

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO  
Chief Judge Marcia S. Krieger**

**Civil Action No. 15-cv-02815-MSK-KLM**

**PIT BARREL COOKER CO., LLC,**

**Plaintiff,**

**v.**

**BARREL HOUSE COOKER, LLC;  
BARREL HOUSE COOKING COMPANY;  
M.D. MANUFACTURING, INC.; and  
BRIAN K. GRAVES,**

**Defendants.**

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**OPINION AND ORDER CONSTRUING CLAIMS**

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**THIS MATTER** comes before the Court in response to a request for construction of the parties' disputed patent claims. The Court has reviewed the parties' Joint Disputed Claim Terms Chart (# 43), the Defendants' Claim Construction Brief (# 44), the Plaintiff's Response Brief (#46), and the Defendants' Reply brief (# 47).<sup>1</sup>

**FACTS**

Plaintiff Pit Barrel Cooker Co. ("PBC") is the holder of U.S. Patent No. 8,919,334 ("the '334 Patent" or "the Patent") which was issued in 2011. The Patent describes a "portable barrel cooker," consisting of "an upright barrel enclosure with an open end, a removable lid, a pre-

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<sup>1</sup> Also pending is the parties' Joint Motion (# 48) requesting a claims construction hearing. The Court finds that it is sufficiently apprised of the issues by the parties' briefing and that an evidentiary hearing would not materially assist in the resolution of the issues. Accordingly, the Court denies that motion as moot.

measured heat source basket, an adjustable venting member, and dual suspension frames or [a] grate.”

PBC alleges that in June 2014, it entered into negotiations with the Defendants (collectively, “MD”) with an eye toward having MD assist with the manufacturing of PBC’s cooker and related products. PBC provided MD with an array of product designs and business information. It alleges that MD used PBC’s information to design and manufacture its own barrel cooker which it then sold in competition with PBC’s product.

Based on these allegations, PBC commenced this action, alleging seven claims: (i) that MD’s product infringes upon the ‘334 Patent, in violation of 35 U.S.C. § 1 *et seq.*; (ii) theft of trade secrets in violation of the Colorado Uniform Trade Secrets Act, C.R.S. § 7-74-101 *et seq.*; (iii) breach of contract, apparently under Colorado law, in that the Defendants breached a non-disclosure agreement with PBC; (iv) tortious interference with contract and with prospective business advantage, apparently under Colorado law, relating to MD’s interference with contracts that PBC had with its manufacturers; (v) unjust enrichment, apparently under Colorado law; (vi) civil conspiracy, apparently under Colorado law, in that the various Defendants conspired to misappropriate PBC’s business information and infringe upon its patents; (vii) violation of the Colorado Consumer Protection Act, C.R.S. § 6-1-105, in that MD “knowingly pass[ed] off [PBC]’s goods as their own,” “fail[ed] to disclose material information concerning the products,” and made false or misleading representations regarding the quality of goods used by PBC in the construction of its products; and (viii) civil theft, in violation of C.R.S. § 18-4-405, in that the Defendants “committed theft of [PBC’s] trade secrets” by obtaining them under false pretenses and distributing them to unauthorized individuals.

Presently before the Court is the parties' request for construction of nine terms in the Patent.

## ANALYSIS

### **A. Claim construction standards**

The fundamental purpose of a patent is to give notice to others of that in which the inventor claims exclusive rights. *Oakley Inc. v. Sunglass Hut International*, 316 F.3d 1331, 1340 (Fed. Cir. 2003). Thus, the focus of claim construction is ascertaining how a reasonable competitor would understand the claim language, rather than what the inventor intended the language to mean. *Id.* at 1340-41. The words used in the patent are given their "ordinary and customary meaning," as would be understood by a person of ordinary skill in the art at the time of the invention. *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312-13 (Fed. Cir. 2005) (*en banc*).

