

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SOLARIS OILFIELD SITE SERVICES OPERATING, LLC and SOLARIS
OILFIELD SITE SERVICES PERSONNEL, LLC,
Petitioners,

v.

MASABA, INC.
Patent Owner.

Case No. IPR2024-01179

Patent No. 11,780,689

Issue Date: October 10, 2023

Title: Aggregate Transferring System

**PATENT OWNER'S REQUEST FOR DIRECTOR REVIEW OF
FINAL WRITTEN DECISION**

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I. Introduction

In this case, the Board's Final Written Decision contains multiple errors warranting Director review and reversal.

A. First, the Board's evaluation of the real-world evidence in this case involves an abuse of discretion because it is contrary to law and based on erroneous findings of material fact. It also implicates important issues of law and policy.

The real-world evidence shows that Petitioner Solaris engaged Patent Owner Masaba to figure out how to transfer "frac sand" to the top of Solaris's storage silos using a transportable system. Solaris's engineer was aware of all the prior art components that eventually ended up in the claimed combination but had not come up with a solution, so Masaba was hired to solve the problem. As Masaba engineers worked to meet Solaris's requirements, Solaris stated how important the solution would be to its business, expressed skepticism about the components that Masaba eventually used to solve the problem, and then praised Masaba's solution once completed, stating that there was "no one" else "that could have designed it." Then, despite Solaris's repeated statements that it would purchase several units from Masaba, Solaris took delivery of only one unit and made dozens of copies of it, all while informing its investors that those copies were the driving force behind amazing increases in Solaris's financial performance. Indeed, Solaris went so far as to apply for its own patent on Masaba's invention, wrongfully attributing Masaba's invention

to its own personnel and asserting that the same subject matter that Solaris now claims as “obvious” in Masaba’s patent is patentable in Solaris’s patent.

The Board dismissed this compelling real-world evidence on several erroneous grounds. For example, the Board refused to consider exhibits merely because it believed that Masaba’s brief did not sufficiently explain what was in those exhibits. That refusal was contrary to law and constitutes an abuse of discretion. In addition, the Board relied on an erroneous factual finding that it was Solaris that came up with the patented invention rather than Masaba. The evidence shows just the opposite. When the real-world evidence in this case is properly considered, as it must be, the Board’s decision of obviousness cannot stand. The Director should review the Board’s decision in this case to make clear that (1) the Board has “an obligation to consider” the real-world evidence submitted and cited to it, *Centripetal Networks LLC v. Palo Alto Networks, Inc.*, 156 F.4th 1368, 1380-81 (Fed. Cir. 2025), and that (2) real-world facts are often “the most probative and cogent evidence in the record,” *Stratoflex, Inc v. Aeroquip Corp.*, 713 F.2d 1530, 1538 (Fed. Cir. 1983).

B. The Board also relied on an erroneous finding of material fact in concluding that Solaris’s expert qualifies as a POSITA and in crediting his testimony in this case. The patent-in-suit is about an “aggregate transferring system,” claiming a combination of mechanical components. Both of the inventors were mechanical engineers, as was Masaba’s expert. Yet, Solaris’s expert is an electrical engineer.

The Board ultimately concluded that Solaris’s expert could testify because he had “approximately 4-6 years of hands-on experience” in “engineering aggregate handling equipment.” But the evidence on which the Board relied establishes no such thing. Therefore, the Board made an erroneous finding that Solaris’s expert had the requisite expertise. Without his testimony, Solaris has no *prima facie* case. The Director should review the decision here to ensure that the Board’s decisions are based on appropriate evidence and competent expert testimony.

