

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

First Named Inventor	Michael Reischmann
Application No. 17/903,637	Filing Date: September 6, 2022
Title of Application:	Vibrating Cooking System
Confirmation No. 2309	Art Unit: 3761
Examiner	Reginald Alexander
Attorney Docket No.	07349-P0004G

Mail Stop Appeal Brief - Patents  
Commissioner for Patents  
Post Office Box 1450  
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**Appeal Brief Under 37 CFR §41.37**

Dear Sir:

A Notice of Appeal from the rejection of Claims 1-17, all pending claims of U.S. Patent Application No. 17/903,637 currently under consideration, having been previously filed on March 16, 2023. Applicant accordingly files its Appeal Brief in connection with its appeal. A Claims Appendix is submitted herewith, as are Appendices related to evidence previously submitted and decisions related to the case.

Enclosed herewith is a Request for a 1 month extension of time to file the afore-mentioned Appeal Brief and the appropriate fee.

Applicant believes that no further fee is due in connection with the filing of this Response. However, if any further fee is due please charge Deposit Account No. 19-4516.

**(i) Real Party In Interest**

The real party in interest is Kenyon Technologies, LLC, of 24 Dockside Lane, #374 Key Largo, FL 33037.

**(ii) Related Appeals and Interferences**

To the best of Appellant's knowledge, there are no related Appeals or Interferences which are pending, however the parent case to this application was appealed, but that appeal did not reach the board as an examiner's amendment and allowance was entered following the filing of the appeal brief, but before paying the forwarding fee.

**(iii) Status Of Claims**

1-17 stand rejected and are the subject of the instant Appeal. A copy of each of these claims is attached hereto in the Claims Appendix.

**(iv) Status Of Amendments**

All claims are original with no amendments having been made since filing.

**(v) Summary Of Claimed Subject Matter**

Claims 1 and 10 are the rejected independent claims which are discussed below in addition to dependent claims 8 and 16

**Independent Claim 1:**

1. A cooking system for heating the contents of a cooking vessel which has a cooking surface, comprising:

a support (16) [0009-10] adapted to support the cooking vessel (58)  
[0009-10];

a heating element (42) [0009-10] comprising a coil for creating an oscillating magnetic field which when activated interacts with and generates an amount of heat in the cooking vessel (58) [0009-10];

a vibrator (46) [0009-10], [0044] adapted to vibrate the cooking surface (16) wherein said vibrator (46) is separated from the heating element (42) such that vibration of the heating element by the vibrator is inhibited when the heating element and vibrator are activated [0009-10], [0044], [0048];

wherein the vibrator (46) [0009-10], [0044], [0048] vibrates the cooking surface (16) when activated; and

a pad (62) [0009-13], [0046-48] comprising a thermally insulating, elastically deformable material and configured to be located underneath and in contact with the cooking vessel (58).

#### **Dependent Claim 8**

8. The cooking system of claim 7, further comprising at least one elastomeric isolation block (38, 138, 238) [0048], [0052], [0066] positioned between said support and said housing (132, 232, 432) [0050], [0053] [0061]; and

at least one foot (150, 438) [0052] [0066], formed of an elastomeric isolation block for supporting the housing.

#### **Independent Claim 10**

10. A cooking system for heating the contents of a cooking vessel which has a cooking surface, comprising:

a support (16) [0009-10] adapted to support the cooking vessel (58) [0009-10];

a heating element (42) [0009-10] comprising a coil for creating an oscillating magnetic field which when activated interacts with and generates an amount of heat in the cooking vessel (58) [0009-10], the heating element (42) separated from the support (16);

a vibrator (46) [0009-10], [0044] configured to vibrate said cooking surface wherein the vibrator is isolated from the heating element (42) to inhibit vibration of the heating element (42) by the vibrator (46) when the coil is activated [0009-10], [0044], [0048];

at least one elastomeric isolation block (38, 138, 238) [0048], [0052], [0066] positioned between said support (16) and the coil to inhibit vibration of the coil; and

a pad (62) configured to be located underneath the cooking vessel and between the heating element and the cooking vessel (58) [0009-13], [0046-48].

