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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* KLA-TENCOR CORPORATION  
(Inventors: LU CHEN, JASON KIRKWOOD, MOHAN MAHADEVAN,  
JAMES A. SMITH, LISHENG GAO, JUNQING (JENNY) HUANG, TAO  
LUO, and RICHARD WALLINGFORD)

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Appeal 2016-005664  
Application 13/900,465<sup>1</sup>  
Technology Center 2800

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Before ROMULO H. DELMENDO, JEFFREY T. SMITH, and  
JEFFREY R. SNAY, *Administrative Patent Judges*.

DELMENDO, *Administrative Patent Judge*.

DECISION ON APPEAL

The Applicant (hereinafter “Appellant”) appeals under 35 U.S.C. § 134(a) from the Primary Examiner’s final decision to reject claims 1–22 and 25–46.<sup>2</sup> We have jurisdiction under 35 U.S.C. § 6(b).

We reverse.

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<sup>1</sup> The real party in interest is identified as “KLA-Tencor Corp.” (Appeal Brief filed on October 31, 2015, hereinafter “Appeal Br.,” 1).

<sup>2</sup> Appeal Br. 1, 4–10; Reply Brief filed on May 3, 2016, hereinafter “Reply Br.,” 2–6; Final Office Action entered on August 4, 2015, hereinafter “Final Act.,” 2–4; Examiner’s Answer entered on March 10, 2016, hereinafter “Ans.,” 3–8.

## BACKGROUND

The subject matter on appeal relates to methods and systems for detecting defects on a wafer (Specification, hereinafter “Spec.,” 1, ll. 8–9). Representative claim 1 is reproduced from page 12 of the Appeal Brief (Claims Appendix), with key limitations highlighted in bolded italics, as follows:

1. A method for detecting defects on a wafer, comprising:
  - generating output for a wafer by scanning the wafer with first and second inspection systems;
  - generating first image data for the wafer using the output generated using the first inspection system and second image data for the wafer using the output generated using the second inspection system, wherein the first inspection system comprises a first light source configured to generate first light, a first stage configured to move the wafer, and a first detector configured to detect light from the wafer and to generate a first portion of the output, wherein the second inspection system comprises a second light source configured to generate second light, a second stage configured to move the wafer, and a second detector configured to detect light from the wafer and to generate a second portion of the output, ***wherein the first and second light sources are not the same light source, and wherein the first and second stages are not the same stage;***
  - combining the first image data and the second image data corresponding to substantially the same locations on the wafer thereby creating additional image data for the wafer; and
  - detecting defects on the wafer using the additional image data.

### REJECTION ON APPEAL

On appeal, the Examiner states that claims 1–22 and 25–46 are rejected under pre-AIA 35 U.S.C. § 112, ¶ 1, as failing to comply with the enablement and written description requirements (Ans. 3). Although the Examiner entered two separate rejections—namely, a lack of enablement rejection against claims 1–22 and 25–46 and a lack of written description rejection against claims 1 and 25 (Final Act. 3–4), no factual findings or reasons are provided in support of a separate lack of enablement rejection (Final Act. 2–4; Ans. 3–7). Therefore, we consider claims 1–22 and 25–46 to be rejected only under the written description requirement of 35 U.S.C. § 112, ¶ 1.

### DISCUSSION

The Examiner finds that independent claims 1 and 25, which were amended or added post-filing (Amendments filed June 20, 2014 and March 23, 2015), contain limitations (i.e., “wherein the first and second light sources are not the same light source, and wherein the first and second stages are not the same stage”) that introduce new matter (Final Act. 4). The Appellant, on the other hand, contends that these limitations are supported in the Specification as originally filed (Appeal Br. 5) (citing, *e.g.*, Spec. 13, l. 14–14, l. 11; 37, l. 10–39, l. 20; 42, l. 5–47, l. 2).

It is well-settled that “the test for sufficiency [of written description] is whether the disclosure of the application relied upon reasonably conveys to those skilled in the art that the inventor had possession of the claimed subject matter as of the filing date.” *Ariad Pharm., Inc. v. Eli Lilly & Co.*, 598 F.3d 1336, 1351 (Fed. Cir. 2010) (en banc). To show possession, “the specification must describe an invention understandable to [the] skilled

artisan and show that the inventor actually invented the invention claimed.” *Id.* at 1351. Nevertheless, “the description requirement does not demand any particular form of disclosure . . . or that the specification recite the claimed invention *in haec verba* . . . .” *Id.* at 1352 (internal citations omitted).

Applying this test, we agree with the Appellant that the Examiner’s rejection is not well-founded. The Specification, as originally filed, plainly states that the wafer may be scanned using different inspection systems (Spec. 38, ll. 8–9) (“The first and second inspection systems may include any of the different inspection systems described herein”). In addition, the Specification describes an embodiment in which the wafer is scanned with inspection systems using different optical states (*id.* at 38, ll. 11–12) (“Alternatively, scanning the wafer with the first and second inspection systems may be performed using different optical states.”). Furthermore, the Specification discloses that each inspection system includes a wafer stage (*id.* at 12, ll. 21–26). These disclosures, as well as others highlighted in the Appeal Brief, reasonably convey to a person skilled in the relevant art that the inventors had possession of the inventions recited in claim 1 and claim 25.

Therefore, we cannot sustain the Examiner’s rejection.

#### SUMMARY

The Examiner’s rejection under 35 U.S.C. § 112, ¶ 1, of claims 1–22 and 25–46 is reversed.

#### REVERSED