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Paper 41
Entered: August 14, 2017

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

XACTWARE SOLUTIONS, INC.,
Petitioner,

v.

EAGLE VIEW TECHNOLOGIES, INC.,
Patent Owner.

Case IPR2016-00590
Patent 8,818,770 B2

Before BRYAN F. MOORE, STACEY G. WHITE, and GARTH D. BAER, *Administrative Patent Judges*.

BAER, *Administrative Patent Judge*.

FINAL WRITTEN DECISION
*35 U.S.C. § 318(a) and 37 C.F.R. § 42.73*

## INTRODUCTION

Xactware Solutions, Inc. ("Petitioner"), filed a Corrected Petition requesting an *inter partes* review of claims 1, 10–12, 14, and 19 of U.S. Patent No. 8,818,770 B2 (Ex. 1001, "the '770 patent"). Paper 7 ("Pet." or "Petition"). Pursuant to 35 U.S.C. § 314(a), we determined the Petition showed a reasonable likelihood that Petitioner would prevail in establishing the unpatentability of claims 1, 10, 11, 14, and 19, and instituted an *inter partes* review of those claims. Paper 12, 17. Patent Owner filed a Patent Owner Response (Paper 30, "PO Resp."), and Petitioner filed a Reply to Patent Owner's Response (Paper 33, "Reply"). An oral hearing was held before the Board. Paper 40.

We issue this Final Written Decision pursuant to 35 U.S.C. § 318(a) and 37 C.F.R. § 42.73. Having considered the record before us, we determine Petitioner has not shown by a preponderance of the evidence that claims 1, 10, 11, 14, and 19 of the '770 patent are unpatentable. *See* 35 U.S.C. § 316(e).

## I. BACKGROUND

### A. RELATED PROCEEDINGS

The '770 patent is also the subject of IPR2017-00025, and Xactware Solutions, Inc. is the Petitioner in that proceeding. Patents related to the '770 patent are involved in IPR2016-00582, IPR2016-00586, IPR2016-00587, IPR2016-00589, IPR2016-00591, IPR2016-00592, IPR2016-00593, IPR2016-00594, IPR2016-01775, IPR2017-00021, IPR2017-00027, IPR2017-00034, and IPR2017-000363. The '770 patent is involved in the following district court matter: *Eagle View Technologies, Inc., v. Xactware Solutions, Inc.*, No. 2:15-cv-07025 (D.N.J.). Pet. 1–2; Paper 6, 2–3.

## B. THE '770 PATENT

The '770 patent relates to a roof estimation system that provides a user interface configured to facilitate roof model generation based on one or more aerial images of a building roof. Ex. 1001, (57). Figure 1 of the '770 patent is reproduced below.

