonstrates that the words “throughout” and “within” may be reasonably interpreted differently, such as an element may be within a body, at some location, but not throughout the

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body entirely. The concept of “within” is not congruent with the concept of “throughout.”

Appellants also contend that “except for when the entire volume has a uniform distribution, the board’s interpretation would render ‘uniformly’ to mean the same thing as ‘non-uniformly’” (Request 3, last para.). However, it is not logically inconsistent for an element to be non-uniformly distributed throughout the entirety of a ceramic body while uniformly distributed within a particular portion of the body.

In conclusion, based on the foregoing, Appellants’ request is granted to the extent we have reconsidered our decision, but is denied with respect to making any change therein.

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).

DENIED

clj

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