

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GLOBALFOUNDRIES U.S., INC.,
GLOBALFOUNDRIES DRESDEN MODULE ONE LLC & CO. KG,
GLOBALFOUNDRIES DRESDEN MODULE TWO LLC & CO. KG,
and THE GILLETTE COMPANY,

Petitioners

v.

ZOND, LLC,
Patent Owner

Case No. IPR2014-01083¹
Patent 7,147,759 B2

PATENT OWNER'S NOTICE OF APPEAL
35 U.S.C. § 142 & 37 C.F.R. § 90.2

¹ Case IPR2014-00988 has been joined with the instant proceeding.

Pursuant to 37 C.F.R. § 90.2(a), Patent Owner, Zond, LLC, hereby provides notice of its appeal to the United States Court of Appeals for the Federal Circuit for review of the Final Written Decision of the United States Patent and Trademark Office (“USPTO”) Patent Trial and Appeals Board (“PTAB”) in *Inter Partes* Review 2014-00781, concerning U.S. Patent 7,147,759 (“the ’759 patent”), entered on August 14, 2015, attached hereto as Appendix A.

ISSUES TO BE ADDRESSED ON APPEAL

- A. Whether the PTAB erred when construing, according to its broadest reasonable interpretation in light of the specification of the ’759 patent as understood by one of ordinary skill in the art at the time of the invention, the term “without forming an arc discharge,” as recited in the claims of the ’759 patent, as “substantially eliminating the possibility of arcing?”
- B. Whether the PTAB erred in finding claim 40 unpatentable as being obvious under 35 U.S.C. § 103(a) in view of U.S. Pat. 6,413,382 to Wang (“Wang”) and A. A. Kudryavtsev and V.N. Skrebov, *Ionization Relaxation in a Plasma Produced by a Pulsed Inert-Gas Discharge*, 28(1) SOV. PHYS. TECH. PHYS. 30–35 (1983) (“Kudryavtsev”)?

Simultaneous with submission of this Notice of Appeal to the Director of the United States Patent and Trademark Office, this Notice of Appeal is being filed with the Patent Trial and Appeal Board. In addition, this Notice of Appeal, along with the required docketing fees, is being filed with the United States Court of Appeals for the Federal Circuit.

Respectfully submitted,

/Tarek N. Fahmi/

Tarek N. Fahmi, Reg. No. 41,402

Dated: October 12, 2015

ASCENDA LAW GROUP, PC
333 W. San Carlos St., Suite 200
San Jose, CA 95110
Tel: 866-877-4883
Email: tarek.fahmi@ascendalaw.com

APPENDIX A

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GLOBALFOUNDRIES U.S., INC.,
GLOBALFOUNDRIES DRESDEN MODULE ONE LLC & CO. KG,
GLOBALFOUNDRIES DRESDEN MODULE TWO LLC & CO. KG, and
THE GILLETTE COMPANY,
Petitioners,

v.

ZOND, LLC,
Patent Owner.

Case IPR2014-01083¹
Patent 7,147,759 B2

Before KEVIN F. TURNER, DEBRA K. STEPHENS, JONI Y. CHANG,
SUSAN L.C. MITCHELL, and JENNIFER MEYER CHAGNON,
Administrative Patent Judges.

CHANG, *Administrative Patent Judge.*

FINAL WRITTEN DECISION
Inter Partes Review
35 U.S.C. § 318(a) and 37 C.F.R. § 42.73

¹ Case IPR2014-00988 has been joined with the instant *inter partes* review.

I. INTRODUCTION

GLOBALFOUNDRIES U.S., Inc., GLOBALFOUNDRIES Dresden Module One LLC & Co. KG, and GLOBALFOUNDRIES Dresden Module Two LLC & Co. KG (collectively, “the GlobalFoundries entities”) filed a Petition requesting an *inter partes* review of claim 40 of U.S. Patent No. 7,147,759 B2 (Ex. 1401, “the ’759 patent”). Paper 2 (“Pet.”). Patent Owner Zond, LLC (“Zond”) filed a Preliminary Response. Paper 7 (“Prelim. Resp.”). Upon consideration of the Petition and Preliminary Response, we instituted the instant trial on October 10, 2014, pursuant to 35 U.S.C. § 314. Paper 9 (“Dec.”).

Subsequent to institution, we granted the revised Motion for Joinder filed by The Gillette Company (“Gillette”), joining Case IPR2014-00988 with the instant trial.² Paper 12. Zond filed a Response (Paper 23 (“PO Resp.”)), and GlobalFoundries filed a Reply (Paper 26 (“Reply”)). Oral hearing³ was held on June 8, 2015, and a transcript of the hearing was entered into the record. Paper 34 (“Tr.”).

We have jurisdiction under 35 U.S.C. § 6(c). This final written decision is entered pursuant to 35 U.S.C. § 318(a) and 37 C.F.R. § 42.73. For the reasons set forth below, we determine that GlobalFoundries has shown by a preponderance of the evidence that claim 40 of the ’759 patent is unpatentable under 35 U.S.C. § 103(a).

² In this Decision, we refer to the GlobalFoundries entities (the original Petitioner) and Gillette as “GlobalFoundries,” for efficiency.

³ The hearings for this review and the following *inter partes* reviews were consolidated: IPR2014-00781, IPR2014-00782, IPR2014-00800, IPR2014-00802, IPR2014-00805, IPR2014-01086, and IPR2014-01087.

A. Related District Court Proceedings

The parties indicate that the '759 patent was asserted in *Zond, LLC v. Advanced Micro Devices, Inc.*, No.1:13-cv-11577-DPW (D. Mass.), and identify other proceedings in which Zond asserted the '759 patent. Paper 5; Ex. 1419.

B. The '759 Patent

The '759 patent relates to a high-power pulsed magnetron sputtering apparatus. Ex. 1401, Abs. At the time of the invention, sputtering was a well-known technique for depositing films on semiconductor substrates. *Id.* at 1:6–13. The '759 patent indicates that prior art magnetron sputtering systems deposit films having low uniformity and poor target utilization—the target material erodes in a non-uniform manner. *Id.* at 1:55–62. To address these problems, the '759 patent discloses that increasing the power applied between the target and anode can increase the amount of ionized gas and, therefore, increase the target utilization. *Id.* at 2:60–62. However, increasing the power also “increases the probability of establishing an undesirable electrical discharge (an electrical arc) in the process chamber.” *Id.* at 2:63–67.

According to the '759 patent, forming a weakly-ionized plasma substantially eliminates the probability of establishing a breakdown condition in the chamber when high-power pulses are applied between the cathode and anode. *Id.* at 7:17–21. Once the weakly-ionized plasma is formed, high-power pulses are applied between the cathode and anode to

generate a strongly-ionized plasma from the weakly-ionized plasma. *Id.* at 7:27–30, 7:65–66.

C. The Sole Challenged Claim

Claim 40, reproduced below, is the sole challenged claim:

40. A magnetically enhanced sputtering source comprising:

a) means for ionizing a feed gas to generate a weakly-ionized plasma proximate to a sputtering target;

b) means for generating a magnetic field proximate to the weakly-ionized plasma, the magnetic field substantially trapping electrons in the weakly-ionized plasma proximate to the sputtering target; and

c) means for applying a *voltage pulse* to the weakly-ionized plasma, an amplitude and a rise time of the voltage pulse being chosen to *increase an excitation rate of ground state atoms* that are present in the weakly-ionized plasma to create a multi-step ionization process that generates a strongly-ionized plasma from the weakly-ionized plasma, *the multi-step ionization process comprising exciting the ground state atoms to generate excited atoms, and then ionizing the excited atoms within the weakly-ionized plasma, without forming an arc discharge*, to ions that sputter target material from the sputtering target.

Ex. 1401, 24:1–20 (emphases added).

D. Prior Art Relied Upon

GlobalFoundries relies upon the following prior art references:

Wang US 6,413,382 B1 July 2, 2002 (Ex. 1405)

D.V. Mozgrin et al., *High-Current Low-Pressure Quasi-Stationary Discharge in a Magnetic Field: Experimental Research*, 21 PLASMA PHYSICS REPORTS 400–409 (1995) (Ex. 1403, “Mozgrin”).

