

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

**UNITED STATES PATENT AND TRADEMARK OFFICE**

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

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Ex parte RONALD FELDEWERTH and RON SMITH

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Appeal No. 2005-1539  
Application No. 09/799,275

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ON BRIEF

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Before FRANKFORT, PATE, and BAHR, Administrative Patent Judges.  
FRANKFORT, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 6, 8, 9 and 14 through 22, which are all of claims remaining in the application. Claims 1 through 5, 7 and 10 through 13 have been canceled.

As noted on page 1 of the specification, appellants' invention relates generally to a food grilling apparatus and, more particularly, to a device to control the grill flame,

prevent hot spots, and to divert excess fats and grease from grilled foods during grilling away from direct contact with the cooking flame. Independent claims 16 and 18 are representative of the subject matter on appeal and a copy of those claims can be found in the Appendix to appellants' brief. Claim 16 reads on the grilling surface seen in Figures 2A-2C, while claim 18 reads on the embodiment seen in Figures 3A-3C.

The references of record relied upon by the examiner to reject the claims on appeal are:

Gremillion	4,630,593	Dec. 23, 1986
Latour et al. (Latour)	4,979,440	Dec. 25, 1990
Barker et al. (Barker)	5,111,803	May 12, 1992
Stanek et al. (Stanek)	5,911,812	Jun. 15, 1999

Claims 9 and 16 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Barker.

Claims 18 and 19 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Latour.

Claims 14, 15 and 17 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Barker in view of Stanek.

Claim 22 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Latour in view of Stanek.

Claims 8, 9, 16 and 21 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Latour in view of Barker.

Claim 6 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Latour in view of Barker as applied to claim 16 above, and further in view of Gremillion.

Claim 20 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Latour in view of Gremillion.

Rather than reiterate the conflicting viewpoints advanced by appellants and the examiner regarding the above-noted rejections, we refer to the answer (mailed July 13, 2004) for a complete exposition of the examiner's position, and to appellants' brief (filed April 5, 2004) for the arguments thereagainst.

OPINION

Having carefully reviewed the anticipation and obviousness issues raised in this appeal in light of the record before us, we have made the determinations which follow.

In considering the rejection of claims 9 and 16 under 35 U.S.C. § 102(b) based on Barker, we note that Barker discloses a flare reduction buffer member (2) to be situated between a grill burner element (8) and a food cooking grill (6) of a gas barbecue to provide even heating in the barbecue and reduce flare-up during cooking. Buffer member (2) is in the form of a plate (12) formed, for example, of cast iron (col. 2, lines 48-50) and includes a plurality of pockets (18) of truncated pyramid configuration extending above the upper surface (14) of the plate (12). See, e.g., Figure 1 of Barker. As noted in column 3, line 42, et seq., in operation, pockets (18) when in the orientation seen in Figure 1, trap hot air and smoke rising off burner element (8) and allow heated air to rise to the cooking grill (6) above to assist in the cooking process. It is further noted that

[s]ufficient heat is retained in plate 12 to provide both radiant heat for cooking and to vaporize most food drippings (juices, fats, falling on upper surface 14 from grill 6), into smoke. Perforations 20 and 30 are sufficiently small in size to block most food drippings from falling directly to burner 8 and hence to block the majority of the flare-ups within the barbecue.

In addition to the foregoing, Barker also discloses (col. 3, lines 17-24) that it is preferred that buffer member (2) be reversible, so that orientation of its upper and lower surfaces (14) and (16) can be reversed. It is noted that such reversal provides a self-cleaning feature in that any accumulated build-up of food debris on one surface would be burnt off by turning over the plate so that that surface is facing the burner element (8). Figure 3 of Barker shows a preferred form of reversible buffer member provided by a symmetrical design of pockets (18) oppositely extending in similar or regular fashion on both surfaces (14) and (16) of plate (12).