In some circumstances, the specification may reveal that the inventor specifically, albeit idiosyncratically, defined a term in a way that might differ from the meaning it would otherwise be given. If the intrinsic record clearly discloses that the inventor resorted to his or her own peculiar lexicography, the Court gives effect to the inventor's unique idiom; however, if the inventor used particular words without giving a clear indication of an intent to endow them with an unusual meaning, the Court will give those words their ordinary and customary meaning in the art, notwithstanding the inventor's subjective intent to invoke a different definition. *See e.g. Laryngeal Mask Co. v. Ambu*, 618 F.3d 1367, 1372 (Fed. Cir. 2010).

To give meaning to the inventor's language, the Court "looks to those sources available to the public that show what a person of skill in the art would have understood disputed claim language to mean." *Phillips*, 415 F.3d at 1314. Among those sources are: (i) the words of the claims themselves; (ii) the remainder of the patent's specification; (iii) the prosecution history of

the patent; (iv) extrinsic evidence concerning relevant scientific principles; (v) the common meanings of technical terms used; and (vi) the state of the art at the time of the invention. *Id.* Terms are to be construed in light of the entirety of the patent, not just in the context of the particular claim(s) they appear in. *Id.* at 1313. In other words, claim language must be read in conjunction with the more general and descriptive specification portion of the patent; indeed, the specification is often “the single best guide to the meaning of a disputed term.” *Id.* at 1315. Because the patent is examined as a whole, the Court assumes that claim terms will normally be used consistently throughout the patent, and thus, the meaning of a term used in one claim can illustrate the meaning of that same term used elsewhere in the patent. *Id.* at 1314.

As with the specification, evidence of the prosecution history of the patent can also be considered as intrinsic evidence of how the USPTO and the inventor understood the patent. *Id.* at 1317. The prosecution history reflects “an ongoing negotiation between the PTO and the applicant,” and can sometimes demonstrate that the inventor limited or disclaimed some portion of a claim. *Id.* At the same time, because the prosecution history predates the final patent language, the prosecution history “often lacks the clarity of the specification and thus is less useful for claim construction purposes.” *Id.*

Extrinsic evidence of disputed terms – that is, “all evidence external to the patent and prosecution history, including expert and inventor testimony, dictionaries, and learned treatises” – can also shed light on the proper construction to be given to those terms, but extrinsic evidence “in general [is] less reliable than the patent and prosecution history in determining how to read claim terms.” *Id.* at 1318. The court in *Phillips* articulated a variety of reasons why a court construing a patent should be wary of relying too heavily on extrinsic evidence, and cautions

that, while admissible and potentially probative, courts “should keep in mind the flaws inherent in each time of [extrinsic] evidence and assess that evidence accordingly.” *Id.* at 1318-19.

## **B. Particular claim terms**

### 1. “metal drum”

All of the independent claims in the Patent describe a “metal drum” as the housing of the cooker. Claim 1 further describes that drum as being “of cylindrical configuration and of uniform diameter”; Claim 8 describes it as being “vertically positioned” and “hollow”; and Claim 17 describes it as “upright.” PBC proposes<sup>2</sup> that the term “metal drum” be construed to mean a “metal cylinder.” MD proposes that it be defined as “a cylindrical drum having a continuous cylindrical wall from the top of the drum to the bottom of the drum, with no separable cylindrical sections.” The Court understands that the parties’ dispute on this point focuses on whether the metal drum must be a one-piece cylinder or whether it may be comprised of several stacked cylindrical sections.

The Specification describes the drum as “an upright cylindrical hollow member having . . . vertical sidewalls” or “a barrel with one closed end.”<sup>3</sup> 2:22-25. It explains that the drum “is uniformly constructed of sheet metal with a constant thickness throughout.” 2:31-33. Beyond these statements, the Patent does not suggest any other limitations, including any limitation as to whether the drum may be a single piece or created in sections. In such circumstances, the Court

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<sup>2</sup> On several occasions, PBC proposes a construction in its brief that differs, sometimes significantly, from the construction it proposes in the Joint Claim Chart. There is little value to a claim chart that does not accurately reflect a party’s proposed constructions and the Court advises PBC’s counsel to ensure that, in any future cases, the constructions urged in the Claim Chart and claim construction briefing match.