A. A. Kudryavtsev and V.N. Skrebov, *Ionization Relaxation in a Plasma Produced by a Pulsed Inert-Gas Discharge*, 28(1) SOV. PHYS. TECH. PHYS. 30–35 (1983) (Ex. 1404, “Kudryavtsev”).

E. Ground of Unpatentability

We instituted the instant trial based on the sole ground that claim 40 of the '759 patent is unpatentable under 35 U.S.C. § 103(a) over the combination of Wang and Kudryavtsev. Dec. 30.

II. ANALYSIS

A. Claim Construction

In an *inter partes* review, claim terms in an unexpired patent are given their broadest reasonable construction in light of the specification of the patent in which they appear. 37 C.F.R. § 42.100(b); *see also In re Cuozzo Speed Techs., LLC*, No. 2014-1301, 2015 WL 4097949, at *5–8 (Fed. Cir. July 8, 2015) (“Congress implicitly approved the broadest reasonable interpretation standard in enacting the AIA,”⁴ and “the standard was properly adopted by PTO regulation.”). Significantly, claims are not interpreted in a vacuum but are part of, and read in light of, the specification. *United States v. Adams*, 383 U.S. 39, 49 (1966) (“[I]t is fundamental that claims are to be construed in the light of the specifications and both are to be read with a view to ascertaining the invention.”) (citations omitted). Claim terms are given their ordinary and customary meaning as would be understood by one of ordinary skill in the art in the context of the entire disclosure. *In re Translogic Tech., Inc.*, 504 F.3d 1249, 1257 (Fed.

⁴ The Leahy-Smith America Invents Act, Pub. L. No. 112–29, 125 Stat. 284 (2011) (“AIA”).

Cir. 2007). An inventor may rebut that presumption by providing a definition of the term in the specification with “reasonable clarity, deliberateness, and precision.” *In re Paulsen*, 30 F.3d 1475, 1480 (Fed. Cir. 1994). In the absence of such a definition, limitations are not to be read from the specification into the claims. *In re Van Geuns*, 988 F.2d 1181, 1184 (Fed. Cir. 1993).

Claim Terms

“multi-step ionization process”

Claim 40 recites “*the multi-step ionization process* comprising exciting the ground state atoms to generate excited atoms, and then ionizing the excited atoms within the weakly-ionized plasma, without forming an arc discharge, to ions that sputter target material from the sputtering target.” Ex. 1401, 24:15–20 (emphasis added). Prior to institution, the parties submitted their proposed claim constructions for the claim term “multi-step ionization process.” Pet. 16–17; Prelim. Resp. 18–20. In the Decision on Institution, we addressed each of the parties’ contentions, and adopted Zond’s proposed construction, in light of the Specification, as the broadest reasonable interpretation. Dec. 9; Ex. 1401, 9:18–36. The parties do not challenge any aspect of our claim construction as to this term. PO Resp. 13; Reply 1. Upon review of the present record, we discern no reason to change our claim construction. We, therefore, construe the claim term “multi-step ionization process” in light of the Specification as “an ionization process having at least two distinct steps.”

“weakly-ionized plasma” and “strongly-ionized plasma”

Claim 40 recites:

means for applying a voltage pulse to the weakly-ionized plasma, an amplitude and a rise time of the voltage pulse being chosen to increase an excitation rate of ground state atoms that are present in the weakly-ionized plasma to create a multi-step ionization process that generates a *strongly-ionized plasma from the weakly-ionized plasma*.

Ex. 1401, 24:9–15 (emphasis added).

During the pre-trial stage of this proceeding, the parties also submitted their constructions for the claim terms “a weakly-ionized plasma” and “a strongly-ionized plasma.” Pet. 16; Prelim. Resp. 17–18. In our Decision on Institution, we adopted Zond’s proposed constructions, in light of the Specification, as the broadest reasonable interpretation. Dec. 7–9; *see, e.g.*, Ex. 1401, 10:3–6 (“This rapid ionization results in a strongly-ionized plasma having a large ion density being formed in an area proximate to the cathode assembly 216.”).

Subsequent to institution, notwithstanding that neither Zond, nor its expert witness, expressly challenged our claim constructions as to these terms (PO Resp. 13; Ex. 2005 ¶ 58), Zond improperly attempts to import extraneous limitations into the claim by arguing that specific ion density ranges for these claim terms are required, in connection with the ground of unpatentability based on Wang and Kudryavtsev (PO Resp. 46–47). It is well settled that if a feature is not necessary to give meaning to a claim term, it is “extraneous” and should not be read into the claim. *Renishaw PLC v. Marposs Societa’ per Azioni*, 158 F.3d 1243, 1249 (Fed. Cir. 1998); *E.I. du*

Pont de Nemours & Co. v. Phillips Petroleum Co., 849 F.2d 1430, 1433 (Fed. Cir. 1988).

Zond does not direct us to where the Specification provides an explicit definition for these claim terms, nor do we discern one. *See Paulsen*, 30 F.3d at 1480. We also do not share Zond's view that Dr. Uwe Kortshagen's cross-examination testimony supports its newly proposed claim constructions, requiring specific ion density ranges. PO Resp. 46–47 (citing Ex. 2010, 44:13–58:12). We observe that the claim terms “*weakly-ionized plasma*” and “*strongly-ionized plasma*” are relative terms, and that Dr. Kortshagen's cross-examination testimony merely points out that one with ordinary skill in the art possibly could have ascertained the claim scope with reasonable certainty when reading the claims in light of the Specification. *See* Ex. 2010, 44:13–58:12.

Moreover, Zond's newly proposed constructions that require specific ion density ranges would render at least the limitation recited in dependent claim 33 superfluous. Ex. 1401, 23:35–38 (“The method of claim 20 wherein the peak plasma density of the strongly-ionized plasma is greater than about 10^{12} cm⁻³.”). It is well settled that “claims are interpreted with an eye toward giving effect to all terms in the claim.” *Bicon Inc. v. Straumann Co.*, 441 F.3d 945, 950 (Fed. Cir. 2006); *see also Stumbo v. Eastman Outdoors, Inc.*, 508 F.3d 1358, 1362 (Fed. Cir. 2007) (denouncing claim constructions that render phrases in claims superfluous). Concomitantly, “[i]t is improper for courts to read into an independent claim a limitation explicitly set forth in another claim.” *Envtl. Designs, Ltd. v. Union Oil Co. of Cal.*, 713 F.2d 698, 699 (Fed. Cir. 1983).

For the foregoing reasons, we decline to adopt Zond's newly proposed constructions that require specific ion density ranges. Rather, upon review of the parties' explanations and supporting evidence before us, we discern no reason to modify our claim constructions set forth in the Decision on Institution with respect to these claim terms, which adopted Zond's originally proposed constructions. Dec. 7–9. Therefore, for purposes of this Final Written Decision, we construe, in light of the Specification, the claim term “a weakly-ionized plasma” as “a plasma with a relatively low peak density of ions,” and the claim term “a strongly-ionized plasma” as “a plasma with a relatively high peak density of ions.”

“without forming an arc discharge”

Claim 40 recites, among other things, the following limitation:

the multi-step ionization process comprising exciting the ground state atoms to generate excited atoms, and then ionizing the excited atoms within the weakly-ionized plasma, *without forming an arc discharge*, to ions that sputter target material from the sputtering target.

Ex. 1401, 24:15–20 (emphasis added).

As we explained previously in the Decision on Institution (Dec. 26–27), neither the Specification nor the original disclosure of the '759 patent recites the claim term “without forming an arc discharge.” Rather, they merely disclose a process that *reduces or substantially eliminates the possibility of arcing*.

For instance, the Specification of the '759 patent discloses:

The partially ionized gas is also referred to as a weakly-ionized plasma or a pre-ionized plasma. As described herein, the formation of weakly-ionized plasma *substantially eliminates the possibility of* creating a breakdown condition when high-

power pulses are applied to the weakly-ionized plasma. The suppression of this breakdown condition *substantially eliminates the occurrence of undesirable arcing* in the chamber 202.

Id. at 11:54–64 (emphases added).

As previously discussed, the weakly-ionized or pre-ionized plasma *reduces or substantially eliminates the possibility of establishing a breakdown condition* in the chamber 202 when high-power pulses are applied to the plasma.