#### **Dependent Claim 16**

16. The cooking system of claim 15, further comprising at least one elastomeric isolation block (38, 138, 238) [0048], [0052], [0066] positioned between said a surface of said support surface and said housing (132, 232, 432) [0050], [0053] [0061]; and

at least one foot formed (150, 438) [0052] [0066] of an elastomeric isolation block for supporting the housing.

#### **(vi) Grounds Of Rejection To Be Reviewed On Appeal**

Claims 1-17 are rejected under 35 USC 103(a) in view of Williams et al (US 2009/0289054) and Harvey (US 7,997,018)

#### **(vii) Argument**

##### **Williams and Harvey**

Williams does not disclose a vibrator and therefore cannot disclose isolating a vibrator from the heating element or from the cooking surface or really isolating/separating the vibrator from anything. Harvey discloses a vibrator which

vibrates both the cooking surface and the heat element. Thus, a combination of Harvey with Williams would take the Harvey vibrator and vibrate the entire Williams apparatus. To go the next step and vibrate the cooking surface and isolate or inhibit vibrations in the heating element requires use of hindsight bias that is not founded in any fact of record in the prior art. The only suggestion Harvey has as to a vibration element is to vibrate the cooking surface and heater together. If “walking a tightrope blindfolded” guided only by objective evidence as required under controlling precedent (see below), the POSITA would take the Williams device and add Harvey’s vibrator in a way that vibrates the entire Williams device, potentially also using Harvey’s stand to put the Williams device with the added vibrator that vibrates the whole thing to then seek to dampen vibrations on the countertop with Harvey’s stand. Nothing in Harvey or Williams suggests that the vibration element would be separated in any way from the heating element. Harvey expressly discloses the heating element and vibrator vibrate together. Since Williams does not disclose a vibrator, it cannot disclose any isolation between the vibrator and any cooking or support surface.

In the Final Office Action, examiner asserts “Harvey discloses a vibrator member 12 which is (separated) spaced a distance from a cooking surface...it is further emphasized that vibrator 12 is indeed spaced from the cooking surface” However, the element in question is not mere spacing of the vibrator it is “said vibrator is separated from the heating element such that vibration of the heating element by the vibrator is inhibited when the heating element and vibrator are activated”. The separation distance in Harvey has no way of inhibiting vibration. Rather, while there may be a physical distance separation, there is a rigid connection between the vibrator and the cooking surface/heating element and the very purpose of Harvey’s design is to use a counterweight motor rigidly attached to the griddle to cause vibrations. On page 4-5 of the rejection, examiner never addresses the key element in regards to the separation of “**such that vibration of the heating element by the vibrator is inhibited**”. Harvey’s

mounting of the vibrator is clearly designed to encourage vibrations as that is the very purpose of Harvey's design and this rigid connection of the vibrator between the cooking surface and the heating element is fundamental to how Harvey works. If the heating element did not vibrate, neither would the cooking surface as the heating element is physically embedded in as part of the cooking surface.

Examiner also notes that Harvey discloses "in an alternative embodiment, tool (vibrator) 12 could be directly coupled to the cooking surface of griddle 10", but since the heating element is embedded as part of the cooking surface element, the vibrator would vibrate the heating element anyways, so the spacing examiner points to does not reach the claims.