<sup>3</sup> The Specification concedes, however, that “the housing could have a variety of shapes, such as rectangular, without departing from the scope of this disclosure.” 2:25-26. Thus, it is not entirely clear that the metal drum must even be cylindrical, although both parties include that limitation in their proposed constructions.

will not read a one-piece limitation into the Patent. Thus, the Court adopts PBC's proposed construction and construes the term "metal drum" to mean, simply, "a metal cylinder."

2. "lower closed end" / "closed bottom portion"

Claims 1 and 17 describe the metal drum as "having a lower closed end." Claim 8 describes the drum as "having a closed bottom portion." PBC proposes that these terms be construed to mean that it has an "enclosed edge." MD proposes that the terms be construed to mean "a closed end formed by a nonremovable bottom member 19 as shown in the drawings."

Beyond noting fact that the bottom portion of the drum is "closed," the Specification does not elaborate on that aspect of the cooker in any way. Perhaps the only description of this feature is found at 2:23, which notes only that the drum "ha[s] a lower closed bottom portion." Nothing in the Specification or Claims suggests that the bottom closure must be "nonremovable," as MD proposes, nor indicates that the drawings reflect the only possible form that a bottom closure could take. PBC's proposed construction that simply requires an "enclosed edge" on the bottom of the barrel is closer to what the Patent describes, but still unsatisfactory. The focus on the closure at an "edge" is susceptible to an interpretation that allows only the edge to be sealed but the center of the barrel's bottom to remain open. (Imagine the bottom of the barrel taking the form of a ring with a sealed edge but open center.) The Patent clearly provides that the entire "end" or "bottom" of the barrel is closed, not just its edge.

Both parties appear to be content to have the claim term "closed" be repeated in the proposed construction; in other words, neither side proposes that "closed" be separately construed to mean "sealed" or some other variant. Thus, the Court finds that the appropriate construction of these terms is that the metal drum is "closed on the bottom end."

3. “vent in a lower portion of said drum”

Claims 1 and 17 refer to “a vent in a lower portion of said drum.” Claim 8 describes “a venting member . . . at a lower end of said [cylinder] wall.” PBC proposes that this term be construed as a “discharge opening situated below normal height of a metal cylinder.” MD proposes that it be construed as “a single circular hole near the bottom of the drum with no additional vent holes in the bottom portion of the drum.”

The Specification describes a “venting system” that “includes a circular venting cutout, a slidable vent cover, vent screw, and adjustment portal.” 2:50-58. The vent is “located at the lower end of the vertical sidewalls to allow oxygen to circulate along the lower portion of the cooker.” 2:56-58. The purpose of the venting system is to “allow[ ] oxygen to pass under the basket” that contains a heat source “and continue to supply oxygen to the heat source.” 3:53-56.

Although MD is correct that the Specification and diagrams depict a venting system consisting of a “circular cutout,” the system described in the Specification is specifically recited in dependent Claim 7 – “wherein said lower portion vent includes a circular venting cutout, a slidable vent cover, a vent screw, and an adjustment portal.” Under the doctrine of claim differentiation, a dependent claim like Claim 7 should be understood to have a narrower scope than the independent claim it accompanies. *Howmedica Osteonics Corp. v. Zimmer, Inc.*, 822 F.3d 1312, 1323 (Fed. Cir. 2016). Thus, under that doctrine, Claim 1’s reference to a “vent” should be understood to be something broader than a circular cutout and adjustable cover. Removing the requirement that the vent described in the independent claim be a circular cutout, the Court is left with the simple requirement that it be something that will “allow oxygen to pass under the basket.” It is readily-apparent that a person of ordinary skill in the art of making barbecue cookers could very well conclude that the function of supplying oxygen to the basket

could be accomplished by a variety of venting structures, including a single hole, an array of holes, a series of louvers, or other structures. Thus, the Patent does not support MD's position that the venting system must be a singular hole.

