

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GODBERSEN-SMITH CONSTRUCTION COMPANY
d/b/a GOMACO CORPORATION,
Petitioner,

v.

GUNTERT & ZIMMERMAN CONST. DIV., INC.,
Patent Owner.

Case IPR2024-00835
U.S. Patent No. 11,535,318

PATENT OWNER'S REQUEST FOR DIRECTOR REVIEW

TABLE OF CONTENTS

	Page
I. Introduction	1
II. Argument.....	3
A. Director Review is Necessary Because the Board Did Not Evaluate G&Z’s Claim Construction Argument or Apply the Proposed Construction in Its Analysis	3
B. Director Review is Also Necessary Because the Board Did Not Evaluate G&Z’s Arguments or Explain Why it Adopted Petitioner’s	6
C. The Board’s Conclusions Concerning Copying Do Not Follow From Its Factual Findings	10
III. Conclusion.....	11

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Cable Elec. Prods., Inc. v. Genmark, Inc.</i> , 770 F.2d 1015 (Fed. Cir. 1985)	10
<i>Eurand, Inc. v. Mylan Pharms., Inc.</i> , 676 F.3d 1063 (Fed. Cir. 2012)	7
<i>KSR, Int’l Co. v. Teleflex Inc.</i> , 550 U.S. 398 (2007).....	6, 9
<i>Medtronic, Inc. v. Teleflex Innovations S.a.r.l.</i> , 70 F.4th 1331 (Fed. Cir. 2023)	10
<i>Midwest Indus., Inc. v. Karavan Trailers, Inc.</i> , 175 F.3d 1356 (Fed. Cir. 1999)	10
<i>Motor Vehicle Mfrs. Ass’n of the U.S., Inc. v. State Farm Mut. Auto. Ins. Co.</i> , 463 U.S. 29 (1983).....	6
<i>In re Nuvasive, Inc.</i> , 842 F.3d 1376 (Fed. Cir. 2016)	1, 6, 9, 11
<i>O2 Micro Int’l Ltd. v. Beyond Innovation Tech., Co.</i> , 521 F.3d. 1351 (Fed. Cir. 2008)	3
<i>Revvo Techs., Inc. v. Cerebrum Sensor Techs., Inc.</i> , No. IPR2025-00632, Paper 19 (Squires Oct. 20, 2025)	1, 3, 5, 6

I. Introduction

G&Z respectfully requests that the Director grant Director Review because the Board failed to resolve a claim construction issue necessary to resolve the parties' dispute. *See Revvo Techs., Inc. v. Cerebrum Sensor Techs., Inc.*, No. IPR2025-00632, Paper 19 (Squires Oct. 20, 2025). Moreover, its analysis of the key patentability arguments presents a textbook violation of *In re Nuvasive's* requirement to "examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made." *In re Nuvasive, Inc.*, 842 F.3d 1376, 1382 (Fed. Cir. 2016) (citation omitted). The Board also erred in finding that the record evidence supports an "inference" of copying before paradoxically concluding with no further explanation that the record as a whole does not support copying. Director Review is necessary to correct these errors.

The Board abused its discretion when it failed to resolve the issue of whether the Challenged Claims require "one side of the slew drive is coupled to the jacking column, one side of the slew drive is coupled to the crawler track, and neither cylinder of the jacking column rotates along with the crawler track." FWD at 17 (quoting PO Resp. 25-26 (citing Ex. 2015 ¶ 15)). Although it purported to apply this construction in its analysis, it never did. *See* FWD at 27 (failing to apply G&Z's

proposed construction); *id.* at 30 (same); *id.* at 45-46 (same). The Director must at least vacate the FWD for the Board to properly evaluate patentability.

The Director should also grant Director Review because when concluding that G&Z's slew-drive arrangement was "known" it failed to examine the relevant data and articulate a satisfactory explanation for its determination. Instead, the Board simply summarized the parties' arguments, stated that it was persuaded by Petitioner's argument, and supported its conclusion with an unexplained string citation to the evidentiary record. *Id.* at 46. The Board did not evaluate G&Z's arguments or evidence, let alone explain why it sided with Petitioner concerning the teachings of certain "state-of-the-art" references, which became critical to Gomaco's case once its expert admitted that Rio did not teach or suggest the claimed slew-drive arrangement.

