

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 20

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte RICHARD S. MUKA

Appeal No. 1999-2220
Application No. 08/662,930¹

ON BRIEF

Before McCANDLISH, **Senior Administrative Patent Judge**, COHEN,
and ABRAMS, **Administrative Patent Judges**.

ABRAMS, **Administrative Patent Judge**.

DECISION ON APPEAL

This is an appeal from the decision of the examiner finally rejecting claims 1-7, 29-36, 51-55, 58-66, 69-71 and 79. Claims 8-28, 37-50 and 78 have been canceled, and claims 56, 57, 67, 68 and 72-77 have been withdrawn as being drawn to a non-elected invention.

¹ Application for patent filed June 13, 1996.

The appellant's invention is directed to a substrate processing apparatus. The claims on appeal have been reproduced in an appendix to the Brief.

THE REFERENCE

The reference relied upon by the examiner to support the final rejection is:

Iwai et al. (Iwai) 1996	5,562,383	Oct. 8, (filed Jan. 5, 1996)
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THE REJECTIONS

Claims 1-7, 29-35, 51-55, 58, 60, 63-66, 69, 71 and 79 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Iwai.

Claims 1-7, 29-36, 51-55, 58-66, 69-71 and 79 stand rejected under 35 U.S.C. § 103 as being unpatentable over Iwai.

OPINION

Rather than attempt to reiterate the examiner's full commentary with regard to the above-noted rejections and the conflicting viewpoints advanced by the examiner and the

appellant regarding the rejections, we make reference to the final rejection (Paper No. 10) and the Examiner's Answer (Paper No. 17), and to the appellant's Briefs (Papers Nos. 16 and 18).

The Rejection Under 35 U.S.C. § 102(e)

Anticipation is established only when a single prior art reference discloses, either expressly or under the principles of inherency, each and every element of the claimed invention. See *In re Paulsen*, 30 F.3d 1475, 1480-1481, 31 USPQ2d 1671, 1675 (Fed. Cir. 1994) and *In re Spada*, 911 F.2d 705, 708, 15 USPQ2d 1655, 1657 (Fed. Cir. 1990). We find this not to be the case here, and therefore we will not sustain this rejection. Our reasons for arriving at this conclusion follow.

Independent claim 1 requires, *inter alia*, the presence of "substrate processing chambers" (emphasis added), a first one of which is vertically oriented in a plane above a second one, with each of them being separately and independently connected to the transport chamber and forming separate and independent isolated substrate processing areas therein.

Iwai is directed to an apparatus for processing substrates. The examiner focuses upon the embodiment shown in Figure 11 as supporting the conclusion that this reference is anticipatory of claim 1. However, we cannot agree. Our reasons follow.

Although the term "processing" is not defined in the appellant's specification, it is our opinion that one of ordinary skill in the art would understand this term to mean subjecting a substrate to treatment or acting upon it so as to alter it in some manner, such as exposing it to gas or other materials and/or conditions, a conclusion that is confirmed in the opening paragraphs of Iwai. Looking to Figure 11 of Iwai, which the examiner has focused upon in the rejection, only element 101 is described as a "processing" chamber (column 15, line 31). Only one such chamber is disclosed and therefore, insofar as its explicit teachings are concerned, on its face, Iwai clearly does not anticipate claim 1, which requires that there be at least two processing chambers. However, the examiner has taken the position that "vessel storage stage" 116 constitutes a plurality of "chambers" which qualify as processing chambers on the basis that "processes such as

storing, drying (at least to some degree), and/or cooling (at least to some degree) would occur in these chambers" (Paper No. 10, page 3). There is no support for this in the reference. First of all, element 116 is not described as a series of chambers, but as a "vessel storage stage," the function of which is to store vessels (114) that contain substrates before and after they are conveyed to chamber 119, where the substrates are removed from the vessels for eventual processing in chamber 109 (column 15, lines 44 and 45; columns 20 and 21). Second, not only is there no teaching in Iwai of applying a treatment anywhere other than in chamber 109, but stage 116 is not described as even having a front closure that can isolate the space so that a treatment could be accomplished therein. Moreover, in view of the fact that the substrates are contained in closed vessels 114 when they are stored in stage 116, no treatment could be accomplished to them at that location with the Iwai apparatus, as disclosed. Finally, we cannot agree with the examiner that the mere act of "storing" substrates in stage 116 amounts to "processing" them, and the conclusion that drying and/or cooling would occur therein is mere speculation,

even if one were to agree, *arguendo*, that such constitutes "processing."

The Section 102 rejection of independent claim 1 is not sustained. On the basis of the same reasoning, we also will not sustain the Section 102 rejection of independent claim 29, which contains the same limitations. It further follows that the rejection of the claims that depend from claims 1 and 29 also will not be sustained.

The Rejection Under 35 U.S.C. § 103

The test for obviousness is what the combined teachings of the prior art would have suggested to one of ordinary skill in the art. See, for example, *In re Keller*, 642 F.2d 413, 425, 208 USPQ 871, 881 (CCPA 1981). In establishing a *prima facie* case of obviousness, it is incumbent upon the examiner to provide a reason why one of ordinary skill in the art would have been led to modify a prior art reference or to combine reference teachings to arrive at the claimed invention. See *Ex parte Clapp*, 227 USPQ 972, 973 (Bd. Pat. App. & Int. 1985). To this end, the requisite motivation must stem from some teaching, suggestion or inference in the prior art as a whole

or from the knowledge generally available to one of ordinary skill in the art and not from the appellant's disclosure. See, for example, **Uniroyal ,Inc. V. Rudkin-Wiley Corp.**, 837 F.2d 1044, 1052, 5 USPQ2d 1434, 1052 (Fed. Cir.), *cert. denied*, 488 U.S. 825 (1988).

Independent claims 1 and 29 also stand rejected as being unpatentable over Iwai. We have pointed out above the subject matter recited in claims 1 and 29 which cannot be found in Iwai. It is our view that these shortcomings are not overcome by considering the reference in the light of 35 U.S.C. § 103. We therefore conclude that the teachings of Iwai fail to establish a *prima facie* case of obviousness with respect to the subject matter of claims 1 and 29, and the Section 103 rejection cannot be sustained.

SUMMARY

Neither rejection is sustained.

The decision of the examiner is reversed.

REVERSED

HARRISON E. McCANDLISH)	
Senior Administrative Patent Judge)	
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)	BOARD OF PATENT
IRWIN CHARLES COHEN)	APPEALS
Administrative Patent Judge)	AND
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