

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
U.S. Patent No. 10,660,473

**PATENT OWNER'S PRELIMINARY SUR-REPLY TO PETITIONER'S
PRELIMINARY REPLY**

As discussed below, Patent Owner’s proposed construction of “rib” is consistent with the ’473 Patent. Additionally, nothing in Petitioner’s Reply cures Petitioner’s failure to establish Dr. Vallee as a POSITA.

I. BOARD SHOULD ADOPT PATENT OWNER’S CONSTRUCTION

Contrary to Petitioner’s arguments, Patent Owner’s construction of “rib” is consistent with the claims, specification, and prosecution history of the ’473 Patent. First, Petitioner asserts that neither the specification nor claims describe a “rib” as needing to be “strong or thick” or “serving to support or strengthen the structure.” This is wrong as the specification describes ribs as able to “serve as stabilizers in substantially preventing the griddle from warping or partially warping,” thus serving to support and strengthen the griddle surface. EX1001, 7:48-53. Ribs, by their very nature, are “strong or thick” and serve to “support or strengthen a structure,” as further demonstrated by multiple dictionary definitions. *See* EX2003, EX2004, EX2005. And without such characteristics they could not accomplish the stated purpose of preventing griddle warping. That the ’473 Patent also refers to separate “stabilizers” is of little import given that the specification makes clear that the ribs serve this function.

Petitioner further points to language from the claims and specification indicating that the ribs “define...heating regions” and baselessly asserts that “Patent Owner’s construction would exclude the primary embodiment where ribs

serve as channel portions for channeling convective heat without serving as stabilizers.” Reply, 2-3. That the ribs/ribbing structure of the ’473 Patent define heating regions and enable improved temperature control of certain areas of the griddle though is not inconsistent with the ribs being “strong or thick” or “serving to support or strengthen the structure.” Indeed, as discussed in the Patent Owner Preliminary Response (POPR), the inventions of the ’473 Patent provide an integrated solution to *multiple* problems, including both preventing griddle warping and improving temperature control/flow of conductive heat. Having strong, thick, supporting ribs would not prevent the use of ribs as channel portions.

Petitioner further alleges that the prosecution history is inconsistent with Patent Owner’s construction merely because the examiner initially rejected the claims over a reference (Reynolds) that discloses thin sheet metal “baffles.” *See* Reply, 3-4. However, an examiner’s interpretation of a claim term has no bearing on its proper construction in an IPR proceeding. An examiner is not the arbiter of claim constructions, and indeed applies a different claim construction standard (i.e., broadest reasonable interpretation) than applied in an IPR proceeding (i.e., ordinary and customary meaning). Additionally, that the applicant did not expressly contest the examiner’s application of Reynolds is of no consequence. The doctrine of prosecution history disclaimer is not applied “where the alleged disavowal is less than clear.” *Baxalta Inc. v. Genentech, Inc.*, 972 F.3d 1341, 1348

(Fed. Cir. 2020). Opting for an unrelated amendment rather than arguing the scope of a particular claim term does not rise to the level of a “clear” disavowal.

As discussed in the POPR, multiple dictionary definitions as well as art cited by Petitioner (Hinkle; EX2013) support Patent Owner’s construction, which is thus consistent with the ’473 Patent as well as lexicography and contemporaneous art.

II. PETITIONER HAS NOT ESTABLISHED DR. VALLEE AS A POSITA

In its Reply, Petitioner again fails to demonstrate that Dr. Vallee is a POSITA according to its own proposed level of skill. To allegedly satisfy its requirement of “at least 2 years of experience in product design and development in the field of griddle cooking stations and/or outdoor cooking grills,” Petitioner points only to Dr. Vallee’s teaching “courses on designing consumer products,” which Petitioner alleges “includes the subject matter of these proceedings.” Reply, 4. However, Petitioner has not shown that such courses include design and development experience for “*griddle cooking stations and/or outdoor cooking grills.*”

Tellingly, despite stating that such courses include “design and development of mechanical and heating components for griddle cooking,” Petitioner provides no support whatsoever for this statement. Regarding such courses, Dr. Vallee states only that “I...teach...how to design products having a number of electrical and mechanical features such as methods of connecting components connections and heating elements.” EX1002, ¶3. When discussing his qualifications, Dr. Vallee

provides no indication of any experience designing (nor does he even mention) griddles, grills, or any type of cooking device. Petitioner would have the Board find that the mention of simply designing “products” and “methods of connecting ...heating elements” somehow satisfies the requisite griddle cooking station and/or outdoor cooking grill experience. Such an ambiguous statement though does not satisfy Petitioner’s burden to establish the qualifications of its purported expert.

Ignoring its burden to establish both the qualifications of its own expert as well as prove unpatentability, Petitioner further complains that Patent Owner’s arguments are “based on unfounded speculation.” Reply, 4. It is not Patent Owner’s burden to demonstrate that Petitioner’s expert is unqualified, but rather Petitioner’s to demonstrate its expert is qualified. *See Bourjaily v. United States*, 483 U.S. 171 (1987) (the proponent has the burden of establishing that the pertinent admissibility requirements are met). At all times, the “burden of persuasion is on the petitioner to prove ‘unpatentability by a preponderance of the evidence.’” *Dynamic Drinkware, LLC v. Nat’l Graphics, Inc.*, 800 F.3d 1375, 1378 (Fed. Cir. 2015) (quoting 35 U.S.C. § 316(e)); *see also* *Harmonic Inc. v. Avid Tech., Inc.*, 815 F.3d 1356, 1363 (Fed. Cir. 2016) (“In an IPR, the petitioner has the burden from the onset to show with particularity why the patent it challenges is unpatentable.”). “[T]hat burden never shifts to the patentee.” *Id.* Patent Owner’s arguments merely

point out the deficient showing provided by Petitioner, and thus Petitioner's failure to satisfy its burden.

Finally, Petitioner proposes deposing Dr. Vallee as a "more suitable process" for addressing his qualifications, again ignoring its burden as well as its responsibility to present all arguments and evidence with the Petition. Such a deposition is unnecessary as demonstrated by prior Board decisions declining institution when Petitioner's expert was not sufficiently established as a POSITA. *See Avail Medsystems, Inc. v. Teladoc Health, Inc.*, IPR2022-00444, Paper 10, 25-26 (PTAB July 21, 2022). Petitioner is essentially asking for an opportunity to fill in holes in its Petition and accompanying evidence after institution, which is improper. "Petitioner may not submit new evidence or argument in reply that it could have presented earlier." U.S. Patent Trial and Appeal Board, Consolidated Trial Practice Guide 73 (Nov. 2019); *see also Adaptics Ltd. v. Perfect Co.*, IPR2018-01596, Paper 20, 15–16 (PTAB Mar. 6, 2019) (informative) ("[P]etitioner has the burden from the onset to show with particularity why the patent it challenges is unpatentable.... It is of the utmost importance that petitioners ... adhere to the requirement that the initial petition identify with particularity the evidence that supports the grounds for the challenge to each claim.").

Because Petitioner has not established Dr. Vallee as a POSITA, Petitioner cannot rely on Dr. Vallee's testimony to support its Grounds.

Dated: August 8, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing **Patent Owner Sur-Reply** together with all exhibits and other papers filed therewith was served on August 8, 2024, to counsel of record by e-mail to:

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