The Court also rejects PBC's proposed construction. The phrase "discharge opening" is not sufficient to specifically describe a vent, as it fails to specify what is being discharged. PBC's construction could be satisfied by a grease trap drain. PBC's construction also fails because "below normal height" is a phrase that has no apparent meaning. The Court is unable to determine what the "normal height" of a metal cylinder would be, nor how being below that height necessarily locates the vent in question in the "lower portion" of the cooker.

Accordingly, the Court construes this term to mean "one or more openings, in the lower half of the drum, that allow oxygen to pass from the exterior of the drum to its interior."

#### 4. "suspension rod"

Claim 1 includes "at least one removable suspension rod traversing an upper end of said drum, including a food suspension member removably positioned on said rod." Claim 8 includes "at least one removable, horizontal suspension rod traversing at least a portion of the diameter of the drum." Claim 17 includes a "food support member comprising either a grill rack or a suspension rod, traversing at least a portion of said drum. . . ." PBC proposes that the term "suspension rod" be construed to mean "a piece or bar of material traversing a portion of the upper end of the drum." MD proposes that the term be construed to mean "elongated metal rods having sufficient length to pass through the wall of the metal drum at two suspension rod supports; the rods are not the same as the grill." Parsing the two proposed constructions reveals the following disputes: (i) whether the "rod" is "a piece or bar of material" or whether it is "elongated metal"; (ii) whether the rod must simply "traverse a portion" of the drum's interior, or



whether it must “pass through the wall of the metal drum” at specific locations; and (iii) whether the rod and the grill can be the same structure.

As to the first point, the nature of the rod itself, the Specification states only that “the suspension members may be made of rebar.” 3:7. This suggests, but does not require, that the rods could be made of metal. In the absence of further evidence in the specification about the nature of the rods, the Court turns to the common meaning of the term “rod.” Because there is no intrinsic evidence shedding light on its meaning, the Court turns to extrinsic evidence. The most applicable definition of that term in Merriam-Webster’s Collegiate Dictionary (10<sup>th</sup> Ed.) is “a slender bar (as of wood or metal).” The Oxford English Dictionary (3d Ed.) defines it as “a piece of metal, carbon, or other hard material formed into a long, straight, typically cylindrical bar, *esp.* a connecting part or shaft which is slender in proportion to its length.” These definitions have several commonalities: a “rod” is made of wood, metal, or another hard material and it is “slender” in the sense that its length is disproportionate to its width. Thus, as to composition, the Court adopts a construction that merges both parties’ proposals: a “suspension rod” is “a piece of hard material that is slender in that its length is disproportionate compared to its width.”

The second dispute concerns how the rods are positioned within the drum: whether it simply “traverses” the drum or whether it “pass[es] through the wall” of the drum. The Specification contemplates that “the interior of the cooker has at least one, but preferably two or more suspension members traversing an upper end of the cooker.” 2: 62-64. The rods are “inserted through vent openings that are present on opposite sides of the vertical walls.” 2:64-67. Thus, the Specification and the drawings all envision the rods passing “through . . . openings” on the walls of the drum.

For the rods to “traverse” the interior of the drum without passing through openings in the walls – as PBC’s proposed construction suggests -- the rods would have to be affixed to the drum’s interior in some fashion. Nothing in the patent discloses any structure that would perform this function. It does describe “support brackets” (49) that are located on the barrel’s interior walls, but those brackets are for the purpose of “support[ing] a grilling grid,” and nothing in the Specification suggests that they are also intended to support suspension rods. 3:2-22. Thus, the Court rejects PBC’s proposed construction that merely requires the rods to “traverse” the interior of the barrel, without actually passing through the barrel’s walls.

