

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 31

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte FREDERICK E. SIMON, FREDERICK F. GREEN and  
KELLY A. ILIESCU

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Appeal No. 96-2191  
Application 08/395,512<sup>1</sup>

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ON BRIEF

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Before CALVERT, COHEN and ABRAMS, Administrative Patent Judges.

COHEN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the refusal of the examiner to allow claims 2 and 5 through 24, all of the claims remaining in the application, as amended (Paper No. 25) subsequent to

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<sup>1</sup>Application for patent filed February 27, 1995. This application is a continuation of application 08/216,362, filed March 23, 1994, which is a continuation of application 07/886,257 filed May 21, 1992, both abandoned.

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the final rejection (Paper No. 22).

Appellants' invention pertains to an apparatus and method for heating an object by microwave radiation. An understanding of the invention can be derived from a reading of exemplary claims 12 through 14, copies of which appear in the APPENDIX to the main brief (Paper No. 24).

As evidence of obviousness, the examiner has applied the documents listed below:

Levendusky 1985 (Levendusky '850)	4,560,850	Dec. 24,
Levendusky 1987 (Levendusky '458)	4,689,458	Aug. 25,
Pomeroy et al. 28, 1988 (Pomeroy)	4,754,111	Jun.

The following rejection is before us for review.

Claims 2 and 5 through 24 stand rejected under 35 U.S.C. § 103 as being unpatentable over Levendusky '458 or Levendusky '850 in view of Pomeroy.

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The full text of the examiner's rejection and response to the argument presented by appellants appears in the answer (Paper No. 28), while the complete statement of appellants' argument can be found in the main and reply briefs (Paper Nos. 24 and 29).

As acknowledged by the examiner (answer, page 2), appellants have indicated that the claims on appeal stand or fall together (main brief, page 4). Accordingly, we select claim 12 for review and shall decide the appeal on the basis of this claim alone; 37 CFR 1.192(c)(7).

#### OPINION

In reaching our conclusion on the obviousness issue raised in this appeal, this panel of the board has carefully considered appellants' specification and claim 12, the applied patents,<sup>2</sup> and the respective viewpoints of appellants and the

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<sup>2</sup>In our evaluation of the applied patents, we have considered all of the disclosure thereof for what it would have fairly taught one of ordinary skill in the art. See In re Boe, 355 F.2d 961, 965, 148 USPQ 507, 510 (CCPA 1966). Additionally, this panel of the board has taken into account not only the specific teachings, but also the inferences which one skilled in the art would reasonably have been expected to draw from the disclosure. See In re Preda, 401 F.2d 825, 826, 159 USPQ 342, 344 (CCPA 1968).

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examiner. As a consequence of our review, we make the determination which follows.

We reverse the rejection of claim 12. It follows that we likewise reverse the rejection of claims 2, 5 through 11, and 13 through 24 since these claims stand or fall with claim 12 as earlier indicated.

As disclosed (specification, page 6), with the present invention, microwave transparent, electrically insulating material is disposed on the exterior of each side wall and on the exterior part of the bottom which would, in the absence of the insulation, contact the floor of the oven. Appellants further point out (specification, page 14) that the electrically-insulating material need not be either microwave-diffusing or microwave-dispersing, "nor is the material disposed on both the interior and the exterior of the container of the invention".

Claim 12 is drawn to an apparatus in which an object

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contained therein is heated with microwave radiation comprising, *inter alia*, a metal container having an interior and an exterior defined by a bottom and at least one side wall, microwave transparent bottom and side wall electrical insulator means for electrically insulating the "exterior" of the container, with the "interior surfaces" of each of said at least one side wall and bottom "lacking electrical insulator means".

We turn now to the evidence of obviousness.

Each of Levendusky '458 and Levendusky '850 explicitly teach a metal container for heating and cooking food in a microwave oven, with the container providing for arc-free and minimal electromagnetic reflection in the oven. The patentee, in each case, instructs those versed in the art to coat all surfaces of the metal body or tray of the container.

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On the other hand, in the matter of a turntable intended for rotating food being cooked in a microwave oven, the patent to Pomeroy teaches those versed in the art to house the turntable drive means in a shielding enclosure. As explained by the patentee (column 5, lines 9 through 16), the outside of a metallic enclosure 45 is covered with a layer of electrical insulation to reduce arcing to the shield. It is noted by Pomeroy (column 5, lines 27 through 29) that the amount of microwave energy which enters the motor housing or enclosure is negligible.

This panel of the board fully appreciates the examiner's understanding of the applied prior art and point of view as to the obviousness of the claimed invention, as expressed in the answer. However, when we set aside what appellants' application teaches us regarding the present invention, and focus upon the evidence of obviousness as a whole, we do not discern any suggestion that would have been fairly derived by one of ordinary skill in the art for modifying the metal food

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containers of the Levendusky patents based upon the turntable teaching of Pomeroy.

The Levendusky food containers and the Pomeroy turntable are clearly functionally and structurally distinctly different entities, as disclosed, notwithstanding their common utilization in a microwave oven environment. As earlier discussed, Levendusky would have directed those skilled in the art to coat both the interior and exterior of a metal container for heating an object exposed to microwave radiation in the interior of the container. From our perspective, the turntable teaching of Pomeroy would have advised an artisan to coat a metal housing only externally when the metal interior is not intended to be exposed to microwave radiation. Accordingly, it is our conclusion that the applied prior art would not have suggested the absence of electrical insulator means on the interior of an apparatus for heating an object therein by microwave radiation,

which radiation acts interiorly of the apparatus. Lacking

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sound evidence to support a conclusion of obviousness, we are  
constrained to reverse the rejection of appellants' claims  
under 35 U.S.C. § 103.

The decision of the examiner is reversed.

REVERSED

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IAN A. CALVERT	)	
Administrative Patent Judge	)	
	)	
	)	
	)	BOARD OF PATENT
IRWIN CHARLES COHEN	)	)
Administrative Patent Judge	)	APPEALS AND
	)	
	)	INTERFERENCES
	)	
NEAL E. ABRAMS	)	
Administrative Patent Judge	)	

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