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MINNEAPOLIS, MN 55440-1022

EXAMINER
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MATHEW, HEMANT MATHAI

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3742

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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* RAYMOND E. DAVIS

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Appeal 2016-007145  
Application 14/177,997  
Technology Center 3700

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Before NEAL E. ABRAMS, THOMAS F. SMEGAL, and  
PAUL J. KORNICZKY, *Administrative Patent Judges*.

KORNICZKY, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF CASE

Appellant, Raymond E. Davis,<sup>1</sup> appeals under 35 U.S.C. § 134 from the Examiner's decision rejecting claims 1–12 and 25–35.<sup>2</sup> We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

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<sup>1</sup> Appellant identifies the real party in interest as ADCO Industries – Technologies, L.P. Appeal Br. 4.

<sup>2</sup> Claims 13–24 are withdrawn from consideration. Final Act. 2.

## THE CLAIMED SUBJECT MATTER

The claims are directed to “a roller grill or griddle for heating and/or reheating precooked food product.” Spec. ¶ 1. Claims 1 and 25 are independent. Appeal Br. 9. Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. A roller grill, comprising:
  - a housing structure adapted to support the roller grill;
  - a plurality of tubular heating surfaces mounted between a first end of the housing structure and a second end of the housing structure;
  - a first side housing coupled to the first end of the housing structure;
  - a second side housing coupled to the second end of the housing structure, at least one of the first side housing or the second housing comprising a pressurized plenum maintainable at a plenum air pressure that is greater than a tubular air pressure of an inner volume of the plurality of tubular heating surfaces;
  - and
  - a drive assembly at least partially enclosed in the first side housing or the second side housing, the drive assembly configured to rotatably drive the plurality of tubular heating surfaces.

## REFERENCES

In rejecting the claims on appeal, the Examiner relied upon the following prior art:

Othmer	US 3,617,699	Nov. 2, 1971
Tomita	US 3,841,299	Oct. 15, 1974
Brown	US 4,372,199	Feb. 8, 1983
Archer	US 4,873,107	Oct. 10, 1989
Schmid	US 5,562,022	Oct. 8, 1996
Lee	US 6,354,193 B1	Mar. 12, 2002
Huegerich	US 2003/0197005 A1	Oct. 23, 2003
Hunot	US 2005/0061161 A1	Mar. 24, 2005

## REJECTIONS

The Examiner made the following rejections:

1. Claims 1, 11, 25, and 34 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Hunot and Othmer.
2. Claims 2, 3, 6, 7, 26, 27, 30, and 31 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Hunot, Othmer, and Archer.
3. Claims 4, 5, 28, and 29 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Hunot, Othmer, Archer, and Tomita.
4. Claim 8 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Hunot, Othmer, and Huegerich.
5. Claims 9 and 32 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Hunot, Othmer, and Lee.
6. Claims 10 and 33 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Hunot, Othmer, Lee, and Brown.
7. Claims 12 and 35 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Hunot, Othmer, and Schmid.

Appellant seeks our review of these rejections.

## ANALYSIS

In Rejections 1–7, the Examiner finds that Hunot discloses the “pressurized plenum” limitation recited in independent claims 1 and 25. The Examiner and Appellant dispute the meaning of “plenum.” Citing to one dictionary, the Examiner states the definition of plenum is a “condition, space, or enclosure in which air or other gas is at a pressure greater than that of the outside atmosphere.” Final Act. 3, fn. 1 (citing

<<http://www.thefreedictionary.com/plenum>>). The Examiner also states that:

the definition taken on by the Examiner is consistent with that of the Applicant's specification since Applicant's specification recites "the pressurized plenum may be substantially sealed against unwanted air leakage out of the plenum (e.g., into an ambient environment) while also allowing some airflow out of the plenum" (see Applicant's specification para. 0042). Examiner interprets Applicant's pressurized plenum as having a positive pressure that is capable of being greater than the ambient environment."

Adv. Act. 3 (mailed November 30, 2015).

In response, Appellant, citing to another dictionary, disagrees with the Examiner's definition, asserting that:

The meaning of "plenum," as one of ordinary skill in the art would understand in view of the present disclosure, carries with it no implied relative pressure differential from atmospheric, and is simply, for example, "an air-filled space in a structure." [citing to <http://www.merriam-webster.com/dictionary/plenum>.] Indeed, Appellant's meaning is in accord with the present disclosure, which, in some embodiments, describes a "pressurized plenum" as a plenum in which an air pressure is maintained "greater (e.g., slightly or significantly) than an air pressure of the heating tubes (e.g., an air pressure of an interior volume of the tubular heating surfaces)." Application at [0042]. Thus, in accord with the present disclosure, the bare term, "plenum," includes no implied relative pressure differential from atmospheric (or any other relative point).

Appeal Br. 13.

In addition to Appellant's assertion that air pressure in the plenum may be greater than the pressure in the heating tubes, the Specification also states the air pressure may be the same. Spec. ¶ 42 ("the air pressure in a pressurized plenum of the roller grill may be equal to the air pressure inside

the heating tubes to prevent or help prevent the heat (e.g., generated by an electric resistance heater positioned in the interior volume of the tubes) from escaping into the plenum rather than the tube surface and into food product.”). In light of these passages, the Examiner’s proposed definition is inconsistent with the Specification’s usage of the term.

The Examiner’s proposed definition that a plenum must have an internal pressure that is greater than outside pressure is also inconsistent with the “pressurized plenum” limitation in claim 1. If a plenum must be pressurized, as defined by the Examiner, then the term “pressurized” is redundant — claim 1 could merely recite a “plenum,” and would not need to recite a “pressurized” plenum. Based upon the usage of the term plenum in the Specification, the broadest reasonable interpretation of plenum is an air-filled space in an enclosed structure.

Turning to Hunot, the Examiner states that paragraph 56 of Hunot discloses “a ‘pressurized plenum’ since Hunot teaches ‘housing (24) comprises ... two generally rectangular side support frames 46 and 48’ in paragraph 0056.” Ans. 3–4. While Hunot discloses a plenum — an air-filled space in an enclosed structure, the Examiner does not explain how or why this plenum is pressurized, as recited in claim 1. Contrary to the Examiner’s finding that Hunot’s plenum is pressurized, Hunot explicitly states that “[s]heet **44** can have vent holes (not shown) formed therethrough for allowing air circulation from the exterior to within the interior of the housing **24**.” Hunot ¶ 56. Thus, the vent holes expose the plenum to outside atmospheric air conditions, and the internal plenum is not pressurized. Even under the Examiner’s proposed definition of plenum, Hunot’s internal space

is not, and cannot be, pressurized so that its internal pressure is larger than the outside pressure.

For these reasons, the Examiner's finding that Hunot discloses a "pressurized" plenum is in error. The Examiner does not explain how the other prior art references remedy the deficiencies of Hunot. Thus, we cannot sustain the rejections of independent claims 1 and 25, or claims 2–12 and 26–35 which depend from claims 1 and 25.

#### DECISION

For the above reasons, the Examiner's rejections of claims 1–12 and 25–35 under 35 U.S.C. § 103(a) are REVERSED.

REVERSED