

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today  
(1) was not written for publication in a law journal and  
(2) is not binding precedent of the Board.

Paper No. 22

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte WALTER C. SEELBACH

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Appeal No. 97-3082  
Application 08/650,023<sup>1</sup>

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ON BRIEF

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Before HAIRSTON, KRASS, and MARTIN, Administrative Patent  
Judges.

KRASS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the final rejection of  
claims 1 and 4. Claims 6 through 8 have been allowed and

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<sup>1</sup> Application for patent filed May 17, 1996. According to  
appellant, this application is a continuation of Application  
08/301,093, filed September 6, 1994, now abandoned.

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claims 2, 3 and 5 have been cancelled.

The invention is directed to providing a bandgap voltage in low voltage submicron CMOS technology so as to provide a bandgap reference voltage that will operate at reduced power supply voltages and can be referenced to a power supply terminal.

Independent apparatus claim 1 is reproduced as follows:

1. A CMOS circuit for providing a current having a positive temperature coefficient, the circuit comprising:

CMOS parasitic P-N junction means for generating a delta voltage having a positive temperature coefficient;

CMOS differential amplifying means responsive to said delta voltage for providing differential currents; and

summing means responsive to said differential currents for providing a resulting current at an output of said summing means, said current having a positive temperature coefficient, and a feedback connection absent between said output of said summing means and said CMOS parasitic P-N junction means.

The examiner relies on the following reference:

Cave et al. (Cave)	5,087,830	Feb. 11, 1992
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Claims 1 and 4 stand rejected under 35 U.S.C. § 112, second paragraph, as being vague and indefinite for relying on a negative limitation, "a feedback connection absent" or "without using feedback." Claims 1 and 4 stand further

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rejected under 35 U.S.C. § 102(b) as anticipated by Cave.

Reference is made to the brief and answer for the respective positions of appellant and the examiner.

#### OPINION

We reverse.

Turning first to the rejection under 35 U.S.C. § 112, second paragraph, the examiner contends that the claim language regarding "feedback" is a "negative limitation" and, therefore, indefinite. At page 4 of the answer, the examiner contends that there "must be support in the specification for the language recited in the claims" and that nowhere "is there anything disclosed in the specification that would set forth this limitation." The examiner deems claims 1 and 4 "to be inconsistent with the description in the specification."

As both appellant and the examiner understand, a "negative limitation" in a claim, does not, per se, make the claim indefinite under 35 U.S.C. § 112, second paragraph. The examiner's complaint about a lack of "support" in the specification sounds more like a problem under the written description section of the first paragraph of 35 U.S.C. § 112,

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but the examiner has not made such a rejection. However, it appears to us, from a review of the drawing itself, that there is no feedback connection between the output of the summing means, node 46, and the CMOS parasitic P-N junction means, transistors 28-31. Thus, the drawing, which is part of the disclosure, is consistent with what is claimed and we find nothing indefinite about the cited claim language.

Accordingly, we will not sustain the rejection of claims 1 and 4 under 35 U.S.C. § 112, second paragraph.

We now turn to the rejection of the claims under 35 U.S.C.

§ 102(b) as anticipated by Cave. Appellant makes one argument in this regard and that is that Cave fails to disclose the claimed "feedback connection absent between said output of said summing means and said CMOS parasitic P-N junction means." Indeed, Cave discloses that there is such a feedback connection (e.g., see Cave's abstract).

The examiner does not deny that the feedback path exists in Cave, directly contrary to the instant claim language, but argues only that "it is not understood what is meant by the recitation concerning the 'feedback connection' or how such a

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'feedback connection' is connected in the circuit" [answer-page 5]. If the claim language is so indefinite that the examiner cannot understand the claimed subject matter, then it appears that a prior art rejection should not have been made since it would be impossible to apply the teachings of the prior art to the claim language. If a prior art rejection is to be made to the extent the claimed subject matter is understood, then the examiner may not choose to ignore any limitations appearing in the claims. However, it is clear from the examiner's response to appellant's arguments that the examiner did, indeed, read out the "feedback connection absent..." and "without using feedback..." limitations from the claims in applying the reference to the claimed subject matter. Therefore, we will not sustain the rejection of claims 1 and 4 under 35 U.S.C. § 102(b).

We also find it strange that the examiner questions where "the 'feedback connection' is provided" in the circuit [answer-top of page 5] and "how such a 'feedback connection' is connected in the circuit" [answer-bottom of page 5]. The claims clearly call for there to be *no* feedback connection so how can the examiner question where and how such a connection

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is provided in the circuit? The simple answer is that it is  
*not* so provided.

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The examiner's decision is reversed.

REVERSED

	Kenneth W. Hairston	)	
	Administrative Patent Judge	)	
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		)	
	Errol A. Krass	)	BOARD OF
PATENT	Administrative Patent Judge	)	APPEALS AND
		)	INTERFERENCES
		)	
		)	
	John C. Martin	)	
	Administrative Patent Judge	)	

tdc

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