Appellant's arguments on pages 9-11 of the brief appear to focus on Figure 1 of Barker and the orientation of the buffer member (2) as seen therein. In particular, appellants contend that Barker discloses the opposite of the grilling surface defined in claim 16 on appeal, because Barker's pyramid shaped members narrow upwardly, rather than downwardly, and are thus distinct from the similar structures of appellants' claimed grilling surface. This line of argument however ignores the disclosure in Barker that the buffer member (2) is reversible, so that orientation of its upper and lower surfaces (14) and (16) can be reversed, thereby providing a self-cleaning feature in that any accumulated build-up of food debris on one surface would be burnt off by

turning over the plate so that that surface is facing the burner element (8). Such an argument also ignores the embodiment of the buffer member seen in Figure 3 of Barker, which clearly has pockets or pyramid shaped members that narrow downwardly in the same manner as appellants' hollow elements (32) seen in Figures 2B and 2C of the present application. Thus, we find appellants' argument that Barker discloses the opposite of the grilling surface defined in claim 16 on appeal to be unpersuasive. As for appellants' further assertion that Barker obviously functions for a different purpose, and the detailed discussion bridging pages 10 and 11 of the brief concerning exactly how appellants' device is intended to work, we need only note that no such details of the exact operation of appellants' grilling surface are set forth in claim 16.

Since we agree with the examiner that claims 9 and 16 on appeal are clearly readable on the structure seen in Barker Figure 3 and also on the buffer member (2) of Figure 1 in its reversed orientation (described in column 3, lines 17-24) wherein surface (14) would face the burner element (8) and surface (16) would face upwardly, we will sustain the rejection of claims 9 and 16 under 35 U.S.C. § 102(b) based on Barker.

As for the examiner's rejection of claims 18 and 19 under 35 U.S.C. § 102(b) based on Latour, we are in agreement with the examiner's position as set forth on

pages 4-5 of the answer. Appellants' contention (brief, page 11) that the configuration of Latour's grill insert structure (22) is different from that required in claims 18 and 19 on appeal is not well taken. In the first place, appellants have not pointed to any specific structural difference they believe would distinguish the grilling surface of claims 18 and 19 on appeal from that of Latour. Moreover, appellants have merely asserted that their invention functions differently from that of Latour, without providing any cogent reasons as to why the grill insert of Latour is different from that defined in claims 18 and 19 on appeal and/or would not be capable of functioning in the manner broadly set forth in those claims. Thus, we will sustain the rejection of claims 18 and 19 under 35 U.S.C. § 102(b) based on Latour.

In rejecting claims 14, 15 and 17 under 35 U.S.C. § 103(a) based on Barker in view of Stanek, the examiner points to the lower collecting grill element (2) of Stanek's cooking grill member and contends (answer, page 7) that it would have been obvious to one of ordinary skill in the art at the time of appellants' invention to modify the plate (12) of Barker to be used in combination with the grease diverter (2) of Stanek for the desirable purpose of preventing all grease drippings from falling onto the burner unit of a grill. Regarding the rejection of claim 22 under 35 U.S.C. § 103(a) based on Latour in view of Stanek, the examiner has made a similar assertion that it would have been

obvious to modify the plate of Latour to be used in combination with the grease diverter (2) of Stanek for the desirable purpose of preventing all grease drippings from falling onto the burner unit of a grill.

Absent hindsight, we see no teaching, suggestion or motivation in the applied prior art references that would have led one of ordinary skill in the art to dismantle the multi-part grilling structure seen in Stanek and then attempt in some way to combine only the lower grill member (2) thereof with the flare reduction buffer of Barker or the grill insert of Latour. In that regard, we note, as our court of review indicated in In re Fritch, 972 F.2d 1260, 1266, 23 USPQ2d 1780, 1784 (Fed. Cir. 1992), that it is impermissible to use the claimed invention as an instruction manual or "template" in attempting to piece together isolated disclosures and teachings of the prior art so that the claimed invention is rendered obvious. Moreover, we observe that the examiner has provided no explanation as to exactly how, even if combined in the manner asserted, the lower collecting grill structure (2) of Stanek would cooperate with either of the structures seen in Barker or Latour to prevent all grease drippings from falling onto the burner unit of the grill.