Examiner also asserts "the disclosure of Williams is that of an induction coil (heat element) which is separated from a cooking surface". This again fails to address the requirement that this separation between the vibrator and heating element is "**such that vibration of the heating element by the vibrator is inhibited**". Williams induction coil is securely attached to the housing of the cook top and the cooktop is also securely attached to the housing of the cook top. The separation of the cooking surface and induction coil is not "such that vibration...is inhibited" because there is no vibrator in Williams provided for which vibration must be inhibited or for which a POSITA is separating the cooking surface from the heating element and again, the claim says the heating element and vibrator are separated such that vibration is inhibited, not that the cooking surface and heating element are separated such that vibration is inhibited. Again, it is required that said **vibrator** is separated from the **heating element** such that vibration is...inhibited". There is no vibrator in Williams to separate the heating element from, so Williams disclosing a heating element physically spaced from a cooking surface is irrelevant because Harvey tells the POSITA to vibrate both the cooking surface and heating element. This leads to the POSITA attach the vibrator in a manner that would vibrate the entire Williams device, including the induction coil.

The gasket of Harvey is not shown or adequately described to know exactly how it is configured. MPEP § 2121.01 states that for a cited prior art document to teach a claim element, the cited art must provide an enabling disclosure of the claimed subject matter. MPEP § 2121.01 goes on to state that the mere naming or description of the subject matter is insufficient; rather, the cited art must demonstrate that the public was in possession of the claimed subject matter before the date of invention. In other words, the cited art must describe the claimed subject matter in such detail as to enable one of ordinary skill in the art to make the claimed subject matter without undue experimentation.

The only disclosure as to the gasket is that: “the cooking surface of griddle 10 could be isolated from the rest of griddle 10 by a silicone rubber gasket, for example, to eliminate transmission of vibration beyond the cooking surface” (Harvey Col 6 L 30-35). Nothing expressly shows where the gasket is located. But, the cooking surface of Harvey includes the heating element anyways, so the vibrator is never separated from the heating element. Instead, the most a POSITA could understand from this disclosure is that Harvey’s cooking surface (with embedded heat element) is placed on a stand of some kind and the gasket is between the stand and cooking surface. This is consistent with Harvey’s drawings. This is akin to placing Williams on a stand with rubber blocks between Williams and the stand. But, none of this discloses separating the heat element from the vibrator which Harvey shows to be connected because the heat element is embedded in the cooking surface. Following Harvey’s disclosure requires that the cooking surface and vibrator and heating element are all connected together, the vibrator and heater being connected in a manner that encourages and does not inhibit vibration runs contrary to the claims. And, Harvey is expressly concerned with making sure the cooking surface vibrates, necessarily making sure the heating element also vibrates.

Nothing in Harvey suggests separating the vibrator from the heat element and nothing in Williams can suggest separating a vibrator from the heat element as Williams does not disclose a vibrator in the first place.

Examiner's motivation to combine is not supported by any facts of record. Examiner alleges the POSITA would want to inhibit vibrations of the coil without any support or teaching of this concern, in fact the only place this concern comes up is in the pending claims. Examiner asserts the life span of the coil would be improved by reducing damage due to vibration. Again, there is no cited fact of record to support the idea that the POSITA was concerned with this. Williams is not concerned with using vibration and Harvey attaches the vibrator to the heat element in a way that vibrates the heat element. The fact that Harvey connects the heat element and the cooking surface and vibrator in this way shows that the POSITA is not concerned about vibrations damaging the heating element in the first place. But, examiner then concludes without evidence on Pages 4-5 of the office action that that a POSITA would use the gasket taught in Harvey to reduce vibrations of the coil. But, the Gasket of Harvey is only disclosed to separate the heating element and cooking surface unit from the stand in Harvey, not separate the vibrator from the heat element.

