

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

LOCO CRAZY GOOD COOKERS, INC
Petitioner,

v.

NORTH ATLANTIC IMPORTS, LLC
Patent Owner.

Case IPR2024-00642
Patent 10,660,473

**PETITIONER REPLY TO
PATENT OWNER'S PRELIMINARY RESPONSE**

I. INTRODUCTION

Pursuant to Board authorization, Petitioner submits this reply to Patent Owner's Preliminary Response ("POPR") submitted on July 11, 2024, to address two issues. First, the Patent Owner's proposed construction of "rib" is inconsistent with the '473 Patent and should not be adopted by the Board. Second, Patent Owner's unsubstantiated attorney argument cannot overcome testimonial evidence of Dr. Vallee's qualifications.

II. BOARD SHOULD NOT ADOPT PATENT OWNER'S PROPOSED CONSTRUCTION OF "RIB"

Patent Owner proposes the claim term "rib" should be construed as "an elongated raised piece of strong or thick material across a surface or through a structure, serving to support or strengthen the structure" in view of certain dictionary definitions. POPR at 13. However, Patent Owner's dictionary-based construction is inconsistent with all the sources of intrinsic evidence: claims, specification and prosecution history of the '473 Patent. *Sunovion Pharms., Inc. v. Teva Pharms. USA, Inc.*, 731 F.3d 1271, 1276 (Fed. Cir. 2013) ("When construing claim terms, we first look to, and primarily rely on, the intrinsic evidence, including the claims themselves, the specification, and the prosecution history of the patent, which is usually dispositive."); *Seabed Geosolutions (US) Inc. v. Magseis FF LLC*, 8 F.4th 1285, 1287 (Fed. Cir. 2021) ("If the meaning of a claim term is clear from the intrinsic evidence, there is no reason to resort to extrinsic evidence.").

First, neither the specification nor the claims describe a rib as needing to be “strong or thick,” or “serving to support or strengthen the structure.” Instead, the specification repeatedly describes the structure and purpose of the ribs with reference to defining heat regions and channels:

The underside surface 58 may include the ribbing structure 50 or multiple ribs each being positioned and directly coupled to the underside surface 58 of the griddle 12 in pre-determined locations to define heating regions and channels for venting or channeling convection heat from the burners 24 (FIG. 2). For example, the multiple ribs 50 may include a front rib 96 and multiple lateral ribs 98.

Ex. 1001 at 7:3-8 (emphasis added); *see also id.* at 7:54-63 (describing how ribs define a heating region), 8:46-65 (describing how ribs form passageways for convection heat); and 9:10-29 (describing how space between ribs fills with convection heat). This is consistent with the claims themselves that recite specific position of the ribs “to define multiple heating regions.” *See e.g.*, Ex. 1001 at 10:31-38; *see also id.* at 10:51-53 (“rib substantially blocks convection heat”), 10:54-58 (“ribs are sized to substantially prevent convection heat from moving over” them).

Moreover, the specification discloses a different structure, referred to as a “stabilizer,” that prevents warping of the griddle. Ex. 1001 at 7:41-53 (“The one or more stabilizers 116 may be configured to stabilize the griddle 12 so as to substantially prevent warping upon the griddle.”). Patent Owner is well-aware that its argument relies on the ’473 Patent’s description of “stabilizers” instead of ribs

but disingenuously asserts ribs are stabilizers by purposefully omitting the critical phrase that ribs “may also” serve as stabilizers. POPR at 14. Yet, the ’473 Patent unambiguously discloses that the ribs’ purpose is serving as channels for channeling convective heat while serving as stabilizers is an optional embodiment:

Further, in addition to the front rib 96 and lateral ribs 98 serving as channel portions for channeling convective heat, the front rib 96 and lateral ribs 98 may also serve as stabilizers in substantially preventing the griddle from warping or partially warping.

Ex. 1001 at 7:50-53 (emphasis added).

Thus, Patent Owner’s proposed construction would exclude the primary embodiment where ribs serve as channel portions for channeling convective heat without serving as stabilizers. *SynQor, Inc. v. Artesyn Tech., Inc.*, 709 F.3d 1365, 1378–79 (Fed. Cir. 2013) (“A claim construction that excludes the preferred embodiment is rarely, if ever, correct”) (internal quotations omitted).

