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D E C I S I O N
of 5 November 2001

Case Number: T 1058/97 - 3.4.3

Application Number: 93111360.9

Publication Number: 0586835

IPC: H01L 29/60

Language of the proceedings: EN

Title of invention:

High speed, low gate/drain capacitance dmos device

Applicant:

MOTOROLA, INC.

Opponent:

-

Headword:

-

Relevant legal provisions:

EPC Art. 52(1), 56, 123(2)

RPBA Art. 11(2)

Keyword:

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

Decisions cited:

T 0784/91, T 1069/97, T 0230/99

Catchword:

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Boards of Appeal

Chambres de recours

Case Number: T 1058/97 - 3.4.3

D E C I S I O N
of the Technical Board of Appeal 3.4.3
of 5 November 2001

Appellant: MOTOROLA, INC.
1303 East Algonquin Road
Schaumburg, IL 60196 (US)

Representative: Hudson, Peter David
Motorola
European Intellectual Property
Midpoint
Alencon Link
Basingstoke
Hampshire RG21 7PL (GB)

Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 24 April 1997
refusing European patent application
No. 93 111 360.9 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. In its communication pursuant to Article 96(2) and Rule 51(2) EPC, the examining division had informed the applicant that the European patent application No. 93 111 360.9 did not comply with the requirements of the convention. In its response, the applicant requested that a decision be issued according to the state of the file. The examining division refused the European patent application in a decision dispatched on 24 April 1997, since the objections raised in the above-mentioned official communication were not met.

- II. The appellant (applicant) lodged an appeal on 11 June 1997, paying the appeal fee the same day. A statement of the grounds of appeal was filed on 3 September 1997 together with new claims 1 to 5 and arguments as to why the amended claims would be patentable having regard to the cited prior art. The appellant requested that the decision under appeal be set aside and that a patent be granted on the basis of the new set of claims. In case the Board should not agree with the above request, the appellant requested that oral proceedings be appointed.

- III. In an official communication of the Board dated 8 August 2001 annexed to summons for oral proceedings to be held on 14 November 2001, the Board informed the appellant in detail that it had considered the submissions filed with the statement of the grounds of appeal, but was nevertheless of the provisional opinion that claim 1 did not appear to meet the requirements of Article 123(2) EPC, and that the subject matter of claim 1 did not appear to involve an inventive step having regard to the prior art documents EP-0 050 773 (referred to as document D1) and Patent Abstracts of

Japan, vol. 14, No. 371 (E-963) [4314] 10 August 1990 & JP-A-2-133 966 (referred to as document D2) (Articles 52(1) and 56 EPC). In addition, the appellant was requested to file any submissions or requests at least one month before the date of the oral proceedings.

- IV. With the letter dated 9 October 2001, the appellant informed the Board that the appellant's representative will not be attending the oral proceedings scheduled for 14 November 2001.
- V. In a communication dated 17 October 2001, the Board informed the appellant that the oral proceedings due to take place on 14 November 2001 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 8 August 2001 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
 - (i) claim 1 as amended did not meet the requirements of Article 123(2) EPC; and
 - (ii) the subject matter of claim 1 did not involve an inventive step having regard to the prior art

documents D1 and D2.

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 15 October 2001.

3. The letter of the appellant dated 9 October 2001 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 8 August 2001, since no other submissions were received before the time limit set out in the official communication expired.

The letter of the appellant dated 9 October 2001 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 8 August 2001 and which were unchallenged by the appellant, the Board sees no reason to depart from them. Therefore, claim 1 submitted with the statement of the grounds of appeal is not allowable for the reasons given in the above-mentioned official communication dated 8 August 2001 which are hereby incorporated in the decision (cf. decisions T 784/91, T 1069/97, and T 230/99, as well as "Case Law of the Boards of Appeal of the European Patent Office", 3rd Edition, 1998, chapter VII-D-8.2).

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:

D. Spigarelli

R. K. Shukla