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Michael P. Leary Sr. Group Patent Counsel Black & Decker Corporation 701 E. Joppa Rd, Mail Stop TW199 Towson, MD 21286			LOPEZ, MICHELLE	
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte MICHAEL KUNZ

Appeal 2011-000052
Application 11/232,667
Technology Center 3700

Before JENNIFER S. BISK, BRIAN J. MCNAMARA, and
MICHAEL J. FITZPATRICK, *Administrative Patent Judges*.

FITZPATRICK, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Michael Kunz (Appellant) appeals under 35 U.S.C. § 134(a) from a decision finally rejecting claims 1-4, 6-10, and 12-19. Claims 5 and 11 were previously cancelled. We have jurisdiction under 35 U.S.C. § 6(b)(1).

We reverse.

The Claimed Subject Matter

According to Appellant, the claimed invention “relates to a hammer drill and in particular, a chipper.” Spec. 1, para. [0001]. Claim 12 is illustrative of the claimed subject matter and is reproduced below with emphasis added.

12. A hammer drill comprising:
 - a body having at least one support handle;
 - an electric motor mounted within the body;
 - an electric switch, capable of being switched on and off by a trigger button connected to it, to activate or deactivate respectively the electric motor, wherein the trigger button is moveable between two positions, an off-position where the electric switch is off and an on-position where the electric switch is on;
 - a locking arm moveably mounted on the electric switch which, when the trigger button is located in its second position, is moveable between two positions, a disengaged position where it is disengaged from the trigger button and a locked position where it engages with the trigger button and holds the trigger button in its on-position; and
 - wherein the locking arm is held in the disengaged position and *prevented from moving to the locked position when the trigger button is located in the off-position.*

Evidence

The Examiner relies upon the following prior art references:

Houser	US 4,097,703	Jun. 27, 1978
Jung	US 6,489,578 B1	Dec. 3, 2002

Rejections

The Examiner makes the following rejections:

- I. Claims 1-4, 6, 8-10, 12-15, and 17-19 are rejected under 35 U.S.C. § 102(b) as anticipated by Jung.
- II. Claims 7 and 16 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Jung and Houser.

OPINION

Anticipation requires that “each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros., Inc. v. Union Oil Co. of Cal.*, 814 F.2d 628, 631 (Fed. Cir. 1987).

Independent claim 12 requires that the “locking arm is held in the disengaged position and prevented from moving to the locked position when the trigger button is located in the off-position.”¹ This Appeal turns on whether Jung discloses this limitation.

The Examiner states that Jung discloses this limitation because the Jung “locking arm 12/22 is held in its first ‘unlocked’ position by the biasing force of the spring 20[.]” Ans. 4. But, the Examiner concedes, as Appellant

¹ Independent claim 1 includes a similar limitation, using different terminology.

has argued, that “Jung’s locking arm is capable of being moved against the biasing force of the spring (20), when the trigger button (5) is located at either its first-off position or its second-on position[.]” Ans. 8.

The Examiner, however, maintains that the limitation “only require[s] the locking arm to has [sic, have] the capability of being maintained in the first ‘unlocked’ position, *if desired*, when the trigger button is in the first-off position.” Ans. 4-5 (emphasis added).

We disagree with the Examiner’s claim interpretation. “During examination, ‘claims . . . are to be given their broadest reasonable interpretation consistent with the specification, and . . . claim language should be read in light of the specification as it would be interpreted by one of ordinary skill in the art.’” *In re American Academy Of Science Tech Center*, 367 F.3d 1359, 1364 (Fed. Cir. 2004) (quoting *In re Bond*, 910 F.2d 831, 833 (Fed. Cir. 1990)). The Examiner’s interpretation is unreasonable in light of the Specification, which is concerned with preventing the power tool from starting in the “lock on” mode when the power tool is off. Spec. ¶ [0053]. We do not find any support in the Specification for interpreting “prevented from moving” as not moving when desired.

Accordingly we cannot sustain the rejection of independent claim 12, the rejection of independent claim 1, which includes a limitation very similar to that of claim 12, or the rejection of claims 2-4, 6-10, and 13-19, which ultimately depend from either claim 1 or 12.

Although claims 7 and 16 were rejected as obvious over Jung and Houser, the Examiner’s reliance on Houser does not cure the deficiency of Jung.

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DECISION

The Examiner's decision to reject claims 1-4, 6-10, and 12-19 is reversed.

REVERSED

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