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**Datasheet for the decision
of 10 July 2009**

Case Number: T 0805/07 - 3.4.03

Application Number: 98105211.1

Publication Number: 0856883

IPC: H01L 21/768

Language of the proceedings: EN

Title of invention:
Method for forming a metal contact

Applicant:
STMicroelectronics, Inc.

Headword:
Method for forming a metal contact/STMicroelectronics, Inc.

Relevant legal provisions (EPC 1973):
EPC Art. 108
RPBA Art. 10a(2)

Keyword:
"Admissibility (no)"

Decisions cited:
T 0809/06, T 0220/83

Catchword:
-



Case Number: T 0805/07 - 3.4.03

D E C I S I O N
of the Technical Board of Appeal 3.4.03
of 10 July 2009

Appellant: STMicroelectronics, Inc.
1310 Electronics Drive
Carrollton, TX 75006-5039 (US)

Representative: Slingsby, Philip Roy
Page White & Farrer
Bedford House
John Street
London, WC1N 2BF (GB)

Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 29 December 2006
refusing European patent application
No. 98105211.1 pursuant to Article 97(1) EPC.

Composition of the Board:

Chairman: G. Eliasson
Members: E. Wolff
T. Bokor

Summary of Facts and Submissions

- I. European application no. 98105211 was filed as a divisional application of European patent application no. 91310146. It was refused by the examining division for non-compliance with Articles 76(1) and 84 EPC 1973.
- II. The applicant filed a notice of appeal and a statement setting out the grounds of appeal, all within the prescribed time limits.
- III. In a written communication attached to the summons to oral proceedings, the board indicated that it considered the appeal to be inadmissible because the statement of the grounds of appeal did not address the grounds of refusal.
- IV. In a letter dated 7 July 2009 the appellant stated that he no longer wished to pursue the patent application and would not be attending the oral proceedings.
- V. Oral proceedings were held in the absence of the appellant who had requested in writing that the decision under appeal be set aside and a patent granted based on the main request or the first or the second auxiliary request, all filed with the statement of the grounds of appeal.

Reasons for the decision

Admissibility

1. The examining division found that the subject matter of claim 1 of each of the requests before it, a main request and three auxiliary requests, extended beyond the content of the parent application as filed. The examining division further found that the independent claims of each of the four requests lacked clarity. The application was therefore refused on the ground that none of the requests complied with the requirements of Art. 76(1) and Art. 84 EPC 1973.
2. Art. 108 EPC 1973 requires the appellant to file a written statement setting out the grounds of appeal. Art. 10a(2) of the Rules of Procedure of the Boards of Appeal (RPBA) as in force at the time the appeal was filed, specifies that the statement of the grounds of appeal shall contain a party's complete case, setting out clearly and concisely the reasons of why it is requested that the decision under appeal be reversed, and shall specify expressly all the facts, arguments and evidence relied on.
3. It is furthermore established case law that if the appellant submits that the decision under appeal is incorrect, the statement setting out the grounds of appeal must enable the board to understand immediately why it is alleged that the decision under appeal is incorrect and on what facts the appellant's arguments are based, without the board first having to make investigations of its own (see, e.g., case T 809/06 of 27th of June 2007, referring to decision T 220/83

(OJ EPO 1986 249), approved in subsequent decisions). A departure from this requirement could be excused, for instance, if the decision under appeal were itself sufficiently incongruent, but this is not the case here nor has it been alleged by the appellant that it was.

4. The board in its written communication expressed the considered view that the statement of the grounds of appeal did not address anywhere the primary reason for the refusal of the application, which was that the subject matter of the claims extended beyond the contents of the parent application (Art. 76(1), second sentence, EPC 1973). The statement of grounds merely addresses the failure of the claims to comply with Art. 84 EPC 1973. The notice of appeal addresses neither.
5. The appellant failed to file a reasoned response to the board's communication.
6. In addition, the main request and the first auxiliary request filed with the statement of the grounds of appeal are identical with requests which were considered in the decision under appeal. These requests therefore do not address the objections under Art. 76(1) EPC 1973 which were raised by the examining division. It is also not immediately apparent that the amendment carried out in respect of the second auxiliary request is intended to address and overcome those objections.

7. The board is thus given no information, not explicitly in the form of arguments nor implicitly in the form of amendments, which addresses the objections of the examining division and which would enable the board to understand why the appellant asserts that the decision is incorrect in respect of the refusal under Art. 76(1) EPC 1973. The board therefore judges that the appeal is not admissible.

Order

For these reasons it is decided that:

The appeal is rejected as inadmissible.

Registrar:

Chair:

S. Sánchez Chiquero

G. Eliasson