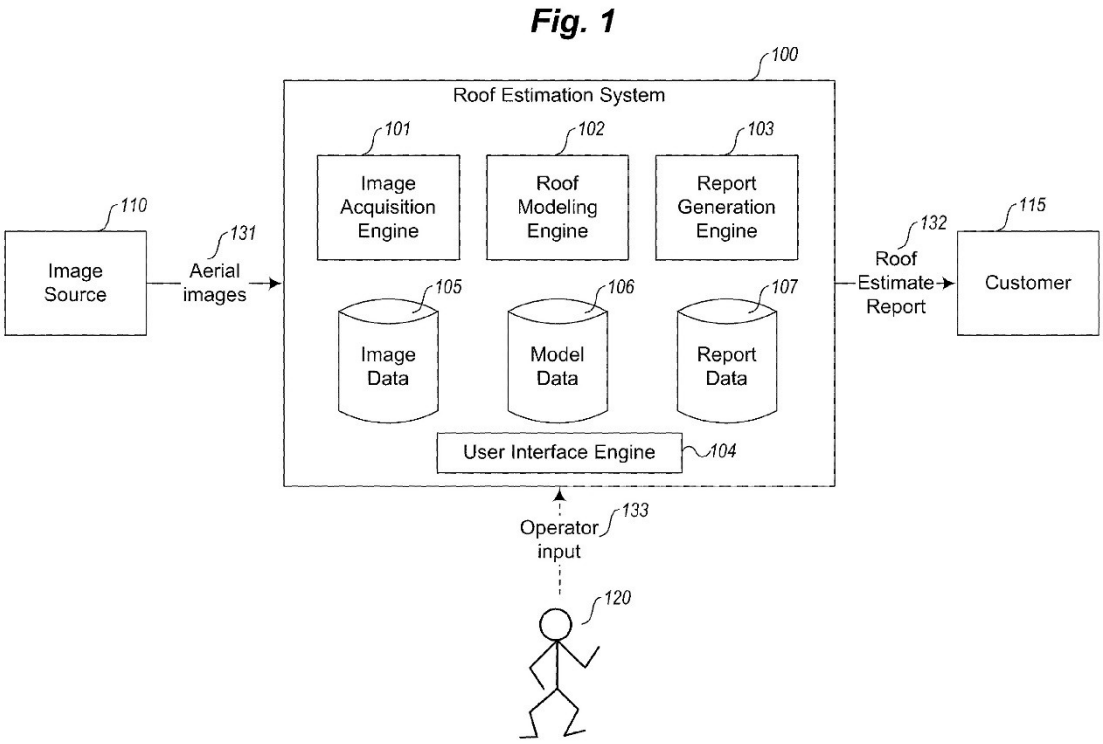


Figure 1 is a block diagram of an example Roof Estimation System ("RES"). Ex. 1001, 3:49–52. RES 100 includes image acquisition engine 101, roof modeling engine 102, report generation engine 103, image data 105, model data 106, and report data 107. *Id.* at 3:52–54. RES 100 is communicatively coupled to image source 110, customer 115, and operator 120. *Id.* at 3:54–56. RES 100 is configured to generate roof estimate report 132 for a specified building, based on aerial images 131 of the building received from the image source 110. *Id.* at 3:60–63.

### C. Illustrative Claim

Claims 1 and 19 are independent. Claim 1 is illustrative and reproduced below.

> 1. A computer-implemented process in a roof estimation system comprising:
>
> displaying, by the roof estimation system, a graphical user interface including a first aerial image of a roof structure of a building and also at least one first visual marker that is moveable by a user in a same display window as the first aerial image while said first aerial image is displayed within the graphical user interface;
>
> moving the first visual marker with respect to the first aerial image of the roof structure to a first location in response to input from the user;
>
> storing data in a memory of the computer of the first location to which the first visual marker was moved;
>
> displaying a second aerial image of the roof structure of the building, the second aerial image providing a different view of the roof than the first aerial image; and
>
> displaying a location of a second visual marker on the roof structure of the building in the second aerial image of the roof structure based on an indication received from the stored data in the memory of the first location on the displayed first aerial image to which the user had moved the first visual marker; and
>
> generating and outputting a roof estimate report using a report generation engine, wherein the roof estimate report includes one or more top plan views of a model of the roof annotated with numerical values for corresponding slope, area, or lengths of the edges of at least some of the plurality of planar roof sections of the model of the roof.

Ex. 1001, 23:65–24:28.

### D. Instituted Grounds of Unpatentability

We instituted *inter partes* review on the following grounds of unpatentability.

| Reference(s) | Basis | Challenged Claim(s) |
|---|---|---|
| Avrahami[1] and Applicad[2] | § 103(a) | 1, 11, and 14 |
| Avrahami, Applicad, and Abhyanker[3] | § 103(a) | 10 and 19 |

Inst. Dec. 17.

## II. ANALYSIS

### A. Principles of Law

Petitioner bears the burden of proving unpatentability of the challenged claims, and that burden never shifts to Patent Owner. *Dynamic Drinkware, LLC v. Nat'l Graphics, Inc.*, 800 F.3d 1375, 1378 (Fed. Cir. 2015). To prevail, Petitioner must establish the facts supporting its challenge by a preponderance of the evidence. 35 U.S.C. § 316(e); 37 C.F.R. § 42.1(d).

