

Internal distribution code:

- (A) [] Publication in OJ
(B) [] To Chairmen and Members
(C) [X] To Chairmen
(D) [] No distribution

D E C I S I O N
of 23 April 2002

Case Number: T 1120/96 - 3.4.3

Application Number: 91119881.0

Publication Number: 0487088

IPC: H01L 21/20

Language of the proceedings: EN

Title of invention:

Method for forming semiconductor crystal and semiconductor device formed by said method

Applicant:

CANON KABUSHIKI KAISHA

Opponent:

-

Headword:

-

Relevant legal provisions:

EPC Art. 52(1), 54

RPBA Art. 11(2)

Keyword:

"Board's provisional finding of lack of novelty in a communication pursuant to Article 11(2) RPBA - not disputed by the appellant in its response informing the Board that the appellant will not attend the oral proceedings"

"Dismissal of the appeal on the grounds communicated to the appellant"

Decisions cited:

T 0784/91, T 1067/97, T 0230/99

Catchword:

-



Case Number: T 1120/96 - 3.4.3

D E C I S I O N
of the Technical Board of Appeal 3.4.3
of 23 April 2002

Appellant:

CANON KABUSHIKI KAISHA
30-2, 3-chome, Shimomaruko
Ohta-ku
Tokyo (JP)

Representative:

Bühling, Gerhard, Dipl.-Chem.
Patentanwaltsbüro
Tiedtke-Bühling-Kinne & Partner
Bavariaring 4
D-80336 München (DE)

Decision under appeal:

**Decision of the Examining Division of the
European Patent Office posted 2 August 1996
refusing European patent application
No. 91 119 881.0 pursuant to Article 97(1) EPC.**

Composition of the Board:

Chairman: R. K. Shukla
Members: E. Wolff
M. J. Vogel

Summary of Facts and Submissions

- I. With a decision dated 2 August 1996, the examining division refused European patent application No. 91 119 881.0 on the ground that independent claim 6 failed to meet the requirements of Articles 52(1) and 56 EPC. The refusal was based on a prior art document, D3 = US-A-3 411 051.
- II. The appellant filed a notice of appeal on 9 October 1996, and paid the appeal fee on the same day. The statement setting out the grounds of appeal was filed on 11 December 1996, together with an amended set of claims 1 to 10. The appellant requested that the decision of the examining division be set aside and a patent be granted on the basis of these amended claims, together with the description and drawings as originally filed. Oral proceedings were requested in the event that the appellant's request for the grant of a patent was considered to be unallowable.
- III. The independent device claim 6 of the request reads as follows:
- "1. A semiconductor device comprising a substrate (5), a recess formed on the substrate (5), a first conductivity type semiconductor region (7) and a second conductivity type semiconductor region (6) having an opposite conductivity type to the first conductivity type formed in the recess formed on the substrate (5), and wiring portions (1, 3) wherein the surfaces of the substrate, the first conductivity type semiconductor region (7) and the second conductivity type semiconductor region (6) are in plane with each other, and the wiring portions (1, 3) connected respectively

to the first conductivity type semiconductor region (7) and the second conductivity type semiconductor region (6) are formed on and in contact with the plane and are all substantively on the same plane and electrically connected only via the semiconductor areas (6, 7), said semiconductor device being obtainable by the process steps (a) to (e) as set out in claim (1)."

- IV. On 27 November 2001 the Board issued summons to oral proceedings scheduled for 23 April 2002. Accompanying the summons was a communication in which the Board raised objections to the claims under Articles 52(1), 54, 56, 84 and 123(2).

In particular, the Board stated its preliminary finding that the invention as claimed in claim 6 lacked novelty over the disclosure in document D3.

- V. In a written reply dated 8 August 2002 to the Board's communication, the appellant informed the Board of his decision not to attend the oral proceedings and did not make any observations on the Board's objections. Oral proceedings were held on the scheduled day in the absence of the appellant.

Reasons for the Decision

1. The appeal is admissible.
2. In the communication of the Board dated 27 November 2001, the appellant was informed in detail of the objections raised by the Board under Articles 52(1), 54, 56, 84 and 123(2). In particular the appellant was

informed that there were no structural differences between the device as claimed and the device disclosed in document D3 and, in particular, that there were no structural differences which were attributable to any of the steps of process claim 1 as referred to in the statement in claim 6 about "said semiconductor device being obtainable by the process steps (a) to (e) as set out in claim 1." Moreover, the phrase "being obtainable by" implied that a device as claimed could but need not be obtained by the process referred to. The subject-matter of claim 6 was accordingly not new having regard to the disclosure of document D3.

3. As mentioned under item V, the appellant did not dispute the finding of lack of novelty in his response and informed the Board of his decision not to attend the oral proceedings. Following the approach taken in decisions T 784/91 of 22 September 1993, T 1069/97 of 24 January 2000 and T 230/99 of 7 May 2001, the Board takes this to be a clear expression of the appellant's wish not to present any further arguments and to have the decision taken on the basis of the application documents on file.

4. Having reconsidered during the oral proceedings the objections raised in the communication of 27 November 2001, the Board sees no reason to depart from its preliminary finding, left unchallenged by the appellant, that the invention as claimed in claim 6 of the application in suit is not new. The detailed reasons for concluding that claim 6 lacks novelty are set out in full in the Board's communication of 27 November 2001 pursuant to Article 11(2) RPBA and, accordingly, are known to the appellant. The Board consequently considers it sufficient to incorporate

those detailed reasons here without repeating them in full.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:

D. Spigarelli

R. K. Shukla



Case Number: T 1120/96 - 3.4.3

D E C I S I O N
of 23 July 2002 correcting error in the decision
of the Technical Board of Appeal 3.4.3
of 23 April 2002

Appellant: CANON KABUSHIKI KAISHA
30-2, 3-chome, Shimomaruko
Ohta-ku
Tokyo (JP)

Representative: Bühling, Gerhard, Dipl.-Chem.
Patentanwaltsbüro
Tiedtke-Bühling-Kinne & Partner
Bavariaring 4
D-80336 München (DE)

Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 2 August 1996
refusing European patent application
No. 91 119 881.0 pursuant to Article 97(1) EPC.

Composition of the Board:

Chairman: R. K. Shukla
Members: E. Wolff
M. J. Vogel

In application of Rule 89 EPC, the decision in the appeal case T 1120/96 is corrected as follows:

On page 2, point V, line 1 - "8 August 2002" is replaced by, "10 April 2002"

The Registrar:

The Chairman:

D. Spigarelli

R. K. Shukla