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10/439,245	05/14/2003	Daniel L. Flamm		5963

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EXAMINER

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ART UNIT PAPER NUMBER

1765

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.	Applicant(s)	
10/439,245	FLAMM, DANIEL	
Examiner	Art Unit	
Anita K. Alanko	1765	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1)  Responsive to communication(s) filed on 20 November 2006.
- 2a)  This action is **FINAL**.                      2b)  This action is non-final.
- 3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4)  Claim(s) 56-98, 100-104 and 106-117 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5)  Claim(s) 56-62, 64-98, 100-104, 106-108 and 110-117 is/are allowed.
- 6)  Claim(s) 63 is/are rejected.
- 7)  Claim(s) 109 is/are objected to.
- 8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9)  The specification is objected to by the Examiner.
- 10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \*    c)  None of:
- Certified copies of the priority documents have been received.
  - Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1)  Notice of References Cited (PTO-892)
- 2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3)  Information Disclosure Statement(s) (PTO/SB/08)
- 4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5)  Notice of Informal Patent Application

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***Claim Objections***

Claim 109 is objected to under 37 CFR 1.75 as being a substantial duplicate of claim 57. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 63 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The term “substantially” in claim 63 is a relative term which renders the metes and bounds of the claim indefinite. The term "high" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. It is unclear which values of temperatures are within the range of being “substantially” equal.

***Allowable Subject Matter***

Claims 56-62, 64-98, 100-104, 106-108, 110-117 are allowed.

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Claim 63 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

***Response to Amendment***

The objection to the specification, rejection of claim 109 under 35 USC 251, and rejection of claim 109 under 35 USC 112, 1<sup>st</sup> paragraph are withdrawn since the “in a controlled manner” and “before” have been deleted from the claims.

The rejection of claims 57, 68 and 103 under 35 USC 112, 2<sup>nd</sup> paragraph is withdrawn since “heat transfer means” has been deleted, proper basis for “plurality of heating elements” has been added and “high” has been deleted.

The prior art rejections over JP 59-076876 are withdrawn. Applicant’s point is well taken that JP 59-076876 does not teach selecting a thermal mass based on a predetermined temperature change and specified interval of time for processing, as in the context of claim 56. Although such a thermal mass may be inherent, there is no teaching to predetermine a temperature change and interval of time, and based on that, to select the thermal mass of the substrate holder. As to claim 70, JP 59-076876 does not teach changing the substrate temperature by using a measured wafer temperature. Rather, JP 59-076876 changes temperature based on the thickness that has been processed (page 6, lines 1-2). As to claim 94, JP 59-076876 fails to disclose a substrate holder temperature sensor. There is no motivation to provide one since the substrate holder temperature is not used to control the process.

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The prior art rejections over Tsubone are withdrawn. Applicant's point is well taken that Tsubone does not teach heating, as in the context of claim 70. Rather, Tsubone has cooling. As to claims 80, 94, 100 and 104, Tsubone fails to disclose a substrate holder temperature sensor. Rather, Tsubone has a substrate temperature sensor 28. There is no motivation to add an extra sensor that Tsubone does not use for process control since the substrate holder is maintained at the same temperature during processing.

### *Response to Arguments*

Applicant's arguments filed 11/20/06 have been fully considered but they are not persuasive to the extent they still apply.

Claim 63 remains rejected under 35 USC 112 because of the term "substantially." Applicant argues that a specific embodiment defines the term to "within one degree Celsius." In response, an example of what comprises "substantially" is not the same as a clear and distinct definition, and therefore the metes and bounds of the claim are unclear. The definition provided in the specification may be added to the claim to overcome the rejection.

Examiner notes that new claim text (new with respect to the issued patent) should be underlined. The text of claims 99 and 105 should not be presented. In addition, a supplemental oath should be submitted stating that all errors (i.e., amendments) occurred without deceptive intent.

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