II. Background

A. The Real-World Facts In This Case

In 2013, Jeremy Weinstein, Solaris’s engineer, recognized a need for a transportable system to top-fill Solaris’s frac-sand silos. (Ex. 2042, 10:4-8, 17:10-21.) After grappling with this problem for seven years, Weinstein still had not solved it. (Ex. 2042, 47:1-18.) In 2020, Weinstein told Mike Stanton about the problem, and Stanton recruited Masaba to come up with a solution. (Ex. 2006, ¶2; Ex. 2005, ¶2; Ex. 1112, ¶8.) At the time, Weinstein was aware of all the prior art components that allegedly render Masaba’s claims obvious but had not thought to combine them. (Ex. 2042, 35:19-36:18, 29:3-21; Ex. 1112, ¶¶10-11; Ex. 2042, 47:1-48:1.)

Weinstein’s and Stanton’s conventional thinking was that the solution would require a high-capacity belt conveyor set at a high incline angle. (Ex. 2006, ¶3; Ex. 2005, ¶4; Ex. 1112, ¶8.) In August 2020, Masaba created an initial concept with such

a belt conveyor at a 60-degree angle, feeding an articulating airslide (an air-powered tube). (Ex. 2006, ¶3; Ex. 2005, ¶¶4-5; Ex. 1112, ¶9; Ex. 1102.) Significantly, the concept did **not** include a bucket elevator or an articulated belt conveyor, which were the components Masaba eventually employed in solving Weinstein's problem. Solaris decided to move forward with Masaba. (Ex. 2005, ¶6; Ex. 2006, ¶3.) In October 2020, Weinstein sent a specification sheet that merely reiterated the "desired dimensions" for the system and adopted aspects of the design that Masaba had already proposed. (Ex. 1112, ¶13; Ex. 1104; Ex. 2042, 48:2-49:2.) In November 2020, Weinstein told Stanton that this was Solaris's "most important" project and that it needed the solution to "gain back market share." (Ex. 2006, ¶4 & Appx. A.)

In January 2021, Masaba came up with a new design replacing the airslide with a gravity-fed tube-in-tube extending chute. (Ex. 2005, ¶7.) Once again, the concept did **not** include a bucket elevator or an articulated belt conveyor. Shortly thereafter, Masaba suggested using a bucket elevator instead of an inclined belt conveyor. (Ex. 2005, ¶9; Ex. 2006, ¶6; Ex. 2042, 92:14-16.) At that time, Masaba's concept was that the bucket elevator would feed a telescoping belt conveyor, an airslide, or a gravity-fed chute (**not** an articulated belt conveyor). (Ex. 2005, ¶9.) Solaris pushed back and expressed skepticism, explaining that "bucket elevators do not have a good reputation in the oil field," and asked Masaba to continue working on increasing the belt conveyor's incline even if it meant reducing the flow rate. (Ex.

2006, ¶6 & Appx. B; Ex. 2005, ¶10.) But eventually, Masaba convinced Solaris to pursue Masaba’s bucket-elevator design. (Ex. 2005, ¶11; Ex. 2006, ¶7.)

When pursuing the bucket-elevator design, Masaba engineers were aware of the *Dynatek* articulated belt conveyor Solaris now relies on, but they believed it would not work with the bucket elevator. (Ex. 2005, ¶12.) Instead, Masaba first pursued coupling the bucket elevator with a telescoping belt conveyor and then an airslide. (*Id.*) Only later did the Masaba inventors consider using an articulated belt conveyor at the top of the bucket elevator. (*Id.*) After Masaba presented this concept, Solaris representatives told Masaba that they were excited about the design, that Solaris expected it to change its business and even the industry, and that Solaris would be purchasing several more units in the future. (Ex. 2005, ¶15; Ex. 2006, ¶8.)

By July 2021, Masaba had built a first unit and scheduled testing. (Ex. 2005, ¶16; Ex. 2006, ¶9.) Photographs of Masaba’s unit are in the record, and—not surprisingly—that unit is indistinguishable from the figures in Masaba’s patent. (*Compare* Ex. 2005, ¶¶17-19 *with* Ex. 1001, Figs. 1A-8F.) After the testing, Weinstein praised the design, saying “there was no one that he was aware of that could have designed it.” (Ex. 2006, ¶9 & Appx. C.) In a September 2021 investor presentation, Solaris used a photograph of the Masaba unit, referred to it as Solaris’s “Top Fill system,” and touted it as an “Innovation.” (Ex. 2008, pp. 5, 8, 9.) Masaba delivered that unit to Solaris in October 2021. (Ex. 2005, ¶21; Ex. 2006, ¶11.)

