

Euro-Pro Operating v. Arcone Enterprises: Final Written Decision Finding All Challenged Claims Unpatentable IPR2014-00351

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Takeaway: If a petitioner provides testimonial evidence, then a patent owner should provide testimonial counterevidence in its response in order to adequately rebut petitioner's arguments.

In its [Final Written Decision](#), the Board found that all challenged claims (claims 1, 13, and 14) of the '262 Patent are unpatentable, and denied Patent Owner's Motion to Amend. The '262 Patent relates to an electric cooking appliance, known as a deep well cooker, for preparing and serving hot foods.

The Board began with claim construction, stating that the claims are given their broadest reasonable interpretation. The Board adopted its constructions from its Decision in Institution of "temperature controlling means," without opposition, and "function controlling means," after considering Patent Owner's alternative construction.

The Board then turned to the obviousness of claims 1, 13, and 14 by Hlava and Admitted Prior Art. The Board noted that Patent Owner did not provide any declarant testimony but made a number of arguments refuting Petitioner's contentions and its expert's testimony. The Board was not persuaded by these arguments. Patent Owner's first argument was that the absence of a bottom heating element in Hlava "mitigates a finding of obviousness," but the Board pointed out that this missing element is why Petitioner is arguing obviousness instead of anticipation. The Board was not persuaded by Patent Owner's contention that Petitioner failed to present an articulated reasoning supporting its obviousness position. The Board also found that Patent Owner's arguments refuting Petitioner's expert's testimony were conclusory and unsupported by anything except attorney argument. The Board did not agree that Hlava teaches away from a bottom heating element.

Next, the Board reviewed whether claims 1, 13, and 14 are obvious over Nachumsohn. The Board rejected Patent Owner's first argument – that Nichaumsohn's failure to disclose a "functioning controlling means" mitigates against a finding of obviousness – for the same reasons as above. The Board was not persuaded by Patent Owner's assertion that Nachumsohn teaches away from "function controlling means" because Patent Owner did not provide any expert testimony to support its conclusion. The Board was also not persuaded by Patent Owner's argument that one of ordinary skill could not modify Nachumsohn to practice the invention because Patent Owner did not provide any support for this conclusion.

The Board then addressed Patent Owner's objections to Petitioner's expert's declaration on the grounds that the expert did not opine on the level of ordinary skill in the art, and that he has no legal training and is not an expert. The Board noted that the expert had 50 years of product development and design experience including electric cooking devices and that he is being offered as an expert on the technology, not the law. The Board was also persuaded that the expert formed his opinions in consideration of the level of ordinary skill in the art at the time of the invention.

The Board next addressed whether the challenged claims are obvious over Hlava and Nachumsohn. The Board noted that Patent Owner did not provide specific arguments as to this ground other than the ones offered above, and found that Petitioner had met its burden.

Then, the Board discussed whether the challenged claims are obvious over Nachumsohn and Vallorani. Patent Owner argued that Vallorani is not analogous art and that a person of ordinary skill in the art would not have had a reason to combine the references. The test for whether art is analogous is whether it is in the same field of endeavor. The Board found that both the '262 Patent and Vallorani are home cooking appliances and in the same field of endeavor. Further, the Board found that, because the references disclose similar apparatuses performing the same food cooking functions, a person of ordinary skill would have looked to combine their teachings.

The Board then turned to Patent Owner's Motion to Amend. The Board found independent substitute claim 20 indefinite because Patent Owner amended by adding "including a multifunction controller" to the function controlling means, but did not explain what structure or substructure is being claimed. The Board also found that Patent Owner failed to explain why this amendment renders the claim patentable over Hlava.

Finally, the Board considered Patent Owner's evidence of copying secondary considerations. Patent Owner argued that the filing of the lawsuit by Patent Owner evidences copying. The Board found that this was not sufficient evidence of copying, even if Petitioner's product is encompassed by Patent Owner's claims.

Euro-Pro Operating LLC v. Arcone Enterprises, LLC, IPR2014-00351

Paper 38: Final Written Decision

Dated: July 9, 2015

Patent 6,515,262 B1

Before: Michael J. Fitzpatrick, Hyun J. Jung, and Scott A. Daniels

Written by: Daniels

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