The Board's one-sided view of the record continued with its treatment of the objective indicia of non-obviousness. Although G&Z has been a proud, family-owned American manufacturer, starting as a shipyard to support America's war effort since the start of World War II, whose inventions were "a **revolutionary change** to the conventional slipform paver" and "a **license to print money**," one would not know that from the FWD. POR at 3-4, 81-82; Sur-Reply at 20-21 (emphasis added); FWD at 69. And with respect to evidence of copying, the Board overrode its own "inference" of copying without explanation. These omissions are

not mere oversights, they reflect a breakdown in the adversarial process and a failure to adjudicate the dispute presented.

In light of the Board's multiple errors and abuses of discretion, G&Z respectfully requests that the Director grant review and reverse the FWD.

II. Argument

A. Director Review is Necessary Because the Board Did Not Evaluate G&Z's Claim Construction Argument or Apply the Proposed Construction in Its Analysis

The Director should grant Director Review and vacate the FWD because the Board refused to construe a disputed term and then failed to evaluate the obviousness grounds under G&Z's proposed construction of the claimed slew-drive arrangement. *O2 Micro Int'l Ltd. v. Beyond Innovation Tech., Co.*, 521 F.3d. 1351, 1360 (Fed. Cir. 2008) ("When the parties raise an actual dispute regarding the proper scope of these claims, the court . . . must resolve that dispute."); *Revvo Techs., Inc.*, Paper 19 at 2 (granting *sua sponte* Director Review "to address the claim construction issues raised").

Throughout the proceedings, G&Z argued that the plain language of the claims requires "one side of the slew drive is coupled to the jacking column, one side of the slew drive is coupled to the crawler track, and neither cylinder of the jacking column rotates along with the crawler track." FWD at 17 (quoting PO Resp. 25-26 (citing Ex. 2015 ¶ 15)). Petitioner did not disagree but argued that the

“proposed combination satisfies the claims under [Patent Owner’s] construction.”

FWD at 17-18 (quoting Reply at 5-6).

Rather than construe the term, the Board promised to evaluate patentability under G&Z’s construction, but it never did. FWD at 18 (“As discussed below, even if we adopted Patent Owner’s proposed interpretation, Petitioner shows that the asserted references teach or suggest the limitation.”). Instead, in the three locations of the FWD where it made findings relevant to this issue, it applied a broader interpretation of the claims, which was in line with the broader claim language of U.S. Patent No. 10,029,749, which the Board invalidated in IPR2020-01698. *See* FWD at 27 (failing to apply G&Z’s proposed construction); FWD at 30 (same); FWD at 45-46 (same). The following table shows a side-by-side comparison of G&Z’s proposed construction to the broader language that the Board applied in its analysis:

G&Z’s Construction	Applied Construction
POR at 25-26 (“ <i>one side</i> of the slew drive is coupled to the jacking column, <i>one side</i> of the slew drive is coupled to the crawler track, and <i>neither cylinder of the jacking column rotates along with the crawler track</i> ”) (emphasis added).	FWD at 27 (finding that CIII and Rio teach “a crawler track rotatably coupled to the jacking column, wherein the crawler track is configured to rotate about a second axis to a second angular orientation relative to the jacking column.”).

	FWD at 30 (“Rio teaches or suggests ‘a slew drive.’”). FWD at 46 (“[M]ounting Rio’s rotary actuator 44 on the bottom of CIII’s jacking column between the jacking column and crawler track was a known design that provides maneuverability.”).
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Resolution of this claim construction issue is necessary because, as Petitioner’s own expert admitted, Rio does not disclose any embodiments where “neither cylinder of the jacking column rotates along with the crawler track.” POR at 33-34 (citing Ex. 2012, 18:3-18, 30:12-25; Ex. 2015 ¶ 52)). In view of this acknowledged deficiency in the art raised in the obviousness combination, Petitioner was forced to rely heavily on a smattering of additional “state-of-the art” evidence to buttress its case. Reply at 8-11.

The Board adopted Gomaco’s argument that the “state-of-the-art” evidence showed that G&Z’s slew-drive arrangement was “known” without attempting to show that it met G&Z’s interpretation. FWD at 46. The Board’s failure to resolve this claim construction issue or to demonstrate that the claims are obvious under G&Z’s proposed construction requires Director Review and vacatur. *Revvo Techs.*,

Inc., Paper 19 (granting *sua sponte* Director Review “to address the claim construction issues raised”).