Examiner's motivation to combine is not founded in any cited fact in the prior art. This is wholly improper as recently recognized by the Board: "the reason for the combination stated by the Examiner lacks a rational underpinning because, as Appellants correctly point out, the Examiner does not support the reasoning with specific finding supported by the prior art." *In re McGarry et al*, Ser. No. 14/038,032, Appeal No. 2017-000852 at 4 (PTAB Nov 13, 2018) *citing In re Warner*, 379 F.2d 1011, 1017 (CCPA 1967). According to MPEP 2144, "[t]he mere fact that a worker in the art could rearrange the parts of the reference device to meet the terms of the claims on appeal is not by itself sufficient to support a finding of obviousness. **The prior art must provide a motivation or reason for the worker in the art**, without the benefit of appellant's specification,



to make the necessary changes in the reference device.” *Ex parte Chicago Rawhide Mfg. Co.*, 223 USPQ 351, 353 (Bd. Pat. App. & Inter. 1984)(emphasis added). “Obviousness requires [the USPTO] to walk a tightrope blindfolded (to avoid hindsight)—an enterprise best pursued with the safety net of objective evidence.” *Mintz v. Dietz & Watson*, 679 F.3d 1372, 1379 (Fed. Cir 2012). Examiner’s motivation is not the product of objective evidence but rather a made up motivation and an assertion which is created for the purposes of rejecting the claims.

Thus, the only reason examiner is using the gasket to separate the heat element from the vibrator is based on a motivation in the present claims and specification. Although the examiner asserts the POSITA would be concerned with prolonging the lifespan of the coil, examiner never cites any evidence to support this assertion. There are no facts of record that the POSITA is concerned with longevity of the heat element which is vibrated by the vibrator because Harvey discloses that the heat element will actually be vibrated by the vibrator. Again, Williams makes no mention of a vibrator and therefore cannot provide any motivation for a POSITA to do anything specific with use or location of a vibrator. If following the teachings of the prior art, the POSITA is instructed to add a vibrator to the Williams device to vibrate the whole thing. The only reason a POSITA would be instructed or motivated to separate the vibrator and heat element in order to inhibit vibrations would be based on reading the present specification and claims. Thus, examiner is using evidence that is a product of hindsight bias. The motivation to reach the claims and modify the teachings of the references must be found in the prior art and no reference teaches separation of the vibrator from the heating element to inhibit vibrations, in fact Harvey teaches the opposite – the vibrator and heat element should be connected in a way that encourages vibrations.

“It is impermissible within the framework of section 103 to pick and choose from any one reference only so much of it as will support a given position, to the

exclusion of other parts necessary to the full appreciation of what such reference fairly suggests to one of ordinary skill in the art.” *In re Wesslau*, 353 F.2d at 241, 147 USPQ at 393. Here, examiner is picking the Harvey vibrator and taking it out of context and adding it to Williams and then using the gasket of Harvey in a way that the gasket was not intended to be used. Proper use of the Gasket according to Harvey would involve placing rubber feet on the Williams device so that vibrations do not transfer to the counter. It is noted in regards to some of the dependent claims, that these feet are claimed positively, thus examiner is using the gasket now in two different locations, one to separate the heating element from the vibrator and a second time to act as feet for the Williams cooktop. The gasket of Harvey cannot be both be used in a new and undisclosed location between the heating element and vibrator and then also be used in a place that does not isolate the heating element and vibrator but instead acts as feet on the bottom of the stand, thus not using the gasket to separate the heating element and vibrator. Examiner cannot call the gasket one thing and place it in one location and then for purposes of the dependent claim make an entirely new “gasket” to be feet that inhibit transfer of vibrations to the countertop while letting the heating element be vibrated by the vibrator.

Examiner made some assertions in the parent case that Examiner appears not to make here, but to the extent examiner wishes to bring them up in the examiner’s answer, Applicant reproduces the arguments from the parent case appeal brief below. It is noted that two of the independent claims submitted for appeal in the parent case are the same as Claims 1 and 10 in the present case.

