Trial decision

Correction No. 2016-390093

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The case of trial for correction of Japanese Patent No. 5333241 has resulted in the following trial decision.

Conclusion

The correction of the scope of claims of Japanese Patent No. 5333241 shall be approved as the scope of claims attached to the written demand for trial of the case, concerning Claim 1 after the correction.

Reason

No. 1 History of the procedures

Japanese Patent No. 5333241 (hereinafter, referred to as the "Patent"), was filed on January 08, 2010 as Japanese Patent Application No. 2010-2485 under the provisions of Article 44(1) of the Patent Act, as a divisional application from Japanese Patent Application No. H11-336130 filed on November 26, 1999, and the establishment of patent right was registered on August 9, 2013, and then a trial for correction of the case was demanded on July 12, 2016.

No. 2 Object of the demand

The object of the demand of trial for correction of the case is to demand the trial

decision that the correction of the scope of claims of the Patent shall be approved as the scope of claims attached to the written demand for trial of the case.

No. 3 Correction

"First conductivity-type" in Claim 1 of the scope of claims of the Patent is corrected as "n-type."

No. 4 Judgment by the body

1. Regarding Correction A

(1) Propriety of correction (underlines were applied by the body. Hereinafter, the same)

Correction A corrects "using an FZ substrate of a first conductivity-type low impurity concentration which forms a drift layer of the first conductivity-type low impurity concentration" and "forming the high impurity concentration layer from the second main surface until a boundary between the high impurity concentration layer and the drift layer of the first conductivity-type low impurity concentration of the FZ substrate" of Claim 1 before the correction, to "using an FZ substrate of an n-type low impurity concentration which forms a drift layer of the n-type low impurity concentration" and "forming the high impurity concentration layer from the second main surface until a boundary between the high impurity concentration layer and the drift layer of the n-type low impurity concentration of the FZ substrate," and in light of technical common knowledge, it is apparent that "first conductivity-type low impurity" and "n-type low impurity" are in a relationship of a superordinate concept and a more specific concept, so that Correction A is aiming at restriction of the scope of claims.

Therefore, Correction A aims at "restriction of the scope of claims" under the provision of Article 126(1)(i) of the Patent Act.

(2) Whether or not the correction is within the scope of the description of the Patent, the scope of claims, or drawings

In Paragraph [0022] of the description attached to the application, there is a description "next, each embodiment of the present invention is described based on accompanying drawings. Figure 1 shows the sectional view of the end-fire array diode concerning Embodiment 1 of the present invention. The vertical type diode of this embodiment is a 1200V withstand voltage diode, and is manufactured using the FZ wafer of the n type low impurity concentration which forms the n-drift layer 3b. The anode electrode 8 of a device active region and aluminum is formed on the surface side of the FZ wafer. Here, the device active region (core part) of a diode means the pn

junction of the p^+anode layer 4 and the n^-drift layer 3b. The n^+cathode layer 1b is formed on the back surface outermost side of an FZ wafer, and the cathode electrode 9 of aluminum is laminated on the n^+ cathode layer 1b," so that it can be said that "the FZ substrate" describes "the FZ substrate" of "the n-type row impurity concentration."

Therefore, Correction A is a correction within the scope of matters described in the description, the scope of claims, or drawings attached to the application, and falls under the provisions of Article 126(5) of the Patent Act.

(3) Whether or not the correction substantially expands or changes the scope of claims

As described in "(1)" above, Correction A limits "first conductivity-type low impurity" to "n-type low impurity," aiming at restriction of the scope of claims.

Therefore, Correction A does not change a category, target, and object, so that it is not applicable to one which substantially expands or changes the scope of claims, and it falls under the provision of Article 126(6) of the Patent Act.

(4) Whether or not the invention specified by the matters described in the scope of claims after the correction should be independently patentable at the time of the patent application

It is found that there is no reason why the invention specified by the matters described in the scope of claims after the correction cannot obtain a patent independently at the time of the patent application.

Therefore, Correction A falls under the provision of Article 126(7) of the Patent Act.

No. 5 Closing

As described above, Correction 1 relating to the demand of trial for correction of the case aims at matters described in Article 126(1)(i) of the Patent Act, and falls under the provision of Article 126(5)-(7) of the Patent Act.

Therefore, the trial decision shall be made as described in the conclusion.

September 26, 2016

Chief administrative judge: FUKAZAWA, Masashi

Administrative judge: ODA, Hiroshi

Administrative judge: KATO, Koichi