A patent claim is unpatentable under 35 U.S.C. § 103(a) if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious to a person of ordinary skill in the art at the time the invention was made. *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 406 (2007). Obviousness is resolved based on underlying factual determinations, including: (1) the scope and

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[1] Yair Avrahami et al., *Extraction of 3D Spatial Polygons Based on the Overlapping Criterion for Roof Extraction from Aerial Images*, XXXVI, CMRT05, IAPRS (2005) (Ex. 1003, "Avrahami").
[2] Applicad Product Bulletin, Key Features of Our Roofing Software (2002) (Ex. 1004, "Applicad").
[3] US App. No. 2007/0220174 A1 (Sept. 20, 2007) (Ex. 1006, "Abhyanker").

content of the prior art; (2) any differences between the claimed subject matter and the prior art; (3) the level of ordinary skill in the art; and (4) objective evidence of nonobviousness, i.e., secondary considerations. *See Graham v. John Deere Co.*, 383 U.S. 1, 17–18 (1966).

## B. Claim Construction

We conclude no express claim constructions are necessary for our determination of whether Petitioner has shown by a preponderance of the evidence that claims 1, 10, 11, 14, and 19 are unpatentable. *See Vivid Techs., Inc. v. Am. Sci. & Eng'g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999) ("[O]nly those terms need be construed that are in controversy, and only to the extent necessary to resolve the controversy.").

## C. Asserted Prior Art

### *1. Overview of Avrahami (Ex. 1003)*

Avrahami is a paper titled "Extraction of 3D Spatial Polygons Based on the Overlapping Criterion for Roof Extraction from Aerial Images." Ex. 1003, 43. It discusses semi-automatic algorithms for extracting a 3D image from an aerial image. *Id.* at Abstract. The algorithm discussed in Avrahami has the following steps: (1) the operator manually points to the center of the left space area, (2) the left space area is segmented and a bounding polygon is extracted, (3) estimated height is calculated, (4) the right space area is segmented and a bounding polygon is extracted, and (5) an iterative process is performed that matches both polygons followed by extraction of the spatial polygon. *Id.* at 43. The algorithm is semi-automatic because the first step is performed manually and the rest of the steps are performed automatically. *Id.* Figure 1 of Avrahami is reproduced below.

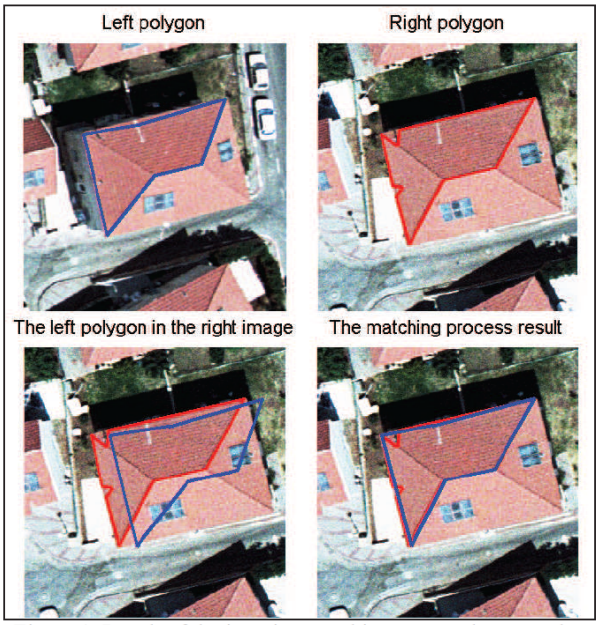


Figure 1. Result of the iterative matching process between the polygons in the right image space

Figure 1 depicts the results of Avrahami's matching process. *Id.* at 45. The top two images show the left and right polygons and the lower two images show the process of matching the polygons from the left and right images. *Id.*