B. Director Review is Also Necessary Because the Board Did Not Evaluate G&Z's Arguments or Explain Why it Adopted Petitioner's

Director Review is also necessary because even if the Board had applied G&Z's proposed construction when considering whether the claimed slew-drive arrangement was “known,” its analysis was devoid of the requisite explanation. *Nuvasive, Inc.*, 842 F.3d at 1382 (“The [Board] ‘must examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made.’” (quoting *Motor Vehicle Mfrs. Ass'n of the U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983))).

Although “it is not adequate to summarize and reject arguments without explaining why the PTAB accepts the prevailing argument,” that is exactly the form of analysis that the FWD took. *Nuvasive, Inc.*, 842 F.3d at 1383. The Board repeatedly summarized the parties' arguments and concluded by stating that “Petitioner persuades us” of its position. *See, e.g.*, FWD at 25-30 (discussing whether the “crawler track” and “slew drive” elements were met); *id.* at 41-46 (discussing whether there exists a motivation for modifying CIII with Rio's rotary actuator). In each instance, the Board supported its conclusion with an unexplained string citation with no reasoning tying its conclusion to the underlying evidence. *Id.*; *KSR, Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 418-21 (2007) (explaining the need to

provide articulated reasoning based on rational underpinning to support an obviousness analysis or run the risk of hindsight bias).

The record demonstrates that the Board failed to consider the evidence relating to obviousness in its entirety before making its obviousness determination and, as a result, fell “into the understandable but improper trap of constructing a selective version of the facts . . . so as to confirm [a] hunch that the asserted claims were obvious.” *See Eurand, Inc. v. Mylan Pharms., Inc.*, 676 F.3d 1063, 1075-80 (Fed. Cir. 2012). Patent Owner presented detailed arguments concerning why “none of the state of the art evidence suggests the arrangement claimed.” Sur-Reply at 11 (emphasis omitted); *see also id.* at 10-14; POR at 36-39. The Board did not disagree with or reject G&Z’s arguments about what the state-of-the-art taught, it just did not evaluate them. FWD at 46.

Not only did the Board ignore G&Z’s arguments about the “state-of-the-art” references, as discussed above it failed to consider the teachings of those references in the context of G&Z’s proposed construction, which requires that no portion of the jacking column rotates when the crawler track is rotating and specifies specific connections between the slew drive, jacking column, and crawler track. Sur-Reply at 10-14; FWD at 44-46; Section II.A, *supra*.

Had the Board meaningfully reviewed the record, it would have learned that for decades, the industry uniformly accepted limited slipform paver maneuverability

as an unavoidable constraint. POR at 6-7 (citing Ex. 2016, ¶ 16), 36. Before G&Z's innovations, slipform pavers, like CIII, could not “quickly and easily reposition its crawler tracks to offset changes in the positioning of the swing leg. Instead, these tasks require that the operator stop the CIII machine and manually repin and reposition the swing leg and hydraulic steering cylinder for each track, individually, which can take up to a full shift.” POR at 10-11 (citing Ex. 1001 at 4:20-36).

That all changed when G&Z took the risk to invest in the research and development to address the industry's needs. The claimed design, which replaced the traditional torque-arm steering design (POR at 2, 6) with a slew drive coupled to the crawler track and a non-rotating jacking column, solved the problem:

G&Z's SmartLeg/ AccuSteer technology was a revolutionary change to the conventional slipform paver. As G&Z's SmartLeg / AccuSteer technology, including slew drives, allow each crawler track to turn under the weight of the slipform paver, as such, the technology allows an operator to maneuver around obstacles by automatically rotating the crawler tracks, almost a full circle, without stopping to make adjustments. In contrast, with GOMACO's slipform pavers the slipform paver would have to stop, and, in turn, workers would have to manually readjust the swing leg and repin the steering cylinder to avoid an obstacle, as I explained above. Thus, G&Z's SmartLeg / AccuSteer technology took the paving industry to a different level.

G&Z's SmartLeg / AccuSteer technology significantly reduced the time it took to reposition the slipform paver from one mode to another,

as the technology allows an operator to automatically readjust the positions of the swing legs and rotate the crawler tracks to 90 degree steering position to walk the slipform paver from one paving location to another. This revolutionary change was a license to print money.

Ex. 2022, ¶¶ 6-7.