In the final rejection in the parent case, examiner asserted “The teaching of Harvey is that of a vibrator with a cooking or heating surface, the location of the element which provides the heat to the surface is not relevant. The vibrator of Harvey would provide vibrations to a cooking vessel regardless of the location

of the heating element.” However, examiner cited no portion of Harvey which supports this assertion or where Harvey states this. Instead, Harvey discloses a cooking surface and heat element which are integrated together such that the vibrator cannot vibrate the cooking surface without vibrating the heating element. Harvey makes no suggestion of putting the vibration inducing element anywhere other than in a position which will ensure the vibration is equally made on the heating element and the cooking surface. The very way in which Harvey achieves the ability to provide heat and vibration to the cooking surface is to connect the vibrator to the integrated unit of the heat element and cooking surface. Nothing in Harvey suggests separating the heat element from the vibrator. Examiner asserted in the parent case final rejection that “the location of the element which provides the heat to the surface is not relevant”, but Harvey disclosure contradicts this assertion because the only arrangement Harvey contemplates is that the heat element and cooking surface are both vibrated. If the heat element of Harvey were located in a place separate from the vibrator and cooking surface, the heat element simply would not work because the way in which the heat element is designed requires the heat element is integrated into the cooking surface. Nothing in Harvey suggests separating the vibrator from the heat element because doing so would separate the vibrator from the cooking surface while making that cooking surface not get hot.

Examiner asserted in the parent case “the location of the heating element used to heat the support or cooking surface would not limit the function of the vibrator”, but separating the Harvey heat element from the vibrator in a manner that inhibits vibrations of the heat element would inhibit vibration of the cooking surface, the very thing Harvey is trying to vibrate. Or, less heat would get to the cooking surface as the very purpose of the Harvey heater is to directly heat the surface and thus the vibrator shaking the hot/cooking food to avoid sticking simply would not have the same impact as the surface would not get hot. Thus, the vibration concern of sticking due to the food being cooked but not being

moved around would be the same because the food would not cook or would not cook efficiently or vibration of the cooking surface would be inhibited and would render Harvey unsatisfactory for its intended purpose of cooking food and avoiding sticking with vibration.

Nothing in Williams suggests a vibrator, separation of a vibrator from a heat element or any element related to a vibrator, so Williams cannot suggest any feature related to a vibrator or where the same is arranged.

Claim 1 requires *inter alia* a vibrator adapted to vibrate the cooking surface wherein said vibrator is separated from the heating element such that vibration of the heating element by the vibrator is inhibited. Williams fails to disclose a vibrator and thus cannot disclose a vibrator separated from any heating element. Harvey discloses a vibrator but the way in which the Harvey vibrator works is that it must be connected in a manner that will not inhibit vibration of the heating element because to inhibit vibration of the Harvey heating element would likewise inhibit vibration of the cooking surface – the very thing that Harvey is trying to vibrate in the first place. Thus, Harvey discloses the exact opposite of what applicant claims – encouraging vibration of the heating element. Examiner has offered no suggestion or motivation other than in the pending claims to separate the vibration and the heating element. The combination of Williams and Harvey does not reach the claims as this combination would vibrate the whole structure of Williams, including the support surface and the heating element. As stated previously, Williams does not disclose separating any vibration element from the heating element as Williams does not disclose a vibrator in the first place. Harvey's vibrator is attached to and vibrates the heating element. Harvey contains no disclosure which states or encourages the separation of the heating element from the vibrator. The combination in the end would lead to a vibration element attached to the entire Williams structure which then vibrates the heating element and support surface.

Further, examiner's motivation to combine is really using the motivation to teach a missing limitation from the prior art's disclosure. First, Examiner asserts it would be obvious to provide a vibrator on the Williams device based on Harvey to improve the distribution of heat. However, this only adds a vibrator to Williams and based on the disclosure of Harvey, this vibrator would be connected to Williams' heat element based on how Harvey connects its vibrator to its heat element. Next examiner states "Additionally, it would have been obvious to provide the cooking system of Williams with the gasket taught in Harvey..." However, the "gasket" taught in Harvey is designed to avoid transferring vibrations of the whole cooking system to the table on which the system sits. Stated differently, if the cooking system is placed on a kitchen countertop, the Harvey gasket is designed to stop the countertop from receiving the vibrations. Essentially, this would involve placing rubber feet on the Williams device so that when the entire Williams device is vibrated according to the Harvey arrangement, that vibration is absorbed by the gasket so that the machine does not vibrate on the countertop. But, this does not suggest separating the heat element from the vibrator. Nothing suggests use of the gasket to inhibit vibrations of the coil as Harvey has already taught that the heat element is connected to the vibrator. The Harvey gasket arrangement is designed to separate one unit including the cooking surface, vibrator and heating element from another unit comprising the features which support those elements. Simply put, the gasket of Harvey only suggests isolating the cooking system as a whole from the countertop or support on which that cooking system sits.

