

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte TROY W. BARBEE, JR.
and WILLIAM D. WILSON

Appeal 2008-1372
Application 10/167,926
Technology Center 1700

Decided: March 12, 2008

Before EDWARD C. KIMLIN, BRADLEY R. GARRIS, and
JEFFREY T. SMITH, *Administrative Patent Judges*.

KIMLIN, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1-22, 24, and 25.

Claim 1 is illustrative:

1. In a sensor, the improvement comprising:

a nano-laminate template,

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said nano-laminate having at least one polished, exposed cross-section, wherein multiple layers of said nano-laminate are exposed across said exposed cross-section.

The Examiner relies upon the following reference in the rejection of the appealed claims:

Atita 5,472,795 Dec. 5, 1995

Appellants' claimed invention is directed to a sensor having a nano-laminate template having at least one polished, exposed cross-section.

All the appealed claims stand rejected under 35 U.S.C. § 102(b) as being anticipated by Atita. Also, claims 1 and 19 are provisionally rejected under the judicially-created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of co-pending application U.S. Serial No. 10/262,015. However, the latter rejection is moot due to the abandonment of the co-pending application on July 31, 2007.

Appellants have not set forth an argument that is reasonably specific to any particular claim on appeal. Accordingly, all the appealed claims stand or fall together with claim 1.

We have thoroughly reviewed each of Appellants' arguments for patentability. However, we find that the Examiner's rejection is well founded and supported by the evidence relied upon. Accordingly, we will sustain the Examiner's rejection for the reasons set forth in the Answer, which we incorporate herein, and we add the following for emphasis only.

Atita, like Appellants, describes a nano-laminate template. As for the presently claimed nano-laminate template having at least one polished, exposed cross-section, the Examiner properly cites Atita for disclosing "in column 8, lines 32-35, that the cross sections of the nano-laminate of Si were

prepared using standard sandwiching, cutting, grinding (polishing), dimpling procedures to make the nanolaminate" (Ans. 6). Since the Examiner's dictionary definition of the term "grinding" includes polishing or sharpening, we find no error in the Examiner's reasoning that "[g]rinding or cutting of a nanolaminate to prepare cross-sections would inherently polish the cross-section of the nanolaminate because any cutting or grinding of a surface has to a degree some polishing performed on the surface" (*id.*). Also, as noted by the Examiner, the appealed claims do not recite any particular degree of polishing effected. Appellants' argument that "[t]he word "polishing" does not appear in the text in column 8, lines 32-35" does not refute the Examiner's rationale.

We are perplexed by Appellants' initial argument that "Atita fails to disclose nanolaminates" (Br. 5, third para.). As explained by the Examiner, the very title of Atita is "Multilayer Nanolaminates Containing Polycrystalline Zirconia." *Also, see* column 4, lines 8 et seq. and column 6, lines 13 et seq., as well as column 8, lines 32 et seq. Also, Appellants' description of nano-laminate materials as described in the provisional application fails to set forth any distinction between nano-laminates within the scope of claim 1 and the nano-laminates described by Atita.

In conclusion, based on the foregoing and the reasons well stated by the Examiner, the Examiner's decision rejecting the appealed claims is affirmed.

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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).

AFFIRMED

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