

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 28

**UNITED STATES PATENT AND TRADEMARK OFFICE**

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

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Ex parte TONY KROEKER

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Appeal No. 2003-0745  
Application No. 09/161,970

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ON BRIEF

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Before COHEN, STAAB, and NASE, Administrative Patent Judges.  
NASE, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1 to 4, 6 to 11, 16 to 18, 47, 49 and 51 to 53, which are all of the claims pending in this application.

We REVERSE.

BACKGROUND

The appellant's invention relates to a single or multi-wafer load lock attached directly to a process chamber in a vacuum processing system (specification, p. 1). A copy of the claims under appeal is set forth in the appendix to the appellant's brief.

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Ohtani et al. (Ohtani)	4,923,054	May 8, 1990
Maydan et al. (Maydan)	5,292,393	Mar. 8, 1994
Brancher	5,330,301	July 19, 1994
Asakawa et al. (Asakawa)	5,934,856	Aug. 10, 1999

Claims 1 to 4, 6 to 11, 16 to 18, 47, 49 and 51 to 53 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the appellant regards as the invention.

Claims 1, 4, 6 to 11, 47, 51 and 53 stand rejected under 35 U.S.C. § 103 as being unpatentable over Maydan in view of Asakawa and Brancher.

Claims 2, 3, 19 and 52 stand rejected under 35 U.S.C. § 103 as being unpatentable over Maydan in view of Asakawa, Brancher and Ohtani.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellant regarding the above-noted rejections, we make reference to the final rejection (Paper No. 20, mailed May 17, 2002) and the answer (Paper No. 26, mailed December 2, 2002) for the examiner's complete reasoning in support of the rejections, and to the brief (Paper No. 25, filed November 4, 2002) for the appellant's arguments thereagainst.

#### OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellant's specification and claims, to the applied prior art references, and to the respective positions articulated by the appellant and the examiner. As a consequence of our review, we make the determinations which follow.

#### **The indefiniteness rejection**

We will not sustain the rejection of claims 1 to 4, 6 to 11, 16 to 18, 47, 49 and 51 to 53 under 35 U.S.C. § 112, second paragraph.

The second paragraph of 35 U.S.C. § 112 requires claims to set out and circumscribe a particular area with a reasonable degree of precision and particularity. In re Johnson, 558 F.2d 1008, 1015, 194 USPQ 187, 193 (CCPA 1977). In making this

determination, the definiteness of the language employed in the claims must be analyzed, not in a vacuum, but always in light of the teachings of the prior art and of the particular application disclosure as it would be interpreted by one possessing the ordinary level of skill in the pertinent art. Id.

The examiner's focus during examination of claims for compliance with the requirement for definiteness of 35 U.S.C. § 112, second paragraph, is whether the claims meet the threshold requirements of clarity and precision, not whether more suitable language or modes of expression are available. Some latitude in the manner of expression and the aptness of terms is permitted even though the claim language is not as precise as the examiner might desire. If the scope of the invention sought to be patented can be determined from the language of the claims with a reasonable degree of certainty, a rejection of the claims under 35 U.S.C. § 112, second paragraph, is inappropriate.

With this as background, we find ourselves in agreement with the appellant (brief, pp. 4-8) that the claims on appeal comply with 35 U.S.C. § 112, second paragraph. We have analyzed the specific rationales (answer, pp. 3-4) raised by the examiner for the rejection under 35 U.S.C. § 112, second paragraph, and fail to see how the metes and bounds of the claims on appeal would not be understood with a

reasonable degree of precision and particularity. See In re Venezia, 530 F.2d 956, 958, 189 USPQ 149, 151 (CCPA 1976). In our view, the specific rationales raised by the examiner go to the breadth of the claims and breadth of a claim is not to be equated with indefiniteness. See In re Miller, 441 F.2d 689, 693, 169 USPQ 597, 600 (CCPA 1971).

For the reasons set forth above, the decision of the examiner to reject claims 1 to 4, 6 to 11, 16 to 18, 47, 49 and 51 to 53 under 35 U.S.C. § 112, second paragraph, is reversed.

### **The obviousness rejections**

We will not sustain the rejection of claims 1 to 4, 6 to 11, 47, 49 and 51 to 53 under 35 U.S.C. § 103.

In the two rejections under 35 U.S.C. § 103 before us in this appeal (answer, pp. 4-5), the examiner (1) ascertained that Maydan does not disclose an atmospheric robot disposed in his mini-environment (i.e., external cassette elevator 24); and (2) determined that it would have been obvious to have included an atmospheric robot disposed in Maydan's mini-environment "to facilitate pod movement" as suggested and taught by Asakawa.

The appellant's argue (brief, pp. 8-11) that the applied prior art does not teach or suggest a semiconductor processing system comprising (1) a mini-environment defined by a wall and having an atmospheric robot disposed therein; (2) a load lock chamber connected to the mini-environment having a transfer robot disposed therein; and (3) a process chamber connected to the load lock chamber as recited in the claims under appeal. We agree. In our view, absent the use of impermissible hindsight,<sup>1</sup> there is no teaching, suggestion or motivation in the applied prior art for a person of ordinary skill in the art at the time the invention was made to have modified Maydan's system to arrive at the claimed invention. Specifically, it is our view that an artisan would not have found it obvious to have modified Maydan's system to include an atmospheric robot disposed in Maydan's mini-environment (i.e., external cassette elevator 24) from the teachings of Asakawa. In that regard, the systems of Maydan and Asakawa are sufficiently disparate in our opinion that one skilled in the art would not have modified Maydan's external cassette elevator 24 to have included a robot.

For the reasons set forth above, the decision of the examiner to reject claims 1 to 4, 6 to 11, 47, 49 and 51 to 53 under 35 U.S.C. § 103 is reversed.

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<sup>1</sup> The use of hindsight knowledge derived from the appellant's own disclosure to support an obviousness rejection under 35 U.S.C. § 103 is, of course, impermissible. See, for example, W. L. Gore and Assocs., Inc. v. Garlock, Inc., 721 F.2d 1540, 1553, 220 USPQ 303, 312-13 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984).

CONCLUSION

To summarize, the decision of the examiner to reject claims 1 to 4, 6 to 11, 16 to 18, 47, 49 and 51 to 53 under 35 U.S.C. § 112, second paragraph, is reversed and the decision of the examiner to reject claims 1 to 4, 6 to 11, 47, 49 and 51 to 53 under 35 U.S.C. § 103 is reversed.

REVERSED

IRWIN CHARLES COHEN	)	
Administrative Patent Judge	)	
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	)	BOARD OF PATENT
LAWRENCE J. STAAB	)	APPEALS
Administrative Patent Judge	)	AND
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JEFFREY V. NASE	)	
Administrative Patent Judge	)	

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