As referenced above, use of the Harvey gasket arrangement with Williams would only suggest rubber feet or rubber elements separating the cooking system from a support stand. Nothing about Harvey's gasket discusses or considers separating the heating element from the vibration element by use of the gasket. Examiner cites no portion of Williams or Harvey to support that conclusion.

All that Harvey's gasket suggests is to isolate portions of the support other than the heating element and cooktop surface from the vibrator. Harvey's gasket does not suggest inhibiting vibration of the heating element because to inhibit this violation would inhibit vibration of the cooking surface in Harvey's design. The combination of Williams and Harvey only suggests vibrating the whole Williams device, possibly placing it on a stand with the gasket between the Williams device (with added vibrator) and the added stand. Examiner offers no evidence that one of skill in the art would instead modify Harvey to separate the heating element and the vibrator and destroying the basic functional purpose of the vibrator – to be attached to the heating element and cooking surface to vibrate them. Examiner cannot modify Harvey without making it unsatisfactory for the intended purpose of vibrating the entire cooktop and heating element. The isolation block examiner refers to in Harvey merely isolates the cook surface and heating element unit from the support so that the kitchen counter is not vibrated.

Examiner argued previously “when Harvey disclosures are applied to Williams they make clear that a vibrator can be used to provide vibrations to the support surface of a vessel and the vessel's cooking surface, and the gasket can provide further isolation of the support surface from the coils”. Harvey never says that the “gasket can provide further isolation of the support surface from the coils” or that “a vibrator can be used to provide vibrations to the support surface of a vessel and the vessel's cooking surface, and the gasket can provide further isolation of the support surface from the coils”. Harvey's gasket is not used to isolate the support surface (of the vessel) from anything that generates heat. Examiner is conflating the gasket disclosure of Harvey to suggest separating two elements (the vibrator and heating element) when Harvey specifically needs those two elements to **not** be separated to make the vibrator and cooking device function as intended in the first place.

The only reason examiner is in effect pulling out the vibrator from Harvey to separate it from the very thing that the vibrator is designed to vibrate and then to apply it to Williams is based on the impermissible use of the claims as a roadmap. Williams cannot suggest any location of the vibrator because Williams does not disclose a vibrator. The only showing of where the vibrator should be positioned is based on the teachings of Harvey which expressly require the vibrator to be located in a manner that it encourages vibration of the heating element.

A rationale to support a conclusion that a claim would have been obvious is that all the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with ***no change in their respective functions***, and the combination would have yielded nothing more than predictable results to one of ordinary skill in the art. *KSR International Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1741, 82 USPQ2d 1385, 1395 (2007); *Sakraida v. AG Pro, Inc.*, 425 U.S. 273, 282 (1976). The gasket is not designed or disclosed to separate the heating element from the cooking surface so that the cooking surface vibrates and the heating element does not. Harvey simply does not suggest such a feature.

#### Claim 8 (and 16)

Claim 8 recites the cooking system of claim 7, further comprising at least one elastomeric isolation block positioned between said support and said housing; and

at least one foot formed of an elastomeric isolation block for supporting the housing.