Id. at 15:49–53 (emphasis added).

In its Response, Zond argues that the claim term “without forming an arc discharge,” should not be construed as “reduces or substantially eliminates the possibility of arcing.” PO Resp. 48–50. Zond alleges that such a construction would not be consistent with the plain and ordinary meaning of the word “without,” essentially urging that the claim term be construed as *absolutely no arcing*. *Id.* Zond also alleges that the disputed term cannot mean a mere reduction in the number of arc discharges. *Id.*

Although Zond proffers examples of a young boy ordering ice cream without sprinkles and a customer ordering a hamburger without cheese (*id.* at 49–50), Zond does not explain adequately why *one with ordinary skill in the plasma art* would have interpreted the claim term “without forming an arc discharge,” *in light of the Specification*, to require the ionization of excited atoms be performed *completely* free of arcing. *See In re NTP, Inc.*, 654 F.3d 1279, 1288 (Fed. Cir. 2011) (stating that the Board’s claim construction “cannot be divorced from the specification and the record evidence”); *see also In re Cortright*, 165 F.3d 1353, 1358 (Fed. Cir. 1999) (stating that the Board’s claim construction “must be consistent with the one that those skilled in the art would reach”). Nor does Zond direct our

attention to credible evidence that would support its attorney's arguments regarding the disputed claim term at issue. *See* PO Resp. 48–50.

One with ordinary skill in the art would have recognized that, unlike ice cream sprinkles or cheese that can be avoided altogether simply by not adding them, electrical arcing in a real-world plasma sputtering apparatus occurs naturally under certain processing conditions. Dr. Lawrence J. Overzet testifies that “I expect that arcing will not be wholly eliminated in sputtering systems and arc-arrestor circuitry in the power supplies will continue to be required,” and that “[t]here are multiple reasons why arcing may occur, and while the multi-step ionization process disclosed in the ’759 patent may reduce or substantially eliminate the possibility of arcing, arcing may still occur during certain instances.” Ex. 1421 ¶¶ 31, 70–71. We credit that the testimony of Dr. Overzet as it is consistent with the Specification of the ’759 patent. Ex. 1401, 11:54–64, 15:49–53.

It is well settled that “[a] claim construction that excludes the preferred embodiment is rarely, if ever, correct and would require highly persuasive evidentiary support.” *Adams Respiratory Therapeutics, Inc. v. Perrigo Co.*, 616 F.3d 1283, 1290 (Fed. Cir. 2010). A construction that excludes all disclosed embodiments is especially disfavored. *MBO Labs., Inc. v. Becton, Dickinson & Co.*, 474 F.3d 1323, 1333 (Fed. Cir. 2007). In short, claim construction requires claim terms to be read so that they encompass the very preferred embodiment they describe, i.e., formation of a weakly-ionized or pre-ionized plasma in a multi-step ionization process. *See On-Line Techs., Inc. v. Bodenseewerk Perkin-Elmer*, 386 F.3d 1133, 1138 (Fed. Cir. 2004).

Here, nothing in the Specification indicates that no arcing occurs when the excited atoms are ionized within the weakly-ionized plasma. Rather, it explicitly states that “the formation of weakly-ionized plasma *substantially eliminates* the possibility of creating a breakdown condition when high-power pulses are applied to the weakly-ionized plasma,” and “the suppression of this breakdown condition *substantially eliminates* the occurrence of undesirable arcing in the chamber.” Ex. 1401, 11:58–63 (emphases added). Given the disclosure in the Specification, we decline to adopt Zond’s proposed construction—absolutely no arcing—because it would be unreasonable to exclude the disclosed embodiments. *See Phillips v. AWH Corp.*, 415 F.3d 1303, 1315 (Fed. Cir. 2005) (en banc) (stating that the Specification is “the single best guide to the meaning of a disputed term”). Instead, we construe the claim term “without forming an arc discharge” as “substantially eliminating the possibility of arcing,” consistent with an interpretation that one of ordinary skill in the art would reach when reading the claim term in the context of the Specification.

Means-Plus-Function Claim Elements

The parties identify three claim elements recited in claim 40 as means-plus-function elements, invoking 35 U.S.C. § 112, ¶ 6.⁵ Pet. 17–19; Prelim. Resp. 21–26. We agree that those claim elements are written in means-plus-function form and fall under 35 U.S.C. § 112, ¶ 6, because: (1) each claim element uses the term “means for”; (2) the term “means for”

⁵ Section 4(c) of the AIA re-designated 35 U.S.C. § 112, ¶ 6, as 35 U.S.C. § 112(f). Pub. L. No. 112-29, 125 Stat. 284, 296 (2011). Because the ’759 patent has a filing date before September 16, 2012 (effective date), we refer to the pre-AIA version of § 112 in this Decision.

in each claim element is modified by functional language; and (3) the term “means for” is not modified by any structure recited in the claim to perform the claimed function. *See Personalized Media Commc’ns, LLC v. Int’l Trade Comm’n*, 161 F.3d 696, 703–04 (Fed. Cir. 1998) (using the term “means for” in a claim creates a rebuttable presumption that the drafter intended to invoke § 112, ¶ 6); *Sage Prods. v. Devon Indus., Inc.*, 126 F.3d 1420, 1427–28 (Fed. Cir. 1997) (the presumption is not rebutted if the term “means for” is modified by functional language and is not modified by any structure recited in the claim to perform the claimed function).

The first step in construing a means-plus-function claim element is to identify the recited function in the claim element. *Med. Instrumentation & Diagnostics Corp. v. Elekta AB*, 344 F.3d 1205, 1210 (Fed. Cir. 2003). The second step is to look to the specification and identify the corresponding structure for that recited function. *Id.* A structure disclosed in the specification qualifies as “corresponding” structure only if the specification or prosecution history clearly links or associates that structure to the function recited in the claim. *B. Braun Med., Inc. v. Abbott Labs.*, 124 F.3d 1419, 1424 (Fed. Cir. 1997). “While corresponding structure need not include all things necessary to enable the claimed invention to work, it must include all structure that actually performs the recited function.” *Default Proof Credit Card Sys. Inc. v. Home Depot U.S.A., Inc.*, 412 F.3d 1291, 1298 (Fed. Cir. 2005).

Upon review of the parties’ contentions and the Specification, we set forth our claim constructions in the Decision on Institution for the means-plus-function elements identified by the parties. Dec. 11–14. Neither party challenges any aspect of our claim constructions as to these claim elements.

PO Resp. 13–15; Reply 2. Based on this entire record, we also discern no reason to modify our claim constructions at this juncture. For convenience, our claim constructions are reproduced in the table below:

Means-Plus-Function Claim Elements	Corresponding Structures
“means for ionizing a feed gas to generate a weakly-ionized plasma proximate to a sputtering target”	A power supply electrically connected to a cathode, an anode, and/or an electrode. <i>See, e.g.</i> , Ex. 1401, 4:57–65, 6:22–26, 6:53–7:8, Figs. 2, 7, 10, 11; Dec. 11–13.
“means for generating a magnetic field proximate to the weakly-ionized plasma, the magnetic field substantially trapping electrons in the weakly-ionized plasma proximate to the sputtering target”	A magnet assembly having either a permanent magnet or a current source coupled to one or more electro-magnets. <i>See, e.g.</i> , Ex. 1401, 5:58–6:21, 6:10–14, Figs. 2, 7, 10, 11; Dec. 13.
“means for applying a voltage pulse to the weakly-ionized plasma . . . to ions that sputter target material from the sputtering target”	A pulsed power supply electrically connected to a cathode, an anode, and/or an electrode. <i>See, e.g.</i> , Ex. 1401, 5:6–49, 7:27–30, 7:65–66, 8:51–10:6, 15:7–17, Figs. 2, 7, 10, 11; Dec. 14.

