

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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. 15

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte ROBERT J. NELSON

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Appeal No. 1998-2397  
Application No. 08/654,708

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ON BRIEF

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Before RUGGIERO, GROSS, and BLANKENSHIP, Administrative Patent Judges.

GROSS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1 through 8 and 10 through 25. In an Amendment After Final, filed on May 14, 1997, appellant cancelled claims 1 through 7 and amended claim 19. In the Examiner's Answer (page 2), the examiner indicates that claims 20 through 23 are allowable and claim 19 is objected to as being dependent upon a rejected base claim. Accordingly,



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Reference is made to the Examiner's Answer (Paper No. 9, mailed September 26, 1997) and the Supplemental Examiner's Answer (Paper No. 11, mailed January 26, 1998) for the examiner's complete reasoning in support of the rejection, and to appellant's Brief (Paper No. 8, filed June 23, 1997) and Reply Brief (Paper No. 10, filed November 24, 1997) for appellant's arguments thereagainst.

OPINION

We have carefully considered the claims, the applied prior art, and the respective positions articulated by appellant and the examiner. As a consequence of our review, we will reverse the obviousness rejection of claims 8, 10 through 18, 24, and 25.

The examiner (Answer, page 4) explains that in the claims "no specific 'testing object' has been designated," and that during "*visual* inspection, the wafer 14, itself, would be the 'testing object.'" The examiner (Answer, page 4) points to the wafer in appellant's figure 1, stating that "it appears that the wafer edges angle downward ... and therefore can be designated as an 'angled upper portion'" as recited in the claims. We disagree.

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Appellant states in the Background of the Invention section of the specification (page 1, lines 13-15) that the "diagram [in Figure 1] exaggerates the curvature of the bottom electrode 16 and is not to scale." Thus, the curvature of the wafer is exaggerated. Furthermore, as indicated by appellant (Reply Brief, page 2) although the wafer bends under the gas pressure used during processing, the wafer itself is flat and, as such, has no upper portion, contrary to the examiner's assertions. Accordingly, the wafer fails to meet the requirement of an upper portion for the claimed testing object. Since all of the claims include this limitation, we cannot sustain the rejection of claims 8, 10 through 18, 24, and 25.

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CONCLUSION

The decision of the examiner rejecting claims 8, 10 through 18, 24, and 25 under 35 U.S.C. § 103 is reversed.

REVERSED

JOSEPH F. RUGGIERO	)	
Administrative Patent Judge	)	
	)	
	)	
	)	
	)	BOARD OF PATENT
ANITA PELLMAN GROSS	)	APPEALS
Administrative Patent Judge	)	AND
	)	INTERFERENCES
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	)	
	)	
HOWARD B. BLANKENSHIP	)	
Administrative Patent Judge	)	

apg/vsh

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