The Board's unsupported conclusion that the claimed slew-drive arrangement was "known" caused cascading errors. For example, it caused the Board to accept Gomaco's argument that the claimed arrangement was merely a "design choice." FWD at 45 ("Petitioner persuades us, and we determine, that one of ordinary skill in the art 'would have known to mount Rio's rotary actuator 44 on the bottom of CIII's jacking column between the jacking column and crawler track' because such a mounting would have been a 'design choice,' because of 'the finite number of places to mount a rotary actuator with a worm-gear design,' and because it was a known design that provides maneuverability."). However, without a finding that the claimed arrangement was, indeed one of "finite number of identified, predictable solutions," the Board's legal conclusion is in error. *KSR*, 550 U.S. at 421.

The Board's explanations in its elemental and motivation to combine analysis cannot be "reasonably discerned" as its inquiry was not "thorough and searching" enough to provide the "specificity" that is required. *Nuvasive*, 842 F.3d at 1381-83 (citations omitted) ("[I]t is not adequate to summarize and reject arguments without

explaining why the [Board] accepts the prevailing argument.”). Director Review is, therefore, necessary.

C. The Board's Conclusions Concerning Copying Do Not Follow From Its Factual Findings

Turning to copying, the Board's explanation was vague and ambiguous. The Board acknowledged that Gomaco's access to G&Z's pavers, and the similarity between G&Z's SmartLeg/AccuSteer technology and GOMACO's GP3's slew gear drive design “may support an inference of copying.” FWD at 61; Sur-Reply at 22-23; POR at 52-58. It would be hard to deny such an inference because undisputed evidence shows access and substantial similarity, which is all that is necessary to “create a strong inference of copying.” *Cable Elec. Prods., Inc. v. Genmark, Inc.*, 770 F.2d 1015, 1027 (Fed. Cir. 1985) (“Access in combination with similarity can create a strong inference of copying.”), *overruled on other grounds by Midwest Indus., Inc. v. Karavan Trailers, Inc.*, 175 F.3d 1356 (Fed. Cir. 1999); *Medtronic, Inc. v. Teleflex Innovations S.a.r.l.*, 70 F.4th 1331, 1339-42 (Fed. Cir. 2023) (“Evidence of access and substantial similarity is evidence of copying.”).

After acknowledging that the evidence “support[s] an inference of copying,” the Board paradoxically concluded that “the totality of the evidence does not support copying.” FWD at 61. It was left as an exercise for the reader to determine what “evidence does not support copying” and imagine the reasons that it overcame the acknowledged “inference of copying.” *Id.* The Board, therefore, abused its

discretion by adopting a legal conclusion that does not follow from its factual findings. *See Nuvasive, Inc.*, 842 F.3d at 1382 (the Board “must examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made”) (citation omitted).

III. Conclusion

For at least the foregoing reasons, Director Review should be granted and the Final Written Decision reversed, or alternatively vacated and remanded.

Respectfully submitted,

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/James Hannah/
James Hannah (Reg. No. 56,369)
HERBERT SMITH FREEHILLS
KRAMER (US) LLP
333 Twin Dolphin Drive, Suite 700
Redwood Shores, CA 94065
Telephone: (650) 752-1700
Facsimile: (650) 752-1800
james.hannah@hsfkramer.com

Jeffrey H. Price (Reg. No. 69,141)
Jenna Fuller (Reg. No. 74,212)
HERBERT SMITH FREEHILLS
KRAMER (US) LLP
1177 Avenue of the Americas
New York, NY 10036
Telephone: (212) 715-9100
Facsimile: (212) 715-8000
jeffrey.price@hsfkramer.com
jenna.fuller@hsfkramer.com

(Case No. IPR2024-00835)

Attorneys for Patent Owner

CERTIFICATE OF SERVICE

The undersigned certifies, in accordance with 37 C.F.R. § 42.6(e), and pursuant to agreement by the parties that filing with the Board through the Patent Trial and Appeal Case Tracking System (P-TACTS) constitutes electronic service, that service was made on the Petitioner as detailed below.

<i>Date of service</i>	December 15, 2025
<i>Manner of service</i>	Electronic Filing with the Board
<i>Documents served</i>	PATENT OWNER'S REQUEST FOR DIRECTOR REVIEW
<i>Persons Served</i>	Finnegan, Henderson, Farabow, Garrett & Dunner, LLP: Jason E. Stach Luke J. McCammon David K. Mroz Sonja W. Sahlsten Robert K. High

/James Hannah/
James Hannah
Registration No. 56,369
Lead Counsel for Patent Owner