

The opinion in support of the decision being entered today was not written for publication in a law journal and is not binding precedent of the Board.

Paper No. 19

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte ALESSANDRO CESARE CALLEGARI,  
CHRISTOS DIMITRIOS DIMITRAKOPOULOS  
and SAMPATH PURUSHOTHAMAN

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Appeal No. 2004-0655  
Application No. 09/740,721

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ON BRIEF

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Before KIMLIN, PAK and PAWLIKOWSKI, Administrative Patent Judges.  
KIMLIN, Administrative Patent Judge.

REQUEST FOR REHEARING

Appellants request rehearing of our decision of February 25, 2004, wherein we affirmed the examiner's rejections of the appealed claims under 35 U.S.C. § 102 and 35 U.S.C. § 103.

We have thoroughly reviewed the arguments set forth by appellants in their request. However, we are not persuaded by such arguments that our decision was in error.

Appellants assert that we erred in interpreting the language of claims 18 and 24 regarding processing and fabrication and operation in and about 25 to 150°C temperature range as "only

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product by process limitations in nature and do not further limit the structure" (page 1 of Request). It should be clear from our decision, however, that appellants mischaracterize our analysis.

In relevant part the decision states:

As urged by appellants and conceded by the examiner in the Answer, each claim limitation must be considered in determining patentability. In the present case, placing the claim language at issue in a light most favorable to appellants, we will interpret the claim language as defining a property of the claimed device. However, it cannot be gainsaid that the language "for processing and fabrication and operation" is of considerable breadth, and we agree with the examiner's analysis that the claim language encompasses using the device at normal, ambient temperatures.

(Paragraph bridging pages 5 and 6 of decision). The thrust of our decision is that there is substantial evidence of record to reasonably support the conclusion that the devices disclosed by Aratani and Dimitrakopoulos possess the claimed property. The decision states "[a]s explained by the examiner, appellants have pointed to no difference in structure between the claimed and prior art devices, nor have appellants proffered any objective evidence which demonstrates that the devices of Aratani and Dimitrakopoulos do not, in fact, possess the claimed property" (page 7 of decision, first paragraph).

As for appellants' argument that the disclosure of the temperature range 150-400°C by Dimitrakopoulos does not anticipate the claimed range of 25-150°C, see Ex parte Lee,

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31 USPQ2d 1105, 1106 (Bd. Pat. App. & Int. 1993). Also, as stated in our decision, "to the extent that the claim language 'processing and fabrication' includes the process of making the thin film transistor device, the limitation is product-by-process in nature, and does not further limit the structure of the claimed device" (page 7 of decision, first paragraph). In re Thorpe, 777 F.2d 695, 697, 227 USPQ 964, 966 (Fed. Cir. 1985).

In conclusion, appellants' request is granted to the extent we have reconsidered our decision, but is denied with respect to making any change therein.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

DENIED

EDWARD C. KIMLIN	)	
Administrative Patent Judge	)	
	)	
	)	
	)	
CHUNG K. PAK	)	BOARD OF PATENT
Administrative Patent Judge	)	APPEALS AND
	)	INTERFERENCES
	)	
	)	
BEVERLY PAWLIKOWSKI	)	
Administrative Patent Judge	)	

ECK:clm

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