B. Principles of Law

A patent claim is unpatentable under 35 U.S.C. § 103(a) if the differences between the claimed subject matter and the prior art are such that the subject matter, as a whole, would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 406

(2007). The question of obviousness is resolved on the basis of underlying factual determinations including: (1) the scope and content of the prior art; (2) any differences between the claimed subject matter and the prior art; (3) the level of ordinary skill in the art; and (4) objective evidence of nonobviousness. *Graham v. John Deere Co.*, 383 U.S. 1, 17–18 (1966). In that regard, an obviousness analysis “need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ.” *KSR*, 550 U.S. at 418; *Translogic*, 504 F.3d at 1259. The level of ordinary skill in the art is reflected by the prior art of record. See *Okajima v. Bourdeau*, 261 F.3d 1350, 1355 (Fed. Cir. 2001); *In re GPAC Inc.*, 57 F.3d 1573, 1579 (Fed. Cir. 1995); *In re Oelrich*, 579 F.2d 86, 91 (CCPA 1978).

We analyze the asserted ground of unpatentability in accordance with the above-stated principles.

C. Claim 40—Obviousness over the Combination of Wang and Kudryavtsev

GlobalFoundries asserts that claim 40 is unpatentable under 35 U.S.C. § 103(a) as obvious over the combination of Wang and Kudryavtsev. Pet. 38–53. In its Petition, GlobalFoundries explains how the combination of the prior art technical disclosures collectively meets each claim limitation and articulates a rationale to combining the teachings. *Id.* GlobalFoundries also submitted a Declaration of Dr. Kortshagen (Ex. 1402) to support its Petition, and a Declaration of Dr. Overzet (Ex. 1421) to support its Reply to Zond’s Patent Owner Response.

Zond responds that the combination of Wang and Kudryavtsev does not disclose every claim element. PO Resp. 36–54. Zond also argues that there is insufficient reason to combine the technical disclosures of Wang and Kudryavtsev. *Id.* at 17–36. To support its contentions, Zond proffers a Declaration of Dr. Larry D. Hartsough (Ex. 2005).

We have reviewed the entire record before us, including the parties’ explanations and supporting evidence presented during this trial. We begin our discussion with a brief summary of Wang and Kudryavtsev, and then we address the parties’ contentions in turn.

Wang

Wang discloses a power pulsed magnetron sputtering apparatus for generating a very high plasma density. Ex. 1405, Abs. Wang also discloses a sputtering method for depositing metal layers onto advanced semiconductor integrated circuit structures. *Id.* at 1:4–15.

Figure 1 of Wang, reproduced below, illustrates a magnetron sputtering system:

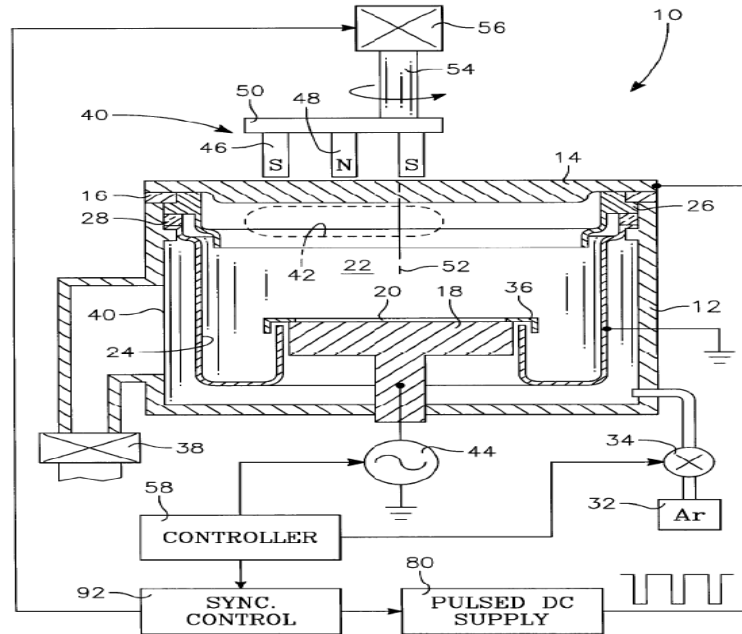


FIG. 1

As shown in Figure 1 of Wang, magnetron sputtering apparatus 10 includes anode 24, cathode 14, magnet assembly 40, and pulsed DC power supply 80, as well as pedestal 18 for supporting semiconductor substrate 20. *Id.* at 3:57–4:55. According to Wang, the apparatus is capable of creating high density plasma in region 42, which ionizes a substantial fraction of the sputtered particles into positively charged metal ions and also increases the sputtering rate. *Id.* at 4:13–34. Magnet assembly 40 creates a magnetic field near target 14, which traps electrons from the plasma to increase the electron density. *Id.* at 4:23–27. Wang further recognizes that, if a large portion of the sputtered particles are ionized, the films are deposited more uniformly and effectively—the sputtered ions can be accelerated towards a negatively charged substrate, coating the bottom and sides of holes that are narrow and deep. *Id.* at 1:24–29.

Figure 6 of Wang, reproduced below, illustrates how the apparatus applies a pulsed power to the plasma:

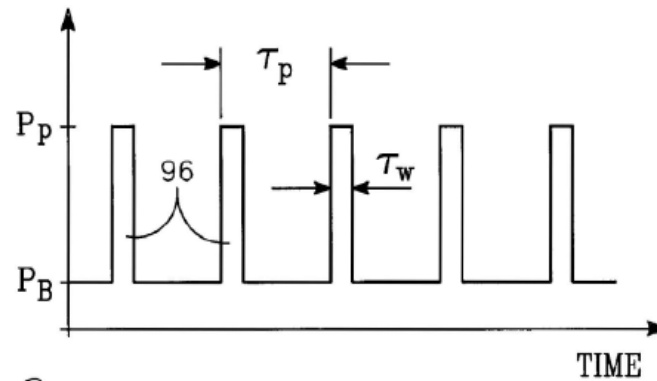


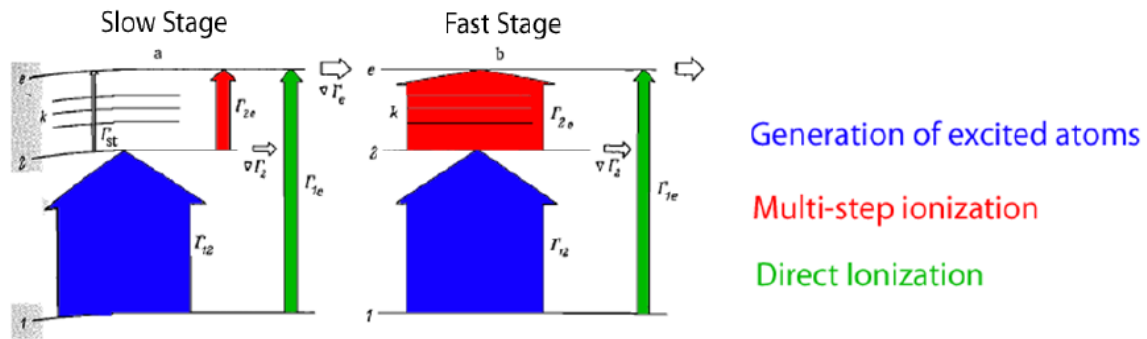
FIG. 6

As shown in Figure 6 of Wang, the target is maintained at background power level P_B between high power pulses 96 with peak power level P_P . *Id.* at 7:13–39. Background power level P_B exceeds the minimum power necessary to support a plasma in the chamber at the operational pressure (e.g., 1 kW). *Id.* Peak power P_P is at least 10 times (preferably 100 or 1000 times) background power level P_B . *Id.* The application of high peak power P_P causes the existing plasma to spread quickly, and increases the density of the plasma. *Id.* According to Dr. Kortshagen, Wang's apparatus generates a low-density (weakly-ionized) plasma during the application of background power P_B , and a high-density plasma during the application of peak power P_P . Ex. 1402 ¶¶ 109–10, 124.

Kudryavtsev

Kudryavtsev discloses a multi-step ionization plasma process, exciting the ground state atoms to generate excited atoms, and then ionizing the excited atoms. Ex. 1404, Abs., Figs. 1, 6. Figure 1 of Kudryavtsev,

reproduced below (with annotations added by GlobalFoundries (Pet. 33)), illustrates the atomic energy levels during the slow and fast stages of ionization:



As shown in annotated Figure 1 of Kudryavtsev, ionization occurs with a “slow stage” (Fig. 1a) followed by a “fast stage” (Fig. 1b). During the initial slow stage, direct ionization provides a significant contribution to the generation of plasma ions (arrow Γ_{1e} showing ionization (top line labeled “e”) from the ground state (bottom line labeled “1”)). Dr. Kortshagen explains that Kudryavtsev shows the rapid increase in ionization once multi-step ionization becomes the dominant process. Ex. 1402 ¶ 91; Pet. 33.