At the same time, the Court rejects that portion of MD’s proposed construction that requires the rods to pierce the wall of the barrel “at two suspension rod supports.” The term “suspension rod supports” is not found anywhere in the Specification. It appears only in Claim 8, in which it describes “suspension rod supports located on an upper portion” of the barrel, and in Claim 11, “wherein said at least one suspension rod is inserted through said suspension rod supports.” By all appearances, this phrase is referring to what the Specification describes as “drop in slots” and which are shown as item 61 in Figure 8.<sup>4</sup> The drop in slots are notches cut down the walls of the barrel from the top, allowing the horizontal suspension rods to be lowered vertically into the notches, rather than inserted horizontally through vent holes in the barrel’s side walls. Nothing in the Patent suggests that the suspension rods must be inserted through these suspension rod supports. To the contrary, the Specification describes and many diagrams depict suspension rods being fitted through “vent holes” on the side of a barrel that contains no suspension rod slots. Thus, the Patent does not support MD’s proposed construction that a

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<sup>4</sup> To the extent that the Specification’s “drop in slots” are not the “supports” described in Claims 8 and 11, the Patent does not disclose any structures other than the “vent holes” that could be construed as “suspension rod supports.”

suspension rod is required to be placed in a “suspension rod support” (also known as the “drop in slots”).

Accordingly, the Court construes this portion of the term “suspension rods” to be a rod that “passes through an opening in the exterior wall of the drum, traverses the interior of the drum, and exits elsewhere through an opening in the exterior wall of the drum.” That exterior opening can be either vent holes or drop in slots.

Finally, there is some dispute between the parties as to whether the rods can constitute the same structure as a grill. The Specification describes the rods as serving as anchor points for hooks that are used to hang food inside the grill during cooking, much as a closet bar is an anchor point for hangers that are used to hang clothes. The Specification describes a separate set of structures for foods that are cooked on a grill. The interior wall of the barrel contains “at least three . . . outer support brackets designed to reliably support a grilling grid in a level position.” 3: 19-22. That grilling grid is “provided to support food to be grilled that the user does not want to suspend from the hook members.” 3:26-28. The Specification explains that “preferably, the grilling grid is removed when the suspension members are to be used and the suspension members are removed when the grilling grid is to be used.” 3:29-32. Claim 17 is the only claim that specifically contemplates the existence of a grill grid or rack, and it describes a “food support member comprising either a grill rack or a suspension rod . . . .” (Emphasis added). Thus, the claims make clear that the grill grid/rack and the suspension rods are discrete structures, serving discrete purposes, and are not intended to be combined into a single structure. Thus, the Court agrees with MD that the term “suspension rods” does not include grill grid/rack.

Thus, the full construction of the term “suspension rod” is “a piece of hard material that is slender in that its length is disproportionate compared to its width, that passes through an

opening in the exterior wall of the drum, traverses the interior of the drum, and exits elsewhere through an opening in the exterior wall of the drum, and is not the same as the grill grid/rack.”

5. “traversing”

All of the independent claims use variants of the term “traversing” to describe the path that the suspension rods take through the drum. The Court’s prior construction of the term “suspension rod” largely incorporates the concept of “traversing,” and thus, no further construction of this term is necessary.<sup>5</sup>

6. “suspension rod supports”

Claim 8 refers to “suspension rod supports located on an upper portion” of the barrel. Claim 11 refers to the cooker in Claim 8, with “at least one suspension rod inserted through said suspension rod supports.” PBC requests that this term be construed to mean “a piece of material

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<sup>5</sup> The Court notes that PBC’s proposed construction of the term “traversing” is that the rod “is positioned to extend across a portion of the diameter” of the barrel. The phrase “portion of a diameter” is used at 3:2-4 in the Specification (and also in Claim 8), describing a rod that can be “inserted through a vent opening 34, extended transversely across the entire or a portion of the diameter of the cooker, and inserted through the opposite vent opening 34’.” The accompanying diagram, Figure 3, depicts a rod following a path that distinctively avoids the center of the cooker. (If one imagines a clock face, with 12:00 at the top of the diagram, the rod shown in the diagram goes from approximately the 8:00 position to the 1:00 position.)

In geometry terms, the rod shown in the diagram is a “chord” – a line that extends from one point on the circumference to another. The “diameter” of a circle is a chord that passes through the center of the circle. The diameter also happens to be the longest possible chord one can draw for that circle.