*2. <u>Applicad (Ex. 1004)</u>*

Applicad is a product bulletin for a roofing software product. Ex. 1004, 1. As described in the reference, the software uses a computer aided design ("CAD") system to draw roof outlines in 3D. *Id.* at 3. That drawing is then used to calculate the amount of building material necessary for the roof. *Id.* The software also generates a detailed quotation breakdown that may include forms for presentation to customers or for internal use. *Id.* The user enters the dimensions of the roof and the software generates a model so that the user can verify the dimensions. *Id.* at 4. Users also have the option of uploading a previous CAD drawing or digitizing a hard copy of a roof plan and using that as the input for the software. *Id.* at 5. The user may update the roof by adding features and the software will automatically

update its model. *Id.* at 13–14. Applicad also discusses allowing the user to print quotation letters, quotation forms, quotation details, and other reports. *Id.* at 40, 41 (displaying sample reports).

*3. Abhyanker (Ex. 1006)*

Relevant to this case, Abhyanker discloses a software system that allows a user to input a street address of interest, and outputs an aerial image of the region, including the building of interest, in a mapping environment. *See* Ex. 1006 ¶¶ 5, 6.

## D. Grounds of Unpatentability

*1. Obviousness of Claims 1, 11, and 14 over Avrahami and Applicad and Claims 10 and 19 over Avrahami, Applicad, and Abhyanker.*

Petitioner contends claims 1, 11, and 14 would have been obvious over Avrahami and Applicad, and claims 10 and 19 would have been obvious over Avrahami, Applicad, and Abhyanker at the time of the invention. Based on our review of the arguments and evidence in the Petition, Response, and Reply, we determine Petitioner has not demonstrated by a preponderance of the evidence that the subject matter of claims 1, 10, 11, 14, and 19 would have been obvious, as explained below.

*a. "moving the first visual marker" (claim 1) and "receive an indication of a selection . . . as a result of detection of movement of at least one visual marker" (claim 19)*

Claim 1 (and, by dependence, claims 10, 11, and 14) require "displaying . . . [a] first visual marker that is moveable by a user" and "moving the first visual marker with respect to the first aerial image of the roof structure to a first location in response to input from the user." Claim 19 has an analogous limitation requiring "receiv[ing] an indication of a selection . . . as a result of detection of movement of at least one first visual

marker in a graphical user interface." Petitioner maps Avrahami's "seed point" to the claimed movable visual marker. *See* Pet. 9 ("the system stores the location of the seed points (first visual markers) in memory"), 14 (claim chart mapping Avrahami's disclosure of "the user manually point[ing] to and identif[ying] seed points" to the claimed "moving the first visual marker"), 25 (incorporating claim 1 mapping for claim 19). In Avrahami, the user manually points to and identifies seed points in the first aerial image. Ex. 1003, 43. Petitioner equates this manual seed point placement to *moving* the seed point. *See* Pet. 14. As Petitioner explains, "[s]ince the seed point is placed by a mouse pointer, the seed point is actually moved by the user through manipulation of the mouse and placed at the desired location." Reply 3.

We do not agree with Petitioner that Avrahami's pointing to and identifying seed points, constitutes movement of a first visual marker. Rather, as Patent Owner explains, "prior to the user's click, the seed point does not exist, and thus there is nothing to move." *See* PO Resp. 18 (citing 2008 ¶ 56). Avrahami's characterization of the already-placed seed point as the "initial 2D seed point" supports Patent Owner's position. *See* Ex. 1003, 44. The user cannot move an object that does not yet exist, and Petitioner offers no support to suggest that Avrahami's seed points somehow exist before the user places them by clicking. *See* Pet. 14; Reply 2–4. There is also no indication that after placing the seed point, the user can move its location. *See* Ex. 2008 ¶ 56. To the contrary, Avrahami describes the algorithm as "fully automatic" after the user places the seed point. Ex. 1003, 43.