In rejecting Claim 1, examiner essentially takes the gasket of Harvey and places it wherever convenient to make a rejection. Then, examiner asserts the gasket arrangement in Harvey is identical to Claim 8. These are fundamentally

inconsistent statements. The gasket of Harvey is designed to separate the cooking surface and vibrator unit from a support stand that holds up the combined cook surface, vibrator and heating element unit. Examiner in Claim 1 modifies this arrangement to place the gasket between the cooking surface and the heat element which is part of the cooking surface/support. Next, examiner claims with respect to Claim 8 that the Harvey gasket arrangement is the same as the isolation block between the support stand and the housing. But, the support stand in Harvey supports the combined unit of the cooking surface, heat element and vibrator and the gasket in Harvey separates this from what sits on the countertop. The gasket in Harvey is not separating the heat element and the cooking surface.

Essentially, examiner is acknowledging that Harvey discloses an isolation block that separates the combined unit of the cooking surface and heat element from the support stand. While asserting Harvey's gasket separates the cooking surface and the heat element in Claim 1. Examiner cannot have it both ways by using two different inconsistent arrangements of the gasket to reject two different claim limitations when Harvey only supports one arrangement of the gasket – the separation of the housing and support stand where the housing contains the cooktop surface (support surface), heat element and vibrator.

Furthermore, examiner fails to address, analyze or even make any attempt to show that the “at least one foot...” limitation of Claim 8 was considered. The text of the rejection does not mention this element anywhere.

The arguments as to Claim 8 similarly apply to claim 16.

#### Claim 10

Claim 10 recites *inter alia* a vibrator configured to vibrate said cooking surface wherein the vibrator is isolated from the heating element to inhibit vibration of the heating element by the vibrator when the coil is activated. Again, Williams fails to disclose a vibrator and therefore cannot disclose a vibrator which



is isolated from any heating element. Harvey discloses a vibrator but the way in which the Harvey vibrator works is that it must be connected in a manner that will not inhibit vibration of the heating element because to inhibit vibration of the Harvey heating element would likewise inhibit vibration of the cooking surface – the very thing that Harvey is trying to vibrate in the first place. So, the vibrator in Harvey is not disclosed to be “isolated” from the heating element, rather, the Harvey vibrator is directly connected to the heating element and cooking surface.

The Arguments with respect to Claim 1 similarly apply.

#### Claim 12

Claim 12 recites: The cooking system of claim 10, wherein said pad is between said vibrator and the cooking vessel.

Examiner does not appear to address this claim in the rejection and examiner has not cited any facts to support a conclusion that either reference discloses this nor that it would be obvious to reach this configuration of elements. Examiner has not met the prima facie case standard as Applicant does not know how this limitation is being rejected or which reference is being used to teach these features. If the pad is between the vibrator and the cooking vessel and the Harvey vibrator is designed to connect to the cooking surface, this would encourage a POSITA to attach the vibrator to the cooking vessel and not to the pan, which would mean the pad is not between the vibrator and the cooking surface.

#### Claim 15

Claim 15 recites. The cooking system of claim 10, further comprising a housing in which said surface, said coil, said vibrator, and said pad are contained. In regards to the gasket, examiner appears to argue that the cooking surface only

could be vibrated, but, the cooking surface is part of a cooking vessel. Williams's support surface (e.g. a glass top) is not a cooking surface as a metal pan needs to be on the top before heat will be created due to the nature of how induction works. But, if examiner proposed to vibrate the cooking surface only and isolate from the rest of the device, this would result in the vibrator being attached directly to the pan (that doesn't include any heat generation capabilities) and then the vibrator would not be contained in the housing of Claim 15.

**Conclusion**

For the foregoing reasons, Appellant respectfully submits that the invention embodied in each of claims 1-17 is patentable over the cited prior art. As such, Appellant respectfully requests that the rejections of each of claims 1-17 be reversed and the Examiner be directed to issue a Notice of Allowance allowing each of these claims.