Indeed, Kudryavtsev discloses:

For nearly stationary n_2 [excited atom density] values . . . *there is an explosive increase in n_e* [plasma density]. The subsequent increase in n_e then reaches its maximum value, equal to the rate of excitation . . . which is several orders of magnitude greater than the ionization rate during the initial stage.

Ex. 1404, 31 (emphasis added). Kudryavtsev also recognizes that “in a pulsed inert-gas discharge plasma at moderate pressures . . . [i]t is shown that the electron density increases explosively in time due to accumulation of atoms in the lowest excited states.” *Id.* at 30, Abs., Fig. 6.

Increasing excitation rate

GlobalFoundries relies upon Wang to disclose all of the structural limitations expressly recited in claim 40—namely, a magnetically enhanced sputtering apparatus that includes: (1) a power supply for ionizing a feed gas to generate a weakly-ionized plasma; (2) a magnetron for trapping electrons in the weakly-ionized plasma; and (3) a power supply for applying a voltage pulse to the weakly-ionized plasma. Pet. 38–53. Indeed, Wang discloses these structural claim features, as well as their functionalities. *See, e.g.*, Ex. 1405, Abs., Figs. 1, 6, 7. For instance, Wang discloses a variable DC power supply that is connected to the sputtering target, supplying a constant negative voltage to the target to generate a weakly-ionized plasma. *Id.* at 7:56–61, Figs. 6, 7.

The parties’ dispute mainly centers on: (1) whether the prior art combination renders obvious the effect or result limitations—the purportedly improved plasma characteristics resulted from applying a voltage pulse to a weakly-ionized plasma; and (2) whether GlobalFoundries has articulated a reason with rational underpinning why one with ordinary skill in the art would have combined the prior art teachings. For example, claim 40 recites “applying a voltage pulse . . . to *increase an excitation rate* of ground state atoms.” Ex. 1401, 24:9–12 (emphasis added). GlobalFoundries relies upon Wang to disclose a pulsed power supply that generates a series of voltage pulses, applying peak power pulses to a weakly-ionized plasma. Pet. 45–46 (citing Ex. 1405, 7:61–62, Fig. 7). Although Wang discloses the claimed structure (a pulsed power supply electrically connected to a cathode/target) performing the claimed function (applying a voltage pulse to a weakly-ionized plasma to increase the density of the plasma quickly without

arcings) (Ex. 1405, 7:1–8:13, Figs. 6, 7), Wang does not describe expressly increasing excitation rate of the ground state atoms.

Nevertheless, GlobalFoundries asserts that Wang’s disclosed power levels of the power pulses fall within the ranges disclosed in the ’759 patent, and, therefore, “Wang is as likely as the ’759 patent to increase the excitation rate of ground state atoms within the weakly-ionized plasma and to cause multi-step ionization.” Pet. 47–48 (citing Ex. 1401, Fig. 5; Ex. 1405, 7:19–25). Dr. Overzet testifies (Ex. 1421 ¶ 83) and Zond’s expert, Dr. Hartsough, confirms (Ex. 1424, 99:14–23) that “the ionization rate of the strongly-ionized plasma is higher than that in the weakly-ionized plasma.” Dr. Overzet further testifies that when generating a strongly-ionized plasma from a weakly-ionized plasma, the ionization rate will increase. Ex. 1421 ¶ 83.

GlobalFoundries further alleges that, even if Wang does not disclose an increase in ionization rate, it would have been obvious, in light of Kudryavtsev’s teaching of “explosive increase” in plasma density, to adjust Wang’s operating parameters to trigger a fast stage of ionization. Pet. 48–50. According to GlobalFoundries, triggering such a fast stage of ionization in Wang’s apparatus would increase plasma density, thereby increasing the sputtering rate, and reducing the time required to reach a given plasma density. *Id.*

Zond counters that GlobalFoundries fails to demonstrate that one with ordinary skill in the art would have combined the systems of Wang and Kudryavtsev to achieve the claimed invention with a reasonable expectation of success or predictable results. PO Resp. 17–36. In particular, Zond contends that GlobalFoundries does not take into consideration the

substantial, fundamental structural differences between the systems of Wang and Kudryavtsev—e.g., pressure, chamber geometry, gap dimensions, and magnetic fields. *Id.* at 25–35 (citing *e.g.*, Ex. 1404, 32; Ex. 2005 ¶ 102; Ex. 1405, 4:35–37, Fig. 1). Zond also argues that GlobalFoundries fails to provide experimental data or other objective evidence to show that Wang’s system as modified would produce the claimed result. *Id.* at 35–36 (citing *Epistar v. Trs. of Boston Univ.*, Case IPR2013-00298 (PTAB Nov. 15, 2013) (Paper 18)).

In its Reply, GlobalFoundries responds that Zond’s arguments focus on bodily incorporating one system into the other. Reply 2–9. GlobalFoundries alleges that Zond improperly attempts to tie Kudryavtsev’s model on plasma characteristics to the particular dimensions and components of the apparatus used in the experiments that support Kudryavtsev’s model. *Id.* at 3, 6–7. According to GlobalFoundries, one with ordinary skill in the art would have understood how the structural differences would affect a magnetically enhanced sputtering system, and how to adjust for these differences to obtain the desired result. *Id.* at 6. GlobalFoundries also contends that *Epistar*, cited by Zond, which involved a direct substitution of a gallium layer for an aluminum layer, is inapplicable to the particular facts in the instant proceeding, because the prior art combination here does not involve substitution of one apparatus feature for another. *Id.* at 8–9.

Upon consideration of the evidence before us, we are persuaded by GlobalFoundries’s contentions. Indeed, for the asserted ground of unpatentability at issue, GlobalFoundries merely relies upon Kudryavtsev’s

teaching that an increase in the excitation rate is achieved by applying a voltage pulse to a weakly-ionized plasma. Pet. 47–49.

We also agree with GlobalFoundries that Zond’s reliance on its interpretation of *Epistar*, a non-precedential Board decision, is misplaced. “It is well-established that a determination of obviousness based on teachings from multiple references does not require an actual, physical substitution of elements.” *In re Mouttet*, 686 F.3d 1322, 1332 (Fed. Cir. 2012); *In re Etter*, 756 F.2d 852, 859 (Fed. Cir. 1985) (en banc) (noting that the criterion for obviousness is not whether the references could be combined physically, but whether the claimed invention is rendered obvious by the teachings of the prior art as a whole). In that regard, one with ordinary skill in the art is not compelled to follow blindly the teaching of one prior art reference over the other without the exercise of independent judgment. *Lear Siegler, Inc. v. Aeroquip Corp.*, 733 F.2d 881, 889 (Fed. Cir. 1984); *see also KSR*, 550 U.S. at 420–21 (stating that a person with ordinary skill in the art is “a person of ordinary creativity, not an automaton,” and “in many cases . . . will be able to fit the teachings of multiple patents together like pieces of a puzzle”).

We, further, are not persuaded by Zond’s argument that applying Kudryavtsev’s model on plasma behavior to Wang’s sputtering apparatus would have been beyond the level of ordinary skill, or that one with ordinary skill in the art would not have had a reasonable expectation of success in combining the teachings. Obviousness does not require absolute predictability, only a reasonable expectation that the beneficial result will be achieved. *In re Merck & Co.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986). As Dr. Overzet testifies, Kudryavtsev’s model on plasma behavior is not

intended to be limited to a particular type of plasma apparatus. Ex. 1421 ¶ 55. Indeed, Kudryavtsev discloses a study of the ionization relaxation in plasma when the external electric field suddenly increases. Ex. 1404, 30. Specifically, Kudryavtsev discloses that “the *electron density increases explosively* in time due to accumulation of atoms in the lowest excited states.” *Id.* at Abs. (emphasis added). Kudryavtsev also describes the experimental results that confirm the model. *Id.* at 32–34. More importantly, Kudryavtsev expressly explains that “the effects studied in this work are characteristic of ionization *whenever a field is suddenly applied to a weakly ionized gas.*” *Id.* at 34 (emphasis added).