Instead of purchasing additional units from Masaba, Solaris started making copies of Masaba's unit—even though Solaris knew that Masaba had applied for a patent. (Ex. 2005, ¶¶20, 24; Ex. 2006, ¶10; Ex. 2042, 75:19-76:7.) In yet another presentation in December 2021, Solaris again showed Masaba's unit, touting it as one of Solaris's "[i]nnovative products & [s]olutions." (Ex. 2011, p. 4.)

In its Q4 2021 earnings call, Solaris repeatedly praised the Top Fill invention, telling its investors that it had "strong demand" and was resulting in "improved profit" and that Solaris planned to grow its fleet "significantly," which would result in "additional profitability" and "significant incremental growth." (Ex. 2012, 2:36-3:08, 6:05-6:31, 20:21-20:48.) In February and June 2022, Solaris released an animation and a spec sheet of its Top Fill system making clear that it is a virtually indistinguishable copy of the Masaba unit delivered to Solaris. (Exs. 2025-2029.) Indeed, the spec sheet shows the dimensions for Solaris's system are within inches of Masaba's. (Ex. 2005, ¶24 & Paper 13, pp. 16-17 (side-by-side comparisons).)

Solaris continued to report to investors how it was rapidly making additional Top Fill systems, and by the end of 2023, Solaris reported having about 60 Top Fill systems. (Paper 13, p. 18.) Solaris grew its fleet so quickly (and reported the number to its investors) because they were driving amazing financial performance. In its briefing, Masaba provided Solaris's numerous statements to its investors during earnings calls praising the commercial success of the Top Fill systems. (Paper 13,

pp. 18-22.) The Top Fill system was so valuable that, in May 2023, Solaris filed a patent application describing the very system that Masaba had delivered in October 2021 and obtained a patent on the very system that Solaris now says would have been obvious. (Ex. 2031, Figs. 1, 3-9, claim 6.) Solaris’s named “inventors” include Weinstein, but Masaba’s role was not disclosed to the USPTO. (Ex. 2031, p. 1.)

In October 2023, Masaba’s patent issued, and Masaba sued Solaris for infringement. (Ex. 1001; Ex. 2037.) Masaba’s complaint included a detailed 28-page claim chart that specifically noted where Masaba alleged that each element of the claims is found in Solaris’s copied machines. (Ex. 2037, pp. 68-95.)

B. Solaris’s IPR Petition

Solaris responded by filing the present IPR petition, alleging that the claims of Masaba’s patent are unpatentable for obviousness. (Paper 1.) Every ground in Solaris’s petition relies on the combination of *Waldner* and *Dynatek*. (*Id.*) *Waldner* discloses a truck unloader that feeds a folding bucket elevator, which feeds a chute to fill silos. (Paper 1, pp. 14-17; Ex. 1004.) *Dynatek* discloses an articulated belt conveyor. (Paper 1, pp. 17-19; Ex. 1005.) Solaris argued that it would have been obvious to substitute *Dynatek*’s articulated belt conveyor for *Waldner*’s chute and that this combination would satisfy the broadest claims of Masaba’s patent. (Paper 1, pp. 25-75.) In support of its obviousness theories, Solaris relied on the testimony of Dr. Durham, an electrical engineer. (Ex. 1002; Ex. 1003, ¶¶4, 7-9, 11-12.)

C. Masaba's Response

Masaba responded by marshalling the real-world facts and supporting evidence described above. (Paper 13, pp. 3-22, 30, 70-73.) Masaba also provided expert testimony from a mechanical engineer with extensive experience in the aggregate transferring field, who rebutted Solaris's alleged motivations to combine *Waldner* and *Dynatek* and explained why there would have been no reasonable expectation of success. (Ex. 2004; Paper 13, pp. 29-40.) Masaba also established that Solaris's expert had no experience designing the mechanical aspects of aggregate transferring systems and was not qualified to testify. (Paper 13, pp. 22-26.)