We note that in Reply, Petitioner makes an alternative argument that "placement of subsequent seed points after placement of a first seed point, as well as the addition of segmentations around such seed points, qualifies as 'movement.'" Reply 3. We decline to reach this argument, however, because Petitioner raised it for the first time in its Reply. *See* 37 C.F.R. § 42.104(b)(5) (requiring that a petition must identify "the supporting evidence relied upon to support the challenge and the relevance of the evidence to the challenge raised, including identifying specific portions of the evidence that support the challenge" and explaining that "[t]he Board may exclude or give no weight to the evidence where a party has failed to state its relevance or to identify specific portions of the evidence that support the challenge").

Because we find Avrahami does not teach moving the first visual marker as independent claims 1 and 19 require, Petitioner has not shown that claims 1 and 19 would have been obvious over the asserted prior art at the time of the invention. Claims 10, 11, and 14 all depend from claim 1 or claim 19 and Petitioner puts forth no argument in regards to these dependent claims to cure the deficiencies noted as to claims 1 and 19. Thus, Petitioner has not shown that claims 10, 11, and 14 would have been obvious over the asserted prior art.

*b. <u>Objective Indicia of Nonobviousness Demonstrate Further that the Challenged Claims are Nonobvious</u>*

Notwithstanding what the teachings of the prior art would have suggested to one skilled in the art, objective evidence of nonobviousness may lead to a conclusion that the challenged claims would not have been obvious. *In re Piasecki*, 745 F.2d 1468, 1471–72 (Fed. Cir. 1984). Objective evidence of nonobviousness "may often be the most probative and

cogent evidence in the record" and "may often establish that an invention appearing to have been obvious in light of the prior art was not." *Transocean Offshore Deepwater Drilling, Inc. v. Maersk Drilling USA, Inc.*, 699 F.3d 1340, 1349 (Fed. Cir. 2012). Patent Owner contends that objective factors including commercial success and praise of Patent Owner's Twister and Render House products establish the non-obviousness of the challenged claims of the '770 patent. PO Resp. 51–52, 66–67, 69. We agree with Patent Owner, as explained below.

*i. Nexus*

To be relevant, evidence of nonobviousness must be commensurate in scope with the claimed invention. *In re Huai-Hung Kao*, 639 F.3d 1057, 1068 (Fed. Cir. 2011). Thus, to be accorded substantial weight, there must be a nexus between the merits of the claimed invention and the evidence of secondary considerations. *In re GPAC Inc.*, 57 F.3d 1573, 1580 (Fed. Cir. 1995). "[N]exus" is a legally and factually sufficient connection between the objective evidence and the claimed invention, such that the objective evidence should be considered in determining nonobviousness. *Demaco Corp. v. F. Von Langsdorff Licensing Ltd.*, 851 F.2d 1387, 1392 (Fed. Cir. 1988). There is a "presumption of a nexus" when a product is "coextensive" with a patent claim. *Teva Pharms. USA, Inc. v. Sandoz, Inc.*, 723 F.3d 1363, 1372 (Fed. Cir. 2013).

We are persuaded by Patent Owner's extensive evidence of nexus between its Render House and Twister products and the challenged claims. Patent Owner steps through each challenged claim on an element-by-element basis and directs us to images and specific passages from its Render House and Twister user guides that it argues embody the limitations of each

challenged claim. PO. Resp. 53–63. Patent Owner also supports its assertion of nexus with testimony in the form of a declaration from Dr. Chandrajit L. Bajaj that includes a claim chart detailing where each limitation of the challenged claim is found in its Twister and Render House products. Ex. 2007, 40–82.[4]

The Federal Circuit has held that "if the marketed product embodies the claimed features, and is coextensive with them, then a nexus is presumed and the burden shifts to the party asserting obviousness to present evidence to rebut the presumed nexus." *Brown & Williamson Tobacco Corp. v. Philip Morris Inc.*, 229 F.3d 1120, 1130 (Fed. Cir. 2000). Patent Owner has put forth sufficient evidence to show that its Twister and Render House products embody the elements of the challenged claims and thus, we look to Petitioner to rebut this presumed nexus and note that the presumption "cannot be rebutted with mere argument; evidence must be put forth." *Id.* Petitioner argues that we should discount Patent Owner's evidence of nexus because "Dr. Bajaj formed his opinion on Twister and Render House in a WebEx presentation with Patent Owner's engineers," but did not actually use the Twister or Render House products himself. Reply 22.