Thus, the Court understands that when the Patent speaks of a rod “extending across a portion of the diameter,” it is not using the term “diameter” in the geometrical sense. That is, it is not describing a rod that begins at one point on the circumference, heads towards the center of the circle, but terminates before reaching the opposite point of the circumference. The rod shown in Figure 3 does not match that description. Rather, the Patent appears to be using the term “diameter” as a measure of distance. A rod that runs “a portion of the diameter” is a chord that does not pass through the center of the circle, and thus is, by definition, shorter than (*i.e.* “a portion of”) the diameter of the circle.

Construed in this way, the phrase “a portion of the diameter” simply means a rod that is placed in such a way that it does not pass through the center of the barrel’s circumference. This construction suffices to reject MD’s argument that Claim 8’s “diameter” language renders that claim indefinite.

bearing the weight of a suspension rod.” MD requests that it be construed to mean “pairs of openings or slots located in the upper wall of the drum used to support the suspension rods passed therethrough; the openings or slots are not the same as the support brackets 49.”

As noted above, the Specification does not contain the phrase “suspension rod supports,” but does refer to “drop in slots.” The Court has addressed the location and function of the drop in slots above. In doing so, it is clear that the Court must reject PBC’s proposed construction, as that construction could be understood to include the support brackets for the grilling grid as “suspension rod supports.” As the Court noted, the Patent makes clear that the grid and its support brackets are structures that are entirely distinct from the suspension rods and any suspension rod supports.

At the same time, the Court agrees to some extent with PBC that MD’s proposed construction is overly specific. MD proposes that the suspension rod supports must be located in “pairs.” Although Figure 8 depicts two rods situated in two pairs of drop in slots (one on either side of the barrel), nothing in the Specification or Claims can be understood to suggest that the slots must always appear in pairs. Indeed, an embodiment of the cooker that would accommodate three parallel rods could have drop in slots that appear in triads, not pairs. PBC is also correct in objecting to the construction of the term using “passed therethrough.” Such a construction defines the existence of a structure (the rod support) by its use (that a rod must be passed through it for it to exist). Finally, because the Court agrees with MD that the supports are necessarily “openings or slots located in the upper wall of the drum,” the Court need not adopt the proposal that these supports “are not the same as the support brackets.” The support brackets are not “openings or slots,” and thus, that additional verbiage is redundant. Accordingly, the

Court construes the term “suspension rod support” as “openings or slots located in the upper wall of the drum used to support the suspension rods.”

7. “rotatable cover”

This phrase appears only in Claim 8, which includes “a venting member having a circular aperture at a lower end of said wall and a rotatable cover removably positioned over said aperture.” PBC proposes that this term be construed to mean “a cover which turns on an axis.” MD proposes that it be construed to mean “a vent cover that rotates in an arc around an axis.” As PBC concedes, there is no meaningful distinction between the two proposals, and thus, the Court sees no need to construe this term.

8. “rotatable and adjustable closure member secured with a pin member”

This term is found only in Claim 17, claiming “a vent in a lower portion of said drum . . . having a rotatable and adjustable closure member secured with a pin member.” PBC proposes that this term be construed to mean “a part that shuts rotatable on an axis.” MD proposes the construction of “a vent cover that is attached to or anchored to the barrel using a pin, and the cover rotates around that pin; the pin is not a handle used to slide a door open or close a vent.”

The structure referred to by this claim language seems to be the same vent system described above – “a circular venting cutout, a slidable vent cover, vent screw, and adjustment portal” – as that appears to be the only opening that is found in the “lower portion” of the drum. The Specification contemplates that the user will adjust the flow of air into the bottom of the cooker by “slightly rotating the venting cover to change the circular opening of the cutout.” 2: 54-56. The structure is also depicted in Figure 1. It is unclear what the “pin member” that the claim language refers to; the term “pin” appears nowhere in the Patent whatsoever. The parties

appear to agree that the claim term “pin” is referring to the “vent screw” described in the Specification.