In addition, the prosecution history also contradicts Patent Owner’s construction. As explained in the Petition, during prosecution the Examiner rejected the claims over Reynolds’ “baffles 30” with “heat reflective radiant 31” and a “ridge flange 33.” EX1004, 95. Reynolds discloses these components are made of “thin sheet metal.” EX1009, 5:1-10. The Patent Owner did not dispute these structures formed a rib but instead distinguished them based on how they were connected to other structural elements. EX1004, 127. Thus, the prosecution history suggests ribs

can be “thin sheet metal” undercutting Patent Owner’s construction that ribs *must* be “an elongated raised piece of strong or thick material across a surface or through a structure, serving to support or strengthen the structure.” POPR at 13.

In view of the intrinsic evidence, the Board should not adopt Patent Owner’s dictionary-based construction. *Grace Instrument Indus. v. Chandler Instruments Co.*, 57 F.4th 1001, 1010 (Fed. Cir. 2023) (“The district court erred in its reliance on extrinsic evidence—i.e., dictionary definitions—that contradict the scope and meaning of...the intrinsic record.”).

III. PATENT OWNER’S ATTORNEY ARGUMENT CANNOT OVERCOME EVIDENCE OF DR. VALLEE’S QUALIFICATIONS

Patent Owner argues Dr. Vallee does not meet his own definition of a POSITA i.e., “a bachelor’s degree in mechanical engineering or a closely related field and at least 2 years of experience in product design and development in the field of griddle cooking stations and/or outdoor cooking grills.” POPR at 16-17 (quoting EX1002, ¶28). This assertion is attorney argument based on unfounded speculation regarding Dr. Vallee’s experience. *Icon Health & Fitness, Inc. v. Strava, Inc.* 849 F.3d 1034, 1043 (Fed. Cir. 2017) (“Attorney argument is not evidence.”).

Dr. Vallee testified he has a Ph.D. in mechanical engineering and has for decades taught courses to students including courses on designing consumer products that includes the subject matter of these proceedings. EX1002, ¶3; *see also* EX1003, 1-2 (Dr. Vallee has been teaching courses for over 20 years). In addition

to general mechanical engineering courses, Dr. Vallee led a Product Development and Innovation (PDI) course teaching students specially about the design and development of consumer products, including the design and development of mechanical and heating components for griddle cooking. In view of this background, Dr. Vallee has served as an expert in the field of cooking appliances in other cases.

Patent Owner speculates, without basis, that such decades of design experience obtained while teaching these courses did not include griddle cooking stations even though that is indisputably a consumer product that includes connecting mechanical components to heating elements. There is no requirement that Dr. Vallee's design and development experience come from working for a company in the griddle or grill industry as Patent Owner seems to imply. Instead, the relevant design experience can come from any source, including designing and developing griddles in academia as well as teaching students (some of whom would also likely qualify as a POSITA) to do the same.

To the extent Petitioner desires to address Dr. Vallee's qualifications in this IPR proceeding it is free to do so through a more suitable process such as deposing Dr. Vallee. Then the Board can consider Dr. Vallee's actual testimony on his own experience rather than Patent Owner's speculation.¹

¹ Petitioner requested permission to submit testimony on this issue so the Board could hear directly from Dr. Vallee, but Patent Owner opposed.

Date: August 1, 2024,

Respectfully submitted,

/James P. Murphy/
James P. Murphy, Reg. No. 55,474

Polsinelli, PC
1000 Louisiana Street, Suite 6400
Houston, Texas 77002
Tele: (713) 374-1631
Fax: (713) 374-1601

CERTIFICATE OF SERVICE UNDER 37 CFR § 42.6(e)(4)

The undersigned hereby certifies that a copy of the accompanying Petitioner's Reply to Patent Owner's Preliminary Response is being served via electronic mail on August 1, 2024, upon the following:

Nicholas M. Lagerwall
Foley & Lardner LLP
150 East Gilman Street, Suite 5000
Madison, WI 53703
Email: nlagerwall@foley.com

Jared J. Braithwaite
Foley & Lardner LLP
95 S State Street, Suite 2500
Salt Lake City, UT 84111
Email: jbraithwaite@foley.com

/Ericka McNeil/
Ericka McNeil

Polsinelli, PC
1000 Louisiana Street, Suite 6400
Houston, Texas 77002
Tele: (713) 374-1600