Under Federal Rule of Evidence 702, an expert witness may offer opinion testimony if (a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue; (b) the testimony is based on sufficient facts or data; (c) the testimony is the product of reliable principles and methods; and

[4] Here, we cited to page numbers and not paragraphs of Dr. Bajaj's report because the paragraph containing the claim charts stretches over many pages.

(d) the expert has reliably applied the principles and methods to the facts of the case. Petitioner has not moved to exclude Dr. Bajaj's testimony as impermissible under Rule 702, but instead argued that we should not rely on Dr. Bajaj's testimony because it is not evidence that that we can use to explain whether the sequence of screenshots provided by Patent Owner's counsel embodies the elements of the challenged claims. Reply 22–23. We do not agree with Petitioner.

Dr. Bajaj testified that he "discussed these products with engineers at Patent Owner who use the Twister and Render House products on a regular basis" and that during those discussions, he "personally directed Patent Owner's engineers to operate the Twister and Render House software to confirm [his] understanding of the products' operation." Ex. 2007 ¶ 80. He further testified that "[m]y understanding of the features of the Twister and Render House products are further confirmed based on my review of user manuals for these two products." *Id.* We find this explanation credible. Petitioner objects to the screenshots in Dr. Bajaj's declaration because they were not personally prepared by Dr. Bajaj and certain screenshots appear to have predated Dr. Bajaj's report. Reply 21–22. Dr. Bajaj, however, is testifying as to his opinion of the capabilities and features of the Twister and Render House products and these screenshots are merely visual aids to assist the Panel in understanding how Dr. Bajaj reached his conclusion. We see no impropriety in his use of images collected from other sources to document his opinions as to the operation of the products at issue. Thus, we are not persuaded by Petitioner's arguments and we find that Patent Owner has provided sufficient evidence to establish a nexus between the challenged claims and the Twister and Render House products.

*ii. Commercial Success*

Patent Owner contends that its Twister and Render House products "used the patented invention to achieve tremendous commercial success by creating accurate roof estimate reports faster and at less expense than previous solutions." PO Resp. 63–64. Patent Owner asserts that Petitioner recognized the benefits of those products and "entered a contract with Patent Owner for its roof reports soon after the release of Patent Owner's first product." *Id.* at 64 (citing Ex. 2021 ("EagleView and Xactware announced a new technology integration that will allow Xactware customers to access EagleView's breakthrough roof measurement capabilities.")). Patent Owner also provides evidence of rapid growth of its business after introducing these products. *Id.* at 64–65 (citing Ex. 2022 (noting "three-year revenue growth of 2,406 percent")). Patent Owner directs us to statements from Scott Stephenson, President and CEO of Verisk Analytics, which is Petitioner's parent company. *Id*. at 66 (citing Ex. 2023). In a call with investors, Mr. Stephenson "announced the acquisition of EagleView Technologies Corporation, or EVT, for a purchase price of $650 million. EVT is the parent company of both Pictometry International, a recognized leader in imagery, and EagleView, which is well known in the insurance industry." Ex. 2023, 3. He also touted Patent Owner's "significant intellectual property, including over 20 issued patents" and its position as a market leader, noting that:

> Eagle View division is a leading provider of reports on structures used in claims processes in the property and casualty insurance and the contractor markets. The Eagle View division does at least some business with 24 of the top 25 insurance companies, as well as with over 30,000 building contractors.

*Id.* Finally Patent Owner offers the testimony of Chris Johnson, Vice President of Eagle View Technologies, to discuss financial reports for the years 2009–2012. Ex. 2011. In his declaration, Mr. Johnson testifies that the reports submitted into evidence all "reflect sales of reports created using the Twister and Render House products." *Id*. ¶¶ 3–6.

