

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. 49

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MITSUBISHI MATERIALS CORP.

Appeal No. 2001-0310
Reexamination Control No. 90/004,385

HEARD: MAY 17, 2001

Before HANLON, PAK, and LIEBERMAN, *Administrative Patent Judges*.
PAK, *Administrative Patent Judge*.

REMAND & ORDER FOR CLARIFICATION

Pursuant to 37 CFR § 1.196(a) and (d) (1999), we order both the examiner and the appellants to clarify certain claim limitations consistent with the views expressed below. We return this application to the examiner's jurisdiction for such purposes.

This is appellant's second appeal of subject matter relating to a copper smelting process. This appeal relates to three pending appeals involving similar subject matter. These related

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appeals are Appeal No. 1999-2318 (Reexamination Control No. 90/004,783), 1999-2411 (Reexamination Control No. 90/004,782) and 2000-2073 (Reexamination Control No. 90/004,386), some of which were not before us when the previous decision was rendered on August 24, 1999. To better understand the scope of the claimed subject matter on present appeal, we have provided below illustrative independent claims, e.g., claim 1 or 5, from the present and related applications:

Present Application

1. A copper smelting process comprising the steps of:
providing a blister copper-producing means, a plurality of
anode furnaces and blister copper launder means for
connecting said blister copper-producing means and said
anode furnaces;

producing blister copper in said blister copper-producing
means;

subsequently causing said blister copper produced in said
blister copper-producing means to flow from said
blister copper-producing means directly through said
blister copper launder means and into one of said anode
furnaces; and

refining said blister copper into copper of higher plurality
in said anode furnace.

Reexamination Control No. 90/004,783

1. A copper smelting apparatus comprising:

a matte-producing means for producing matte;

a converting furnace for oxidizing said matte produced in said matte-producing means into blister copper;

a plurality of blister copper refining furnaces for refining the blister copper produced in said converting furnace into copper of higher purity; and

blister copper launder means for connecting said converting furnace and said blister copper refining furnaces to transfer blister copper from said converting furnace to one of said blister copper refining furnaces, wherein said blister copper launder means includes a main launder having one end connected to said blister copper-producing means and a plurality of branch launders each having one end connected to the other end of said main launder and the other end connected to a respective one of said blister copper refining furnaces; and

a selecting device attached to said blister copper launder means for selectively bringing said main launder into fluid communication with one of said branch launders.

Reexamination Control No. 90/004,782

5. A continuous copper smelting process comprising the steps of:

providing a matte-producing means, a converting furnace, a plurality of blister copper refining furnaces and blister copper launder means for connecting said converting furnace and said blister copper refining furnaces and for transferring blister copper from said converting furnace to said blister copper refining furnaces, wherein said blister copper launder means includes a main launder having one end connected to said blister copper producing means and a plurality of branch launders, each said branch launder having one end connected to the other end of said main

launder and another end arranged to provide blister copper to a respective one of said blister copper refining furnaces;

producing matte in said matte-producing means and oxidizing said matte produced in said matte producing means into blister copper in said converting furnace;

selectively bringing said main launder into fluid communication with a first one of said branch launders;

continuously tapping blister copper from said converting furnace to provide a continuous flow of blister copper in said main launder;

subsequently causing said blister copper produced in said converting furnace to flow through said blister copper launder means into a selected one of said blister copper refining furnaces by causing said blister copper to flow from said main launder through one of said branch launders, until said selected one of said blister copper refining furnaces is filled;

subsequently bringing a second one of said branch launders into fluid communication with said main launder without stopping said flow of blister copper in said main launder; and

refining said blister copper into copper of higher purity in said selected one of said blister copper refining furnaces while causing blister copper to flow from said main launder through said second one of said branch launders into another one of said blister copper.

Reexamination Control No. 90/004,386

1. An apparatus for smelting copper comprising:
blister copper producing means;

a plurality of blister copper refining furnaces for refining blister copper into copper of higher quality; and

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blister copper launder means connecting said blister copper producing means and said blister copper refining furnaces.

Any initial inquiry into the propriety of the examiner's prior art rejections requires the determination of the precise scope of the claimed subject matter. *In re Paulsen*, 30 F.3d 1475, 1479, 31 USPQ2d 1671, 1674 (Fed. Cir. 1994). We observe that the appellant states (Brief, pages 20-21) that:

While both the Board and Appellant[] agree[s] that the claims contain "means-plus-function" language, and Appellant[] agree[s] with the Board's prior interpretation of the means-plus-function language as far as it goes

The appellant then appears to imply that the claimed "blister copper-producing means" embraces some form of selecting means so that it can be operated in a continuous manner. In so doing, the appellant appears to reject our position in the previous decision entered August 24, 1999 that the claimed "blister copper launder means" includes the specific "selective device structure" described in the specification or the equivalents thereof.

Although the appellant appears to imply what may or may not be included in the claimed means-plus-function limitations, they do not specify what structures are encompassed by the claimed means-plus-function limitations.

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37 CFR § 1.196(d) provides:

The Board of Patent Appeals and Interferences may require appellant to address any matter that is deemed appropriate for a reasoned decision on the pending appeal. Appellant will be given a non-extendable time period within which to respond to such a requirement.

Therefore, pursuant to 37 CFR § 1.196(d), we order the appellant to file a Supplemental Appeal Brief to specify all of the structures encompassed by each and every means-plus-function limitation recited in the claims on appeal and provide the specific passage in the specification supporting such interpretation.

We also observe that claim 1 recites, *inter alia*, a "blister copper launder means for connecting said blister copper-producing means and said anode furnaces." According to *Al-Site Corp. v. VSI Int'l, Inc.*, 174 F.3d 1308, 1319, 50 USPQ2d 1161, 1167 (Fed. Cir. 1999), Section 112, paragraph 6, cannot be invoked if the claimed means-plus-function language includes sufficient structural limitations for performing the claimed function. The claims of the related application appear to indicate that the term "launder" is used to define a structure. Thus, the question here is whether the term "launder" preceding "means" in claim 1 of the present application defines a sufficient structure which performs the claimed function of "connecting said blister copper-

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producing means and said anode furnaces." However, we find nothing in the record to indicate whether the examiner has considered the term "launder" as used in claim 1 as defining a structure. Nor has the examiner considered whether such a structure, if any, performs the claimed function of "connecting said blister copper-producing means and said anode furnaces." Therefore, pursuant to 37 CFR § 1.196(a), we remand this application to the examiner to determine whether the claimed "blister copper launder means" invokes Section 112, paragraph 6.

This application, by virtue of its "special" status requires immediate action. See *Manual of Patent Examining Procedure* (MPEP) § 708.01 (8th Ed., Aug. 2001). It is important that the Board be informed promptly of any action affecting the appeal in this application.

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The appellant is given a ***non-extendable time period*** of two (2) months from the mailing date of this order for response thereto or two (2) months from the mailing date of the examiner's response to our remand order for response thereto, whichever is later. Failure to respond within the given time period will result in the dismissal of the appeal. If the appeal is dismissed, the reexamination proceeding will be terminated, and a certificate under 35 U.S.C. § 307 and 37 CFR § 1.570 will be issued.

REMANDED UNDER 37 CFR § 1.196(a)/ORDERED UNDER § 1.196(d)

ADRIENE LEPIANE HANLON)	
Administrative Patent Judge)	
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Administrative Patent Judge)	INTERFERENCES
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CKP:hh

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