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D E C I S I O N
of 4 July 2002

Case Number: T 0882/00 - 3.4.3

Application Number: 93914016.6

Publication Number: 0641484

IPC: H01L 21/208

Language of the proceedings: EN

Title of invention:
Process for fabricating intrinsic layer and applications

Applicant:
RAMOT UNIVERSITY AUTHORITY FOR APPLIED RESEARCH & INDUSTRIAL DEVELOPMENT LTD.

Opponent:
-

Headword:
P-I-N Structure/RAMOT

Relevant legal provisions:
EPC Art. 83
EPC R. 67
RPBA Art. 11(2)

Keyword:
"No arguments from the appellant contesting the findings in a communication of the Board under Article 11(2) RPBA"
"The reasons for the non-allowability of the application incorporated in the decision by deference to the communication under Article 11(2) RPBA"

Decisions cited:
T 0784/91, T 0766/97, T 1058/97, T 1069/97, T 0230/99

Catchword:
-

Europäisches Patentamt | European Patent Office | Office européen des brevets

Beschwerdekammern | Boards of Appeal | Chambres de recours

Case Number: T 0882/00 - 3.4.3

D E C I S I O N
of the Technical Board of Appeal 3.4.3
of 4 July 2002

Appellant: RAMOT UNIVERSITY
AUTHORITY FOR APPLIED RESEARCH
& INDUSTRIAL DEVELOPMENT LTD.
32 Haim Levanon Street
Ramat Aviv
Tel Aviv 69975 (IL)

Representative: AMMANN PATENTANWAELTE AG BERN
Schwarztorstrasse 31
CH-3001 Bern (CH)

Decision under appeal: **Decision of the Examining Division of the European Patent Office posted 6 April 2002 refusing European patent application No. 93 914 016.6 pursuant to Article 97(1) EPC.**

Composition of the Board:

Chairman: R. K. Shukla
Members: G. L. Eliasson
M. J. Vogel

Summary of Facts and Submissions

I. European patent No. 93 914 016.6 was refused in a decision of the examining division dated 6 April 2000. The reason for the refusal was that the application did not meet the requirements of Articles 83, 84, and 123(2) EPC.

II. In the examination procedure, the following documents, among others, were cited:

D1: US-A-4 238 252;

D2: US-A-3 859 148; and

A3: Solid State Electronics, vol. 36, no. 12 (1993), pages 1749 to 1755;

III. The appellant (applicant) lodged an appeal on 25 May 2000, paying the appeal fee the same day. A statement of the grounds of appeal was filed on 3 August 2000 together with the documents

A14: B. J. Baliga, "Modern Power Devices" (J. Wiley & Sons, New York, 1987), pages 62 to 72;

A15: 28th International Power Conversion Conference Proceedings , June 1994, pages 519 to 524;

A16: "Israeli start up commercializes high voltage GaAs power diodes," CIE January 1995; and

A17: US-A-5 733 815.

IV. The appellant requested that the decision under appeal be set aside and a patent be granted on the basis of one of the following requests:

Main request:

Claims: 1 filed with the statement of the grounds of appeal
2 to 25 according to the main request under consideration in the decision under appeal, i.e. Set 1 filed with the letter dated 14 February 2000; and

as **Auxiliary requests 1 to 6**, the claims according to the main request and the auxiliary requests 1 to 5 forming the basis of the contested decision.

The appellant requested oral proceedings in case the main request was not allowed.

Furthermore, the appellant requested reimbursement of the appeal fee, since the examining division had acted beyond the rules provided by the Guidelines for the Examination in the European Patent Office.

V. In a communication under Article 11(2) of the RPBA annexed to summons to be held on 9 July 2002, the Board introduced the following prior art documents into the appeal proceedings:

D6: P. D. Greene "Liquid-phase epitaxy of III-V compounds" in S. J. Moss and A. Ledwith ed. "The Chemistry of the Semiconductor Industry" (Blackie, Glasgow and London, 1987), pages 157 to 174; and

D7: US-A-3 676 228,

and informed the appellant of its provisional opinion that the application did not appear to meet the requirements of Article 83 EPC, and that there was no substantial procedural violation committed by the examining division in its issue of the decision which would justify reimbursement of the appeal fee.

VI. With a letter dated 8 May 2002, the appellant informed the Board that he would not attend the oral proceedings and requested that the Board makes a final decision on this case.

VII. In a communication dated 7 June 2002, the Board informed the appellant that the oral proceedings due to take place on 9 July 2002 were cancelled.

Reasons for the Decision

1. The appeal complies with Articles 106 to 108 and Rule 64 EPC and is therefore admissible.

2. In the official communication of the Board under Article 11(2) RPBA dated 14 February 2002 and annexed to the summons to oral proceedings, the appellant was informed in detail that the Board had taken the submissions presented with the statement of the grounds of appeal into consideration, but was nevertheless of the provisional opinion that the application did not meet the requirements of Article 83 EPC. Taking into consideration the cited documents D1, D2, D6, D7, A3, A15, and A16 exemplifying known prior art methods, the Board arrived at its provisional view that the application in suit did not contain enough information for the skilled person to carry out the invention for

which protection is sought.

The Board also informed the appellant that it appeared from the file that the examining division did not commit any substantial procedural violation justifying a reimbursement of the appeal fee under Rule 67 EPC.

Furthermore, the appellant was given an opportunity to file submissions and requests until one month before the date of the oral proceedings. This time limit expired on 10 June 2002.

3. The letter of the appellant dated 8 May 2002 informing the Board that the appellant's representative will not attend the oral proceedings thus represents the definitive response of the appellant to the official communication of the Board dated 14 February 2002, since no other submissions were received before the time limit set out in the official communication expired.

The letter of the appellant dated 8 May 2002 does not contain any comments on the case thereby indicating that the appellant also does not wish to make any further observations in writing.

4. Having reconsidered the reasons which were given in the official communication of 14 February 2002, the Board sees no reason to depart from them. Therefore, the application in suit does not meet the requirements of Article 83 EPC for the reasons given in the above-mentioned official communication dated 14 February 2002 which are hereby incorporated in the decision (cf. decisions T 784/91, T 766/97, T 1058/97, T 1069/97, and T 230/99, as well as "Case Law of the Boards of Appeal

of the European Patent Office", 4th Edition, 2001, Chapter VII.D.8.2). Since the application as a whole does not meet the requirements of Article 83 EPC, none of the main request and first to sixth auxiliary requests is patentable.

5. As to the request for reimbursement of the appeal fee, a reimbursement under Rule 67 EPC can only take place when the appeal is allowable, and a reimbursement is equitable by reason of a substantial procedural violation. In the above-mentioned official communication, the Board informed the appellant of the provisional opinion that a substantial procedural violation was not committed taking into account the facts on file.

Since none of the appellant's requests is allowable, none of the conditions set out in Rule 67 EPC for the reimbursement of the appeal fee is met. The request for reimbursement of the appeal fee is therefore rejected.

Order

For these reasons it is decided that:

1. The appeal is dismissed.

2. The request for reimbursement of the appeal fee is rejected.

The Registrar: The Chairman:

D. Spigarelli R. K. Shukla