Dr. Overzet also testifies that a person having ordinary skill in the art “would have looked to Kudryavtsev to understand how plasma would react to a voltage pulse, and how to achieve an explosive increase in electron density” when generating a strongly-ionized plasma, for improving sputtering and manufacturing processing. Ex. 1421 ¶ 56. Dr. Overzet further explains that such an artisan would have known how to apply Kudryavtsev’s model to Wang’s system by making any necessary changes to accommodate the differences through routine experimentation. *Id.* ¶¶ 57–58. On this record, we credit Dr. Overzet’s testimony (*id.* ¶¶ 55–58) because his explanations are consistent with the prior art of record.

Indeed, as GlobalFoundries points out (Pet. 31–33, 49), Kudryavtsev teaches the application of a voltage pulse to a weakly-ionized plasma. Ex. 1404, 32. Kudryavtsev explains that, in the initial stage, the number of atoms in the first excited state increases rapidly for a relatively slow change in the electron density, and “[t]he *rate of ionization then increases* with time.” *Id.* at 31 (emphasis added). Like Kudryavtsev, Wang applies a

voltage pulse to a pre-existing, weakly-ionized plasma, quickly causing the plasma to spread and increasing the density of the plasma. Ex. 1405, 7:29–30, 61–63. Wang discloses a power supply being configured to generate a voltage pulse with an amplitude and a rise time. Ex. 1405, 7:56–8:13, Fig. 7. Significantly, it discloses power levels applied to the plasma that fall within the ranges disclosed in the '759 patent. Ex. 1401, Fig. 5; Ex. 1405, 7:19–25. In particular, Wang discloses background power P_B of 1 kW (falling within the range of 0.1–100 kW, as disclosed in the '759 patent, for generating a weakly-ionized plasma), and pulse peak power P_P of 1 MW (falling within the range of 1 kW–10 MW, as disclosed in the '759 patent, for generating a strongly-ionized plasma). Ex. 1405, 7:19–25; Ex. 1401, 11:52–58, 12:24–36, Fig. 5.

When considering whether a claimed invention would have been obvious, “the knowledge of [a skilled] artisan is part of the store of public knowledge that must be consulted.” *Randall Mfg. v. Rea*, 733 F.3d 1355, 1362 (Fed. Cir. 2013). Notwithstanding that Dr. Hartsough provides a definition of “a person of ordinary skill in the art” in the context of the '759 patent,⁶ we are mindful that the level of ordinary skill in the art also is reflected by the prior art of record. *See Okajima*, 261 F.3d at 1355. Here, as GlobalFoundries points out, Mozgrin applied Kudryavtsev’s teachings of an “explosive increase” in plasma density to a magnetron sputtering system similar to Wang’s. Pet. 31–33, 38, 48; Reply 9; Ex. 1403, 401. Mozgrin

⁶ “[A] person of ordinary skill in the art at the time of filing of the '759 Patent [is] someone who holds at least a bachelor of science degree in physics, material science, or electrical/computer engineering with at least two years of work experience or equivalent in the field of development of plasma-based processing equipment.” Ex. 2005 ¶ 13.

cites to Kudryavtsev and discloses that in “[d]esigning the unit, we took into account the dependences which had been obtained in [Kudryavtsev] of ionization relaxation on pre-ionization parameters, pressure, and pulse voltage amplitude.” Ex. 1403, 401. This illustrates that one with ordinary skill in the art at the time of the invention was capable of applying the teachings of Kudryavtsev to well-known magnetron sputtering systems, such as Wang’s.

For the foregoing reasons, we are persuaded that GlobalFoundries has demonstrated, by a preponderance of evidence, that the proffered combination of Wang and Kudryavtsev discloses a pulsed power supply for applying a voltage pulse with an amplitude and a rise time that increases an excitation rate of ground state atoms, as recited in claim 40.

GlobalFoundries also has articulated a reason with rational underpinning why one with ordinary skill in the art would have combined the technical teachings of Wang and Kudryavtsev.

Voltage pulse

Claim 40 recites:

means for applying a *voltage pulse* to the weakly-ionized plasma, an amplitude and a rise time of the voltage pulse being chosen to *increase an excitation rate of ground state atoms* that are present in the weakly-ionized plasma to create a multi-step ionization process that generates a strongly-ionized plasma from the weakly-ionized plasma

Ex. 1401, 24:9–20 (emphases added).

In its Response, Zond argues that the combination of Wang and Kudryavtsev does not teach or suggest a “voltage pulse” as recited in claim 40. PO Resp. 37–48. In particular, Zond alleges that neither Wang

nor Kudryavtsev describes a weakly-ionized plasma and a strongly-ionized plasma, because they do not disclose certain *specific ion density ranges*. *Id.* at 46–47. Zond further argues that Wang controls *power* pulses, rather than *voltage* pulses. *Id.* at 39–42. Zond also contends that neither Wang nor Kudryavtsev describes *choosing* a rise time and amplitude of the voltage pulse to increase an excitation rate of ground state atoms. *Id.* at 42–46.

Zond’s arguments, however, are not commensurate with the scope of the claims. *See In re Self*, 671 F.2d 1344, 1348 (CCPA 1982) (stating that limitations not appearing in the claims cannot be relied upon for patentability). As we explained previously in the claim construction section, the claim terms “a weakly-ionized plasma” and “a strongly-ionized plasma” do not require specific ion density ranges. Rather, in light of the Specification, we construe the claim term “a weakly-ionized plasma” as “a plasma with a relatively low peak density of ions” and the claim term “a strongly-ionized plasma” as “a plasma with a relatively high peak density of ions.”

As GlobalFoundries explains (Pet. 39–43), Wang discloses a variable DC power supply that applies a constant negative voltage, corresponding to the background power P_B , to generate a low-density plasma (a weakly-ionized plasma). Ex. 1405, 7:17–61, Figs. 6, 7. Wang applies a voltage pulse to the weakly-ionized plasma, producing a very high-density plasma (a strongly-ionized plasma). *Id.* at Abs. Kudryavtsev expressly discloses that applying a voltage pulse with a rise time (e.g., $1-2 \times 10^{-7}$ seconds) to a weakly-ionized plasma causes an increase in excitation rate of ground state atoms. Ex. 1404, 31–32, Fig. 1 (“*The rate of ionization then increases with time and rises . . . [T]he subsequent increase in n_e [plasma*

density] then reaches its maximum value, . . . which is several orders of magnitude greater than the ionization rate during the initial stage.”) (emphasis added). As discussed above, Dr. Overzet testifies that “the ionization rate of the strongly-ionized plasma is higher than that in the weakly-ionized plasma,” and, therefore, when creating a strongly-ionized plasma from a weakly-ionized plasma, the ionization rate will increase. Ex. 1421 ¶ 83. In sum, the combination of Wang and Kudryavtsev collectively discloses a multi-step ionization process, increasing the excitation rate of ground state atoms and generating a strongly-ionized plasma from a weakly-ionized plasma.

Contrary to Zond’s assertion that Wang does not control *voltage* pulses, Wang explicitly discloses a pulsed power supply that “produces a train of negative *voltage pulses*.” See Pet. 46; Ex. 1405, 7:56–62 (emphasis added). As Dr. Kortshagen explains, “[t]hose voltage pulses create Wang’s peak power pulses, P_P , which are applied to Wang’s weakly-ionized plasma, i.e., the plasma generated by the background power, P_B .” Ex. 1402 ¶ 122.

Dr. Overzet also explains Wang discloses that “a magnitude (amplitude) of the voltage pulse at the power supply is selected and delivered to the reactor chamber during the peak power pulse P_P .” Ex. 1421 ¶ 66 (citing Ex. 1405, 7:19–22, 7:65–8:1, 9:30–40, Fig. 7). Dr. Overzet further explains that “to generate a power pulse, a *voltage pulse* with a specific amplitude and rise time is first provided by the power supply.” *Id.* ¶¶ 47–48 (emphasis added). Dr. Overzet testifies that “Wang describes controlling both the magnitude and rise time of the voltage pulse at the power supply such that the electrical pulse is sufficient to increase the

density of the weakly-ionized plasma and generate a strongly-ionized plasma.” *Id.* ¶ 66.

