

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte PADMAPANI C. NALLAN, GUANGXIANG JIN,
and AJAY KUMAR

Appeal 2007-2601
Application 10/338,250
Technology Center 1700

Decided: January 15, 2008

Before THOMAS A. WALTZ, CATHERINE Q. TIMM and
MICHAEL P. COLAIANNI, *Administrative Patent Judges*.

COLAIANNI, *Administrative Patent Judge*.

DECISION ON REQUEST FOR REHEARING

This is in response to a Request, filed October 26, 2007, for rehearing of our Decision, mailed August 27, 2007, wherein we sustained the § 103(a) rejection of claims 1-3 and 22-26 as being unpatentable over Ono in view of Arghavani and the § 103(a) rejection of claims 4 and 5 as being unpatentable over Ono in view of Arghavani and Ji.

Appellants argue for the first time in this appeal that their process and Ono's process are not identical because Ono discloses etching a polysilicon material, not a dielectric material (Request 1-2).

That the argument is made for the first time is evident from our determination that Appellants had not disputed the Examiner's finding of identity (Decision 3). Appellants neither argue that our determination was in error nor support such an argument by pointing out where in the Brief and Reply Brief the Examiner's finding was disputed. In accordance with 37 C.F.R. § 41.52, because such a new argument is not made regarding a "recent relevant decision of the Board or a Federal Court" or in response to a new grounds of rejection under § 41.50(b), Appellants' newly advanced argument has not been considered.

Regarding Appellants' previously made argument that Ono discloses that "etching does not develop," (i.e., no etching occurs) but, rather, deposition of reaction products occur when the RF bias is turned off (Request 2), our adoption of the Examiner's reasoning (Ans. 6-7) and our explanation on pages 3-4 of the Decision respond to this argument.

Appellants further argue that Ono and Appellants etch different materials (i.e., polysilicon versus a dielectric material) and, thus, have different processes, such that Appellants' disclosure that deposition occurs along with etching when the RF bias is turned off does not contradict their argument that Ono's etching does not develop when the RF bias is turned off (Request 2). However, as noted above, Appellants' argument regarding the different materials (i.e., polysilicon versus a dielectric material) has not been considered because it was presented for the first time in the Request for Rehearing of this Appeal.

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Furthermore, as explained in the Decision, Appellants disclose that deposition of by-products on the surface 238 when the RF bias is turned off may reduce or terminate the etching process (Decision 3-4), which contradicts their argument that when Ono turns off the RF bias no etching occurs (Request 2). Rather, like Appellants' process, Ono discloses that etching continues when the RF bias is turned off, however, at a reduced etching rate due to competing deposition of by-products.

For the above stated reasons, we adhere to our conclusions that claims 1-3 and 22-26 are unpatentable under § 103(a) over Ono in view of Arghavani, and claims 4 and 5 are unpatentable under § 103(a) over Ono in view of Arghavani and Ji.

The Request for Rehearing is denied.

DENIED

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