Petitioner asserts that "Patent Owner has failed to demonstrate a nexus with the purportedly unique characteristics of the claimed invention and that for which there is alleged commercial success." Reply 24. Our reviewing court has held that for evidence of commercial success to be relevant, "the patentee must establish a nexus between the evidence of commercial success and the patented invention." *Wyers v. Master Lock Co*., 616 F.3d 1231, 1246 (Fed. Cir. 2010). As noted above, however, Patent Owner has provided extensive evidence that the Twister and Render House products are coextensive with the challenged claims and that the reports sold were created using the Twister and Render House products. Thus, we are persuaded that a nexus exists between the challenged claims and the commercially successful products at issue.

Petitioner also asserts that "Patent Owner has failed to make any showing as to market share, thus rendering their sales figures irrelevant and not adequately defined." Reply 24. Patent Owner, however, provided unrebutted evidence that "approximately 96 percent of the top 25 insurance carriers rely on [Eagle View Technologies 3D aerial roof measurement reports] in their claims departments." Ex. 2020, 1; *see also* Ex. 2029, 8 (Verisk Analytics presentation noting that 24 of top 25 insurance companies and 30,000 contractors are Eagle View customers). In addition, Patent Owner's evidence shows that its products are used by "about one-fifth of the

roofing contractor market, according to an estimate by market researcher IbisWorld." Ex. 2024. Patent Owner's financial reports show both that it sold a large number of roofing reports and that its sales grew significantly between 2009 and 2015. *See* PO Resp. 66. We find that this information, taken together with statement from others in the industry (*see* Ex. 2029), gives us a view of Patent Owner's place in the relevant market and persuades us that Patent Owner's Twister and Render House products experienced significant commercial success and wide-spread use in the industry.

Finally, Petitioner asserts that we should discount Patent Owner's evidence of commercial success because "all of the evidence presented relates to the sale of roof reports, not the license or sale of the Twister and Render House products themselves." Reply 23. We do not find this argument persuasive. As noted above, Patent Owner has provided extensive evidence that the Twister and Render House products are coextensive with the challenged claims and that the commercially successful reports were created using the Twister and Render House products. A patent challenger may respond to an allegation of presumed nexus by presenting evidence that shows the proffered objective evidence was "due to extraneous factors other than the patented invention." *Demaco Corp. v. F. Von Langsdorff Licensing Ltd.*, 851 F.2d 1387, 1393 (Fed. Cir. 1988). However, as noted above, patent challenger cannot successfully rebut the presumption with argument alone—it must present evidence. *Brown & Williamson*, 229 F.3d at 1130 (citing *Demaco*, 851 F.2d at 1393). Petitioner has not done so in this case.

Patent Owner may commercialize its technology in many different ways. The choice to sell the output of the claimed method or apparatus as

opposed to selling or licensing software that practices the claims does not undermine Patent Owner's commercial success in the marketplace that is attributable to its claimed invention. Patent Owner is tasked with providing evidence tying the commercial success and the claims. That commercial success may take many forms and may be the result of many different business strategies, but in the end, for our purposes, the question is whether Patent Owner has shown a sufficient nexus between the commercial success and the claims. We are persuaded that Patent Owner has provided such evidence here. As noted above, Patent Owner and its declarant have extensively analyzed the Twister and Render House products and shown that these products embody the challenged claims in order to generate the roofing reports that it sold, and that the reports sold were created using the Twister and Render House products. Petitioner has not made any showing that the commercial success is based on something other than the contributions of the claimed invention to the generation of roofing reports. Thus, in light of extensive evidence of nexus, we are persuaded that it is proper for Patent Owner to rely upon financial information relating to the sale of reports generated by the Twister and Render House products.