Figure 7 of Wang is reproduced below (green annotation added):

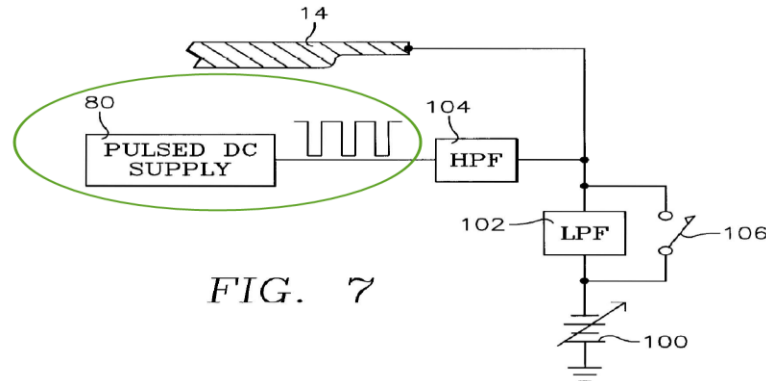


FIG. 7

Indeed, as shown in Figure 7 of Wang, variable DC power supply 100 is connected to target 14 through low-pass filter 102, and supplies a voltage to target 14, corresponding to the background power P_B that generates a weakly-ionized plasma. Ex. 1405, 7:56–8:1. Pulsed DC power supply 80 is connected to target 14, in parallel to DC power supply 100 and through high-pass filter 104, and produces a series of *voltage pulses*. *Id.* The time constant of high-pass filter 104 is chosen to fall between the pulse width τ_w —which includes a rise time—and the pulse repetition period τ_p . *Id.* Zond’s expert, Dr. Hartsough, agrees that a high-pass filter “could enable fast rise times.” Ex. 1425, 181:9–17. As discussed above, Wang’s power levels fall within the ranges disclosed in the ’759 patent. Ex. 1401, Fig. 5; Ex. 1405, 7:19–25. Given the evidence before us, we credit Dr. Kortshagen’s testimony (Ex. 1402 ¶ 134) and Dr. Overzet’s testimony (Ex. 1421 ¶¶ 47–48, 66), as it is consistent with the prior art disclosures.

We also are not persuaded by Zond’s argument and Dr. Hartsough’s testimony that the amplitude and rise time of the voltage pulses in Wang are

not controlled but, instead, vary randomly with the current. PO Resp. 36–39; Ex. 2005 ¶¶ 111–15. Zond’s argument and expert testimony are predicated on a narrow view of Wang, focusing on Wang’s first embodiment in which the “chamber impedance dramatically changes.” Ex. 1405, 5:29–31. In fact, in Wang’s second embodiment, as shown in Figures 6 and 7, Wang expressly indicates that “the chamber impedance changes relatively little between the two power levels P_B , P_P since a plasma always exist[s] in the chamber.” Ex. 1405, 7:47–51. As Dr. Overzet testifies, the relatively constant impedance allows Wang’s voltage amplitude and rise time to be controlled. Ex. 1421 ¶¶ 73–74. Upon review of the evidence before us, we credit the testimony of Dr. Overzet (Ex. 1421 ¶¶ 73–74) over that of Dr. Hartsough (Ex. 2005 ¶¶ 111–15) because Dr. Overzet’s testimony is consistent with Wang’s disclosure. *See Yorkey v. Diab*, 601 F.3d 1279, 1284 (Fed. Cir. 2010) (holding that Board has discretion to give more weight to one item of evidence over another “unless no reasonable trier of fact could have done so”).

Zond’s argument and expert testimony also do not consider Wang, as a whole, in the context of what was generally known in the art at the time of the invention. *See Translogic*, 504 F.3d at 1259–62 (stating that prior art must be read in context, taking account of the general knowledge possessed by a person with ordinary skill in the art); *Randall Mfg. v. Rea*, 733 F.3d at 1362. Here, Kudryavtsev discloses an increase in the ionization rate when a *voltage pulse* with a rise time of $1\text{--}2 \times 10^{-7}$ seconds is applied to a weakly-ionized plasma. Ex. 1404, 31–34. We observe that Kudryavtsev’s rise time falls squarely within the range of 1×10^{-7} seconds to 10 seconds disclosed in the ’759 patent (Ex. 1401, 10:63–65). Moreover, as we noted

above, Mozgrin illustrates that one of ordinary skill in the art at the time of the invention would have appreciated Kudryavtsev's teachings and applied them to a magnetron sputtering system, generating a strongly-ionized plasma from a weakly-ionized plasma by applying a voltage pulse with a preselected amplitude and rise time. Ex. 1403, 401–06 (“Designing the unit, we took into account the dependences which had been obtained in [Kudryavtsev] of ionization relaxation on pre-ionization parameters, pressure, and pulse voltage amplitude.”). The Admitted Prior Art also discloses a well-known magnetron sputtering system in which a voltage pulse is applied between the cathode and anode and the voltage pulse has a specific amplitude sufficient to ionize the gas and increase the amount of ionized gas, but low enough to avoid undesirable electrical discharges and target heating. Ex. 1401, 2:60–3:65, Fig. 1. Given the prior art disclosures in this record, we agree with Dr. Overzet's testimony that a person with ordinary skill in the art would have understood that the amplitude and rise time of the voltage pulses in Wang are selected in order to increase the ionization rate of ground state atoms in the weakly-ionized plasma. *See* Ex. 1421 ¶ 68.

Based on the evidence before us, we are persuaded that GlobalFoundries has demonstrated, by a preponderance of evidence, that the combination of Wang and Kudryavtsev discloses controlling the voltage pulses and selecting an amplitude and a rise time of the voltage pulses to increase an excitation rate of ground state atoms that are present in weakly-ionized plasma.

Creating a multi-step ionization process without forming an arc discharge

Claim 40 recites:

the *multi-step ionization process* comprising exciting the ground state atoms to generate excited atoms, and then ionizing the excited atoms within the weakly-ionized plasma, *without forming an arc discharge*.

Ex. 1401, 24:16–20 (emphases added). As we articulated above, in light of the Specification, the claim term “without forming an arc discharge” is construed as “substantially eliminating the possibility of arcing.”

In its Petition, GlobalFoundries takes the position that the combination of Wang and Kudryavtsev collectively discloses this claim limitation. Pet. 13–14, 50–53 (citing Ex. 1402 ¶¶ 132–39). As discussed previously, the combination of Wang and Kudryavtsev discloses a multi-step ionization process, exciting the ground state atoms to generate excited atoms, and then ionizing the excited atoms within the weakly-ionized plasma to generate a strongly-ionized plasma. Like the ’759 patent (Ex. 1401, 11:54–64, 15:49–53), Wang generates a weakly-ionized plasma in the background between the voltage pulses to avoid arcing (Ex. 1405, 7:1–8:13, Figs. 6, 7).

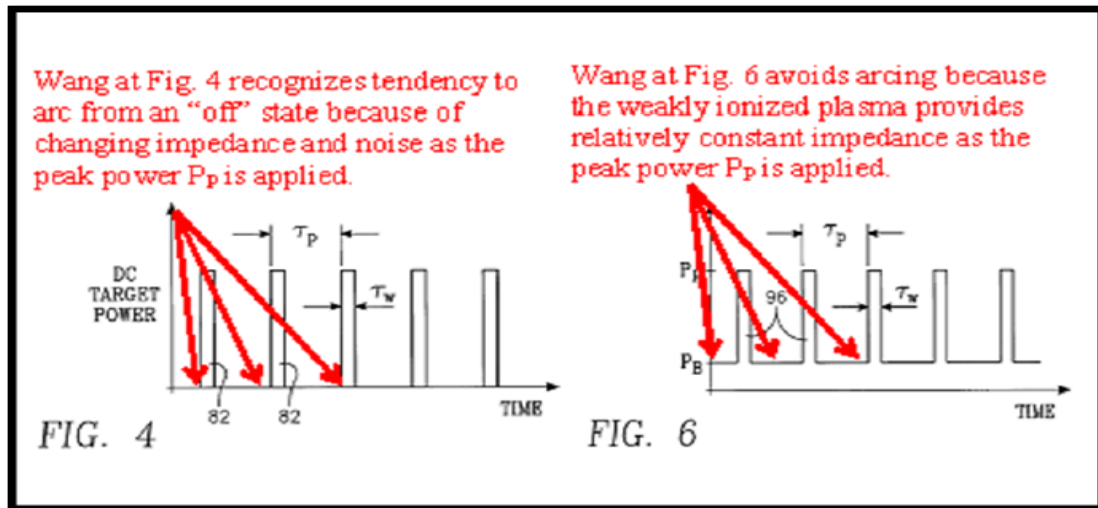
In its Response, Zond counters that Wang suggests arcing does occur after ignition because Wang states that “[p]lasma ignition . . . has a tendency to generate particles during the initial arcing, which may dislodge large particles from the target or chamber.” PO Resp. 50–52 (citing Ex. 1405, 7:3–6). Zond also contends that Wang does not state that arcing is reduced after ignition, but rather Wang discloses that the “*particulates* produced by arcing are much reduced,” suggesting that arcing will continue to occur