The Court first turns to MD’s proposal that the construction include the observation that “the pin is not a handle used to slide a door open or close a vent.” The Court is unable to adopt that proposition. It is not clear from the Specification how the user actually slides or rotates the vent cover. Neither the Specification nor the drawings depict the vent cover as having a handle, flange, cutout, or any other feature that might assist the user in rotating it (much less doing so when the cooker is in use and presumably hot). At the same time, there is nothing in the Patent that suggests that the vent screw itself can not be used as a handle to open or close the vent. One can at least conceive of a situation in which the friction of loosening or tightening the screw could cause the cover to rotate accordingly. Because the Patent is silent on this point, the Court declines any construction that compels it to function in the way suggested by MD.

As between the parties’ remaining contentions, MD’s proposed construction that identifies the “closure member” as the “vent cover” described in the Specification is preferable over PBC’s proposed construction that fails to meaningfully identify the “part” in question. Both parties agree that the vent cover “rotates.” And both parties appear to concede that the “pin” (or in PBC’s case, the “axis”) that it rotates about is the vent screw described in the Specification. Accordingly, the Court construes this phrase to mean “a vent cover attached to the barrel by a screw and which can be rotated about that screw.”

9. “said removable lid having an adjustable venting member”

Finally, although all of the independent claims describe the cooker having “a removable lid,” only Claim 17 goes on to describe that lid as “having an adjustable venting member.” PBC proposes that this latter term be construed to mean “a changeable part that shuts for

effective discharge.” MD proposes that the term be construed as “a vent structure that includes at least one vent hole in the lid and a movable cover positioned on the lid for adjustably covering the vent holes; the adjustable vent member is distinct from the ‘vent in a lower portion of said drum’.”

The Specification does not describe any venting member located on the lid, except to reference “Fig. 9 shows an optional vent member that has a rotatable butterfly opening that allows for adjustable venting on the lid member.” The corresponding structure is item 72 in Figure 9, but that single drawing gives no other information about the lid’s vent or its operation.

The Court reflexively rejects that portion of MD’s proposed construction that differentiates the venting member on the lid from a vent in the “lower portion” of the drum. Such a construction is unnecessary as, by definition, the vent member in question here is located on the cooker’s lid and thus, cannot possibly be located on a lower portion of the drum.

The Court also rejects PBC’s proposed construction. Even assuming that one were to understand that the “part” it speaks of is the vent member or its cover mentioned in the Specification, the term “changeable” seems alien to what the Specification describes. “Changeable” suggests a part that can “change” into something else – *i.e.* that is capable of taking on some other form. Perhaps PBC intended to mean a part that is “movable” or, as the Specification states, “rotatable.” Moreover, the verb “shuts” does not explain what structure is being “shut,” and the phrase “effective discharge” is unmoored from any description of what is being “discharge[d]” – is it air? smoke? scents?

The Court agrees with MD that, by definition, the structure being described must have the characteristic of “venting” which, in turn, requires that it have at least one opening in the lid for air to pass through. And because the term requires that venting to be “adjustable,” the term must



describe a structure that can be manipulated to regulate the flow of air through the vent opening. MD's proposed construction describes an "adjustabl[e] cover[ ]" for that vent, and that description is consistent with both the Specification's reference to a "butterfly opening" (which can be adjusted or closed by rotating a cover to seal vent holes) and the structure shown in Figure 9 (which appears to depict a circular vent cover that can be rotated to cause three vent holes to be open, partially covered, or fully covered). Thus, the Court construes this term to mean "one or more holes in the lid through which air may pass and a movable cover over such holes that allows the user to adjust the amount of air that flows through the holes."

### **CONCLUSION**

For the foregoing reasons, the Court construes the Patent as set forth above. The Court **DENIES** the parties' Joint Motion for Determination (# 48) as moot.

Dated this 24th day of July, 2017.

**BY THE COURT:**



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Marcia S. Krieger  
Chief United States District Judge