*iii. Industry Praise*

Praise from industry participants, especially competitors, is probative as to obviousness because such participants "are not likely to praise an obvious advance over the known art. Thus, if there is evidence of industry praise of the claimed invention in the record, it weighs in favor of the non-obviousness of the claimed invention." *Apple Inc. v. Samsung Elecs. Co.,* 839 F.3d 1034, 1053 (Fed. Cir. 2016). Petitioner described Patent Owner's products as "[u]sing aerial photography and patent-pending software [to]

accurately calculate[] measurements for the roof's ridges, rafters, valleys, slopes and more." Ex. 2021, 1. Petitioner further noted that the "process saves contractors and roofers hours of time spent measuring and scoping a roof." *Id.*

Verisk Analytics described Patent Owner as "a leader in sophisticated imagery for uses in the property and casualty, contractor, government, and commercial spaces." Ex. 2023, 3. Verisk's CEO stated that Patent Owner is "a leading provider of reports on structures used in claims processes in the property and casualty insurance and the contractor markets." *Id.* He also noted that "[Patent Owner's] solutions provide detailed, accurate measurements without the danger and added time of an adjustor climbing onto a roof." *Id.* at 4.

Patent Owner directs us to an article from Bloomberg in which a roofer touts the accuracy of Patent Owner's products, stating that "most insurance carriers at this point treat [Patent Owner's roofing reports] as gospel." Ex. 2024, 2. Patent Owner also directs us to an article from CNN Money in which a partner at a claim investigation company stated that "[h]aving an Eagle View report has become an industry accepted standard." Ex. 2025, 1. An article from the California Business Journal states that "Eagle View made one of the biggest breakthroughs in the history of the industry by creating a state-of-the-art software program that remotely snaps sophisticated aerial pictures of roofs and accurately measures lengths, pitches, valleys and other hard-to-see areas on roofs." Ex. 2027, 1. In that article, a roofer is quoted as saying that "Eagle View changed the industry forever with this technology." *Id*. at 2. We find Patent Owner's extensive

evidence of industry praise weighs in favor of the non-obviousness of the claimed invention.

*c. Conclusions on Obviousness*

We have weighed Petitioner's evidence and arguments about the asserted prior art's teachings and the reasons why one skilled in the art would combine them. We have also weighed the objective indicia of non-obviousness presented by Patent Owner. As explained above in Section (II)(D)(1)(a), we agree with Patent Owner that the asserted prior art does not disclose certain limitations from the challenged claims. Even if we agreed, however, with Petitioner as to the disclosures in each of the asserted references and the reasons one skilled in the art would have to combine those disclosures, we are persuaded that objective indicia of nonobviousness—i.e., commercial success and industry praise—would outweigh the evidence of obviousness in this case. *See Tec Air, Inc. v. Denso Mfg. Mich. Inc.*, 192 F.3d 1353, 1361 (Fed. Cir. 1999) (holding that "even assuming that [the accused infringer] established a prima facie case of obviousness, [the patentee] presented sufficient objective evidence of nonobviousness to rebut it"). In particular, we are persuaded that Patent Owner has shown strong evidence of nexus between the challenged claims and the Twister and Render House products used to produce the commercially successful reports. We are persuaded also that Patent Owner has shown strong evidence of industry praise. "These real world indicators of whether the combination would have been obvious to the skilled artisan in this case 'tip the scales of patentability.'" *Apple Inc. v. Samsung Elecs. Co.*, 839 F.3d 1034, 1058 (Fed. Cir. 2016). Thus, upon consideration of the strength of Petitioner's obviousness allegations and the strength of Patent

Owner's contentions as to secondary considerations of non-obviousness, we are persuaded that Petitioner has not met its burden to show that the challenged claims would have been obvious over the asserted prior art.

## III. CONCLUSION

In conclusion, Petitioner has not shown by a preponderance of the evidence that claims 1, 10, 11, 14, and 19 are unpatentable under 35 U.S.C. § 103(a).

## IV. ORDER

In consideration of the foregoing, it is hereby:

ORDERED that Petitioner has not shown by a preponderance of the evidence that claims 1, 10, 11, 14, and 19 of the '770 patent are unpatentable; and

FURTHER ORDERED that, because this is a Final Written Decision, the parties to the proceeding seeking judicial review of the decision must comply with the notice and service requirements of 37 C.F.R. § 90.2.

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