subsequent to ignition. *Id.* at 51–52 (citing Ex. 1405, 7:47–49 (emphasis added by Zond)). To support Zond’s contention, Dr. Hartsough testifies that Wang does not state that arcing either does not occur, or is substantially eliminated, while the ground state atoms are excited to generate excited atoms or while the excited atoms are ionized. Ex. 2005 ¶¶ 122–27.

Based on evidence before us, we are not persuaded by Zond’s arguments and expert testimony. An obviousness analysis is not an *ipsissimis verbis* test. *See In re Gleave*, 560 F.3d 1331, 1334 (Fed. Cir. 2009). Rather, a *prima facie* case of obviousness is established when the prior art itself would appear to have suggested the claimed subject matter to one of ordinary skill in the art. *In re Rinehart*, 531 F.2d 1048, 1051 (CCPA 1976).

Zond’s arguments and expert testimony also conflate Wang’s first embodiment with Wang’s second embodiment, and narrowly focus on the discussion regarding the disadvantages of Wang’s first embodiment. In fact, Wang acknowledges that the on-and-off pulsing in the first embodiment (shown in Figure 4) can be improved further by maintaining a background power level P_B between pulses to avoid arcing, as illustrated by Wang’s second embodiment shown in Figure 6. *See* Ex. 1405, 7:1–8:13.

Figures 4 and 6 of Wang are reproduced below, with red annotations added by Dr. Overzet (Ex. 1421 ¶ 73).



As shown in annotated Figures 4 and 6 above, Wang discloses that it is advantageous to maintain a background power level P_B between the high power pulses. Ex. 1405, 7:13–17. Notably, Wang recognizes that, in the first embodiment (shown in Figure 4), because the plasma is ignited with a high power pulse in each pulse cycle, the chamber impedance dramatically changes between the on-and-off phases, and large particles are dislodged from the target or chamber. *Id.* at 5:28–32, 7:1–13. By contrast, in Wang's second embodiment (as shown in Figure 6), the plasma is ignited only once at a much lower power level (P_B). *Id.* at 7:47–55. Since the plasma always exists after ignition, the chamber impedance changes relatively little, and particulates produced by arcing are reduced substantially. *Id.*

Dr. Overzet testifies that the relatively constant impedance allows the strongly-ionized plasma to be generated without arcing. Ex. 1421 ¶¶ 74–75. Indeed, Zond's expert, Dr. Hartsough, confirms that "if the impedance changes relatively little during the transition from a low-[density plasma] to

a high-density plasma, then it's indicative of no short circuit or arcing.”
Ex. 1427, 88:23–89:24. Given the prior art disclosures and evidence before us, we credit Dr. Overzet's testimony (Ex. 1421 ¶¶ 74–75).

Zond further alleges that Kudryavtsev's system forms an arc discharge during the multi-step ionization process. PO Resp. 53–54. As support, Dr. Hartsough testifies that the voltage and current versus time plot shown in Figure 2 of Kudryavtsev, demonstrates that Kudryavtsev's system forms an arc discharge. Ex. 2005 ¶ 127.

Zond's argument and expert testimony, however, narrowly focus on Figure 2 of Kudryavtsev, and fail to consider Kudryavtsev's teachings regarding the arc-free embodiment. In fact, Kudryavtsev identifies conditions that may result in arcing, as well as conditions that avoid arcing. Ex. 1404, 34. In particular, Kudryavtsev discloses that certain experiments have shown that “ionization occurs *uniformly* over a cross section of the discharge tube when a field is applied to a pre-ionized gas,” and “ionization develops more *uniformly* in the bulk, in good agreement with experiment.” *Id.* (emphases added). Dr. Overzet testifies that “a uniform plasma is indicative of a substantially constant degree of ionization across the electrodes and thus, indicative of an arc-free condition.” Ex. 1421 ¶ 34. We credit Dr. Overzet's testimony (Ex. 1036 ¶ 34) because it is consistent with the prior art of record.

Given the evidence before us in this entire record, we determine that GlobalFoundries has demonstrated, by a preponderance of evidence, that the combination of Wang and Kudryavtsev would have suggested to one with ordinary skill in the art at the time of the invention a “multi-step ionization process comprising exciting the ground state atoms to generate excited

atoms, and then ionizing the excited atoms within the weakly-ionized plasma, *without forming an arc discharge,*” as recited in claim 40.

III. CONCLUSION

For the foregoing reasons, we conclude that GlobalFoundries has demonstrated, by a preponderance of the evidence, that claim 40 of the ’759 patent is unpatentable under § 103(a) over the combination of Wang and Kudryavtsev.

IV. ORDER

In consideration of the foregoing, it is
ORDERED that claim 40 of the ’759 patent is held *unpatentable*; and
FURTHER ORDERED that, because this is a final written decision, parties to the proceeding seeking judicial review of the decision must comply with the notice and service requirements of 37 C.F.R. § 90.2.

IPR2014-01083
Patent 7,147,759 B2

For PETITIONER:

GlobalFoundries:

David Tennant
dtennant@whitecase.com

Dohm Chankong
dohm.chankong@whitecase.com

Gillette:

David Cavanaugh
david.cavanaugh@wilmerhale.com

Larissa B. Park
larissa.park@wilmerhale.com

For PATENT OWNER:

Gregory J. Gonsalves
gonsalves@gonsalveslawfirm.com

Bruce J. Barker
bbarker@chsblaw.com

Tarek Fahmi
tarek.fahmi@ascendlaw.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing:

PATENT OWNER'S NOTICE OF APPEAL

was served on October 12, 2015, by filing this document through the Patent Review Processing System as well as delivering a copy via EMAIL directed to the attorneys of record for the Petitioner at the following address:

For Petitioner:
GLOBALFOUNDRIES U.S., INC.,
GLOBALFOUNDRIES DRESDEN
MODULE ONE LLC & CO. KG,
GLOBALFOUNDRIES DRESDEN
MODULE
TWO LLC & CO. KG
David M. Tennant
Dohm Chaukong
WHITE & CASE LLP
701 THIRTEENTH STREET, NW
WASHINGTON, DC 20005
dtennant@whitecase.com
dohm.chaukong@whitecase.com

For Petitioner:
THE GILLETTE COMPANY
David L. Cavanaugh, Reg. No. 36,476
Larissa Park, Reg. No. 59,051
Wilmer Cutler Pickering Hale and Dorr
LLP
60 State Street
Boston, MA 02109
Tel: (617) 526-5000
Email:
david.cavanaugh@wilmerhale.com;
larissa.park@wilmerhale.com

The parties have agreed to electronic service in this matter.

An additional copy was served on

Director of the United States Patent and Trademark Office
c/o Office of the General Counsel
Madison Building East, 1 OB20
600 Dulany Street
Alexandria, VA 22314-5793

As required under 37 C.F.R. § 90.2(a).

Respectfully submitted,

Dated: October 12, 2015

/Tarek N. Fahmi/

Tarek N. Fahmi, Reg. No. 41,402

ASCENDA LAW GROUP, PC
333 W. San Carlos St., Suite 200
San Jose, CA 95110
Tel: 866-877-4883
Email: tarek.fahmi@ascendalaw.com