

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* WAI-FAN YAU,  
DAVID CHEUNG,  
SHIN-PUU JENG,  
KUOWEI LIU, and  
YUNG-CHENG LU

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Appeal 2008-1727  
Application 11/056,459  
Technology Center 2800

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Decided: December 31, 2008

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Before BRADLEY R. GARRIS, PETER F. KRATZ, and  
JEFFREY T. SMITH, *Administrative Patent Judges*.

GARRIS, *Administrative Patent Judge*.

DECISION ON REQUEST FOR REHEARING

This is in response to a Request for Rehearing, dated November 11, 2008, of our Decision, mailed October 28, 2008, wherein we affirmed the Examiner's § 103 rejection of all appealed claims.

In support of their Rehearing Request, Appellants present the following argument:

The Board errs in its conclusion that one of ordinary skill would have [a] reasonable expectation of success, as described above, because the Board ascribes unreasonably broad scope to the teachings of Chiang. Contrary to the interpretation suggested by the Board and the Examiner, Chiang does not teach that any known etch stop material may be used as an etch stop with any known dielectric material. Chiang teaches that any *suitable* etch stop material may be used, and any *suitable* dielectric material may be used. The Board gives the word "suitable" no meaning in evaluating the teachings of Chiang.

This argument is unpersuasive because it is based on the incorrect proposition that we erroneously interpreted the teachings of Chiang (i.e., "Contrary to the interpretation suggested by the Board and the Examiner, Chiang does not teach that any known etch stop material may be used as an etch stop with any known dielectric material" (*id.*)). Rather, our obviousness conclusion was explicitly based on "Chiang's express teaching that '[d]ielectric layer 322 may include any suitable dielectric material or materials'" (col. 13, ll. 26-27) and that "'[e]tch-stop layer 323 may include any suitable material, including . . . silicon carbide (SiC)' (col. 14, l. 66-col. 15, l. 2)" (Decision ¶ bridging 4-5; emphasis added). Therefore, contrary to Appellants' contention, we quoted and considered Chiang's use of the word "suitable" in evaluating the teachings of this reference. Indeed, Appellants' contention is undermined by their earlier statement in the Request: "The Board asserts that Chiang teaches a dielectric layer that 'may include any suitable dielectric material or materials' and an etch stop layer that 'may

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include any suitable material, including . . . silicon carbide (SiC),' and that from these teachings an artisan would have [a] reasonable expectation of success in replacing Sugahara's silicon nitride etch stop layer with Chiang's silicon carbide etch stop layer" (Request 2, first ¶; emphasis added).

For the above stated reasons and for the reasons expressed in our Decision, the evidence of record continues to support a prima facie case of obviousness, and Appellants continue to fail in their attempts to show error in this obviousness conclusion.

The Request for Rehearing is DENIED.

DENIED

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