

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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. 16

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ROLAND W. GOOCH,
and
MARK V. WADSWORTH

Appeal No. 1998-2971
Application No. 08/690,274

ON BRIEF

Before HAIRSTON, HECKER, and GROSS, Administrative Patent Judges.

HAIRSTON, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1 through 9.

The disclosed invention relates to a radiation detector comprising a substrate with circuitry, and a plurality of bolometers with resistance dependent upon temperature. Each

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of the bolometers is supported on the substrate via a
plurality of

conductive support arms that connect the bolometer to the circuitry on the substrate, and the width of the support arms is greater than the spacing between adjacent bolometers. The bolometers are connected in parallel.

Claims 1 and 5 are illustrative of the claimed invention, and they read as follows:

1. A radiation detector, comprising:
 - (a) a substrate containing circuitry;
 - (b) a plurality of bolometers, each of said bolometers suspended over said substrate, each of said bolometers with resistance dependent upon temperature; and
 - (c) each of said bolometers with a plurality of support arms supporting said each bolometer on said substrate, said support arms located between said bolometers and said substrate, and said support arms include conductors connecting said bolometers to said circuitry.

5. A radiation detector, comprising:
 - (a) a substrate containing circuitry;
 - (b) a planar array of bolometers, each of said bolometers suspended over said substrate, each of said bolometers with resistance dependent upon temperature;

and

- (c) each of said bolometers with a plurality

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of support arms supporting said each bolometer on said substrate, said support arms of width greater than the spacing between adjacent bolometers, said support arms including conductors connecting said bolometers to said circuitry with said bolometers connecting in parallel.

The references relied on by the examiner are:

Higashi et al. (Higashi) 5, 1994	5,300,915	Apr.
Hornbeck 1990 (published European Patent Application)	0 354 369	Feb. 14,

Claims 1 through 4 and 7 through 9 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Hornbeck.

Claims 5 and 6 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Higashi.

Claims 1 through 9 stand provisionally rejected under the judicially created doctrine of double patenting over claims 1, 2 and 4 through 10 of copending Application Number 08/690,277.

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

OPINION

With the exception of the 35 U.S.C. § 102(b) rejection of claims 5 and 6, all of the other rejections are sustained.

In response to the rejection of claims 1 through 4 and

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7 through 9 under 35 U.S.C. § 102(b), appellants argue (Brief, page 3) that "Hornbeck Fig.4a shows the vertical portion (156-158) of the support arms extending above the plane of the bolometer and these same vertical portions are indicated in Figs.9a-e by the square at the ends of the support arms in plan view." The examiner's reply (Answer, page 5) to the appellants' argument is that:

First, the claim does not require the totality of each of the plurality of support arms to be between the bolometers and the substrate, and therefore does not preclude some portion to be elsewhere. Second, the claim does not make any reference to the plane of the bolometer, and the bolometer need not be planar or parallel to the substrate.

We agree with the examiner that claim 1 on appeal does not preclude a portion of the support arms extending above the bolometer, and that claim 1 is silent as to a "plane of the bolometer." In the absence of any other argument, we will sustain the 35 U.S.C. § 102(b) rejection of claim 1. The 35 U.S.C. § 102(b) rejection of claims 2 through 4 and 7 through 9 is likewise sustained because appellants have chosen to let these claims stand or fall with claim 1 (Brief, page 3).

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In the 35 U.S.C. § 102(b) rejection of claims 5 and 6, the examiner is of the opinion (Answer, page 4) that "[t]he support arms of the radiation detector of Higashi *et al.* have a width greater than the spacing between adjacent bolometers (Fig. 5)." Appellants argue (Brief, page 3) that "even if the sloping sides are considered 'support arms', then the width (sloped direction) of the sides is less than the spacing between bolometers." Turning to Figure 5 of Higashi, we find that the figure is completely devoid of any relative dimensions for the support arms and the spacing between the bolometers, and the explanation of the same in the disclosure is equally lacking in any type of explanation of relative dimensions. In view of the lack of such relative dimensions, we will reverse the 35 U.S.C. § 102(b) rejection of claims 5 and 6.

Turning to the provisional double patenting rejection, appellants argue (Brief, page 3) that "both this application and application serial no. 08/690,277 were filed on 7/19/96 and will both expire 20 years later, so a terminal disclaimer is moot." In response, the examiner indicates (Answer, page 5) that appellants' reliance "on a common termination date to

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overcome the provisional rejection under the judicially created doctrine of double patenting is misplaced in view of the clear requirement of 37 CFR 1.321(c)(3) for common ownership of any patents granted on the applications." We agree with the examiner's reasoning. Thus, the provisional rejection of claims 1 through 9 under the judicially created doctrine of double patenting is sustained.

DECISION

The decision of the examiner rejecting claims 1 through 9 under 35 U.S.C. § 102(b) is affirmed as to claims 1 through 4 and 7 through 9, and is reversed as to claims 5 and 6. The decision of the examiner provisionally rejecting claims 1 through 9 under the judicially created doctrine of double patenting is affirmed. Accordingly, the decision of the examiner 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).

AFFIRMED

KENNETH W. HAIRSTON))
Administrative Patent Judge))
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STUART N. HECKER)	BOARD OF PATENT
Administrative Patent Judge)	APPEALS AND
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)	INTERFERENCES
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ANITA PELLMAN GROSS))
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