In light of the foregoing, we will not sustain the examiner's rejection of claims 14, 15 and 17 under 35 U.S.C. § 103(a) based on Barker and Stanek, or the rejection of claim 22 under 35 U.S.C. § 103(a) based on Latour and Stanek.

The next rejection for our review is that of claims 8, 9, 16 and 21 under 35 U.S.C. § 103(a) as being unpatentable over Latour in view of Barker. In this instance, the examiner has determined that it would have been obvious to one of ordinary skill in the art at the time of appellants' invention to modify the conical shaped hollow elements of Latour to be in the form of inverted pyramids like those seen in Barker "as the pyramid shape is understood in the art to be the equivalent of an inverted conical shape for collecting and diverting grease drippings from cooked food items" (answer, pages 8-9). Finding no separate argument in appellants' brief which specifically addresses this rejection, we will summarily sustain it. Moreover, from the Grouping of Claims set forth on page 8 of the brief, it appears that appellants intended that the claims subject to this rejection would stand or fall together with the outcome concerning our consideration of the individual rejections of independent claims 16 and 18 treated above.

The remaining rejections on appeal involve claims 6 and 20, each of which is rejected under 35 U.S.C. § 103(a), claim 6 as being unpatentable over Latour in view of Barker and Gremillion, and claim 20 as being unpatentable over Barker in view of Gremillion. In each instance, the examiner has concluded that it would have been obvious to one of ordinary skill in the art at the time of appellants' invention to modify the grill insert plate of Latour to be suspended by suspension elements as taught by Gremillion for the desirable purpose of securely supporting the plate in suspended relation to a cooking grid. More particularly, page 14 of the answer indicates that the examiner is of the view that

a person of ordinary skill in the art would reasonably consider that the plate (22a) of Latour et al., which receives and directs grease drippings in the same manner as the screen (12) of Gremillion, would be suspended by suspension elements, such as those taught by Gremillion, for the recognized purpose of securing the plate (22a) within a grill.

We see no basis in the applied prior art references for modifying the grill insert plate (22a) of Latour (which as seen in Figure 6 of that patent is specifically designed to be mounted on the top of grill cooking grid (16)) in the particular manner urged by the examiner so as to be suspended below the cooking grid by hook-type clips like those seen at (34) in Gremillion. Thus, we find that the examiner has failed to make out a *prima facie* case of obviousness. For that reason, we will not sustain the examiner's rejections of claims 6 and 20 under 35 U.S.C. § 103(a) as being

unpatentable over Latour, Barker and Gremillion, and Latour in view of Gremillion, respectively.

In accordance with the foregoing discussions, the decision of the examiner is affirmed-in-part. That is, the decision of the examiner to reject claims 9 and 16 under 35 U.S.C. § 102(b) as being anticipated by Barker, claims 18 and 19 under 35 U.S.C. § 102(b) as being anticipated by Latour, and claims 8, 9, 16 and 21 under 35 U.S.C. § 103(a) as being unpatentable over Latour in view of Barker, is affirmed, while that to reject claims 14, 15 and 17 under 35 U.S.C. § 103(a) as being unpatentable over Barker in view of Stanek, claim 22 under 35 U.S.C. § 103(a) as being unpatentable over Latour in view of Stanek, claim 6 under 35 U.S.C. § 103(a) as being unpatentable over Latour in view of Barker and Gremillion, and claim 20 under 35 U.S.C. § 103(a) as being unpatentable over Latour in view of Gremillion, is not.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED-IN-PART

CHARLES E. FRANKFORT  
Administrative Patent Judge

WILLIAM F. PATE, III  
Administrative Patent Judge

JENNIFER D. BAHR  
Administrative Patent Judge

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