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| Maginot, Moore & Beck LLP<br>One Indiana Square, Suite 2200<br>Indianapolis, IN 46204 |             |                      | CARLSON, MARC       |                  |
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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* ANDREAS ZURBRUEG and URS ROTH

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Appeal 2017-006564  
Application 14/352,207<sup>1</sup>  
Technology Center 3700

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Before MICHAEL C. ASTORINO, CYNTHIA L. MURPHY, and  
TARA L. HUTCHINGS, *Administrative Patent Judges*.

ASTORINO, *Administrative Patent Judge*.

DECISION ON APPEAL

Pursuant to 35 U.S.C. § 134(a), the Appellants appeal from the Examiner's decision rejecting claims 1–5 and 7–11. We have jurisdiction over the appeal under 35 U.S.C. § 6(b).

We AFFIRM-IN-PART.

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<sup>1</sup> According to the Appellants, “Robert Bosch GmbH is the real party in interest for this application.” Appeal Br. 2.

STATEMENT OF THE CASE

*Claimed Subject Matter*

Claims 1 and 10 are the independent claims on appeal. Claim 1, reproduced below, is illustrative of the subject matter on appeal.

1. A power tool clamping device for clamping a sheet-type working tool to a tool receiver that is mounted in an eccentrically movable manner, comprising:

at least one clamping element movably mounted to the tool receiver;

at least one slotted link movement unit configured to move the clamping element so as to generate a tension in the sheet-type working tool in at least one operating state; and

a further clamping element mounted to the tool receiver so as to be movable relative to the at least one clamping element.

*Rejections*

The Examiner maintains the following rejections, which are before us for review:

I. Claims 3, 8, and 9 stand rejected under 35 U.S.C. § 112(b) or 35 U.S.C. § 112 (pre-AIA), second paragraph, as indefinite (Ans. 2–3); and

II. Claims 1–5 and 7–11 stand rejected under 35 U.S.C. § 102(b) as anticipated by Stoll et al. (US 4,351,133, issued Sept. 28, 1982) (“Stoll”) (Ans. 3–8).<sup>2</sup>

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<sup>2</sup> The Examiner acknowledges that the Final Office Action (mailed December 9, 2015) rejected claims 1–5 and 7–11 under 35 U.S.C. § 103(a). Ans. 2; *see* Final Act. 3–8. The Examiner explains, however, that the rejection of claims 1–5 and 7–11 was not a rejection under 35 U.S.C. § 103(a), but rather a rejection under 35 U.S.C. § 102(b). Ans. 2. The Appellants acknowledge the Examiner’s explanation in the Reply Brief and presents arguments for the rejection under 35 U.S.C. § 102(b) as presented in the Answer. *See* Reply Br. 2–5.

## ANALYSIS

### *Rejection I*

The Appellants do not contest the Examiner's rejection of claims 3, 8, and 9 as indefinite. Thus, we summarily sustain the Examiner's rejection of claims 3, 8, and 9, under 35 U.S.C. § 112(b) or 35 U.S.C. § 112 (pre-AIA), second paragraph, as indefinite.

### *Rejection II*

The Examiner finds that Stoll's clamping slide 4 corresponds to "at least one clamping element movably mounted to the tool receiver," as recited in claim 1. Ans. 4. Also, the Examiner finds that the end surfaces 5 and bores 36 of Stoll's table plate 1 or, alternatively, Stoll's angle pieces 10–13, which are positioned on table plate 1, correspond to "a further clamping element mounted to the tool receiver so as to be movable relative to the at least one clamping element," as recited in claim 1. *Id.*; see Stoll, Figs. 1, 3, 7, 8. The Examiner makes similar findings for independent claim 10, which has similar recitations as claim 1. Ans. 8.

The above findings are based on a construction of claims 1 and 10 in which the Examiner determines that there is no stationary point of reference in the claims to assess relative movement. See Ans. 9–10. Namely, the Examiner finds that when Stoll's clamping slide 4 opens and closes, and table plate 1 remains stationary, clamping slide 4 moves relative to table plate 1. And, the Examiner finds that when Stoll's clamping slide 4 opens and closes, but clamping slide 4 remains stationary, table plate 1 moves relative to clamping slide 4. *Id.* at 9. Here, the Examiner determines that *the same action*, i.e., Stoll's clamping slide 4 opening and closing, *under*

*different conditions*, i.e., either table plate 1 or clamping slide 4 remaining stationary, *results in different movements*, i.e., clamping slide 4 or table plate 1 moving, respectively. *See id.* at 9–11.

The Appellants argue that claims 1 and 10 require “that both the ‘at least one clamping element’ and the ‘further clamping element’ are each movable,” whereas “Stoll only has one movable element - either the clamping slide (4) as asserted by Applicant, or the rest of the Stoll structure, as asserted by the Examiner.” Reply Br. 3; *see also id.* at 4. We determine that the Appellants’ argument is persuasive of error. Here, the Examiner’s application of Stoll implies a construction of claims 1 and 10 that would not be shared by one of ordinary skill in the art when reading the claims in light of the Specification. As such, we determine that the Examiner’s application of Stoll’s disclosure to subject matter of independent claims 1 and 10 is in error.

Thus, we do not sustain the Examiner’s rejection of independent claims 1 and 10, or their dependent claims, under 35 U.S.C. § 102(b) as anticipated by Stoll.

#### DECISION

We summarily AFFIRM the Examiner’s decision rejecting claims 3, 8, and 9 under 35 U.S.C. § 112(b) or 35 U.S.C. § 112 (pre-AIA), second paragraph, as indefinite.

We REVERSE the Examiner’s decision rejecting claims 1–5 and 7–11 under 35 U.S.C. § 102(b) as anticipated by Stoll.

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No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED-IN-PART