Respectfully submitted,

June 16, 2023

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**(viii) Claims Appendix to Appeal Brief Under 37 CFR §41.37**

**Serial No. 17/903,637**

1. A cooking system for heating the contents of a cooking vessel which has a cooking surface, comprising:
  - a support adapted to support the cooking vessel;
  - a heating element comprising a coil for creating an oscillating magnetic field which when activated interacts with and generates an amount of heat in the cooking vessel;
  - a vibrator adapted to vibrate the cooking surface wherein said vibrator is separated from the heating element such that vibration of the heating element by the vibrator is inhibited when the heating element and vibrator are activated;
  - wherein the vibrator vibrates the cooking surface when activated; and
  - a pad comprising a thermally insulating, elastically deformable material and configured to be located underneath and in contact with the cooking vessel.
2. The cooking system of claim 1, further comprising that the pad is formed of a thermally insulating, elastically deformable material.
3. The cooking system of claim 1, further comprising a recess formed in a surface of said support, said surface supporting the cooking vessel at least a portion of said pad is disposed in the recess such that horizontal movement of said pad relative to said surface is substantially prevented.
4. The cooking system of claim 1, further comprising that removal of said pad from said support is not impeded.
5. The cooking system of claim 1, further comprising that the pad is formed of a material adapted to create a friction force between the pad and the cooking

vessel sufficient to substantially prevent sliding of the vessel relative to the support.

6. The cooking system of claim 1, wherein said pad is between the support and the cooking vessel.

7. The cooking system of claim 1, further comprising a housing in which said surface, said coil, said vibrator, and said pad are contained.

8. The cooking system of claim 7, further comprising at least one elastomeric isolation block positioned between said support and said housing; and

at least one foot formed of an elastomeric isolation block for supporting the housing.

9. The cooking system of claim 1, further comprising that said vibrator imparts movement to a surface of the support in a plane of the surface, wherein the surface supports the cooking vessel.

10. A cooking system for heating the contents of a cooking vessel which has a cooking surface, comprising:

a support adapted to support the cooking vessel;

a heating element comprising a coil for creating an oscillating magnetic field which when activated interacts with and generates an amount of heat in the cooking vessel, the heating element separated from the support;

a vibrator configured to vibrate said cooking surface wherein the vibrator is isolated from the heating element to inhibit vibration of the heating element by the vibrator when the coil is activated;

at least one elastomeric isolation block positioned between said support and the coil to inhibit vibration of the coil; and

a pad configured to be located underneath the cooking vessel and between the heating element and the cooking vessel.

11. The cooking system of claim 10, further comprising that the pad is formed of a thermally insulating, elastically deformable material.

12. The cooking system of claim 10, wherein said pad is between said vibrator and the cooking vessel.

13. The cooking system of claim 10, further comprising that removal of said pad is not impeded.

14. The cooking system of claim 10, further comprising that the pad is formed of a material adapted to create a friction force between the pad and the cooking vessel sufficient to substantially prevent sliding of the vessel relative to a surface of the support.

15. The cooking system of claim 10, further comprising a housing in which said surface, said coil, said vibrator, and said pad are contained.

16. The cooking system of claim 15, further comprising at least one elastomeric isolation block positioned between said a surface of said support surface and said housing; and

at least one foot formed of an elastomeric isolation block for supporting the housing.

17. The cooking system of claim 10, further comprising that said vibrator imparts movement to said surface in a plane of a surface of the support which supports the cooking vessel.

**(ix) Evidence Appendix to Appeal Brief Under 37 CFR §41.37**  
**Serial No. 17/903,637**

None



**(x) Related Proceedings Appendix to Appeal Brief Under 37 CFR §41.37**  
**Serial No. 17/903,637**

Nothing pending, but there was a prior appeal in parent case 16/130,505 that did not reach the board due to an examiner's amendment that ultimately resulted in the issuance of U.S. 11,439,164, the independent claims in this case were originally the subject of that appeal as were a number of the dependent claims.