D. The Board's Decision

The Board accepted all of Solaris's arguments and rejected Masaba's. (Paper 41.) The Board concluded that Solaris's expert was qualified to testify and that it would have been obvious to substitute *Dynatek's* articulated belt conveyor for *Waldner's* chute. (Paper 41, pp. 7-11, 28-46.) In doing so, the Board concluded that it was not persuaded by the real-world evidence. (Paper 41, pp. 39-45.)

III. Argument

A. In Its Evaluation of the Real-World Evidence, The Board Abused Its Discretion, Acted Contrary to Law, and Relied On Erroneous Findings of Material Fact

The Board's decision purports to address Masaba's real-world evidence but only addresses the arguments on pages 70-73 of Masaba's brief without addressing the real-world facts and evidence discussed on pages 3-22 (and re-presented above).

(Paper 41, pp. 39-45.) In evaluating the real-world evidence, the Board erred in four ways, acting contrary to law, relying on erroneous findings of material fact, and abusing its discretion. Each of the four categories of errors is discussed below.

First, the Board concluded that there was no presumption of nexus for Solaris’s praise, commercial success, and copying—not because the evidence failed to support a presumption of nexus—but simply because Masaba’s *brief* did not sufficiently elaborate on what the evidence shows. (Paper 41, p. 40.) A presumption of nexus arises when the praised, copied, and/or commercially successful product has all the elements of the claims at issue and is coextensive with them. *Polaris Industries, Inc. v. Arctic Cat, Inc.*, 882 F.3d 1056, 1072 (Fed. Cir. 2018). Here, the Board complained that Masaba’s *brief* did not show that Solaris’s machines “satisfy the claim elements.” (Paper 41, p. 40.) But Masaba’s briefs cited a detailed 28-page claim chart from Masaba’s complaint showing just that. (Paper 13, p. 72 (citing “Ex. 2037 (Exhibit 9)”); Paper 33, pp. 21-22 (citing “Ex. 2037, pp. 68-95”).)¹ Masaba also argued and cited evidence that Solaris’s machines are *virtually indistinguishable* from (1) the one patented machine that Masaba created for Solaris and (2) the figures of Masaba’s patent. (Paper 13, pp. 15-17, 72; Paper 33, pp. 21-22; *compare* Ex.

¹ “A claim chart from another proceeding that is submitted as an exhibit...will not count towards word count limits.” Consol. Trial Prac. Guide (Nov. 2019), p. 44.

1001, Figs. 1A-8F *with* Ex. 2005, ¶¶17-19 *and with* Exs. 2007, 2008, 2011, 2025-2030, 2005 ¶¶17-21.) The Board refused to consider this evidence in assessing the nexus presumption even though Masaba cited it. (Paper 41, pp. 39-40, 41-42.)

It is hard to imagine a stronger case for the nexus presumption than when all the products in question are virtually indistinguishable from the figures in the patent. A claim construction that does not cover the preferred embodiment—*i.e.*, that does not cover the figures in the patent—is “rarely, if ever, correct.” *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed. Cir. 1996). Therefore, it would be “rarely, if ever, correct” to conclude that products that match the patent’s figures (like Masaba’s and Solaris’s machines) do not fall within the scope of the claims.

Solaris understood how the claims mapped to its Top Fill machines and, in its reply, disputed only that they were lacking *one* claim element, a ramp. (Paper 20, p. 26.) Masaba’s sur-reply showed that this assertion was incorrect and that not all claims require a ramp in any event. (Paper 33, p. 22.) Yet the Board declined to recognize a nexus presumption because Masaba’s *brief* was allegedly insufficient in showing that the Masaba and Top Fill machines satisfied all the claim elements.

The law is clear that the Board cannot disregard cited exhibits merely because it believes that a party’s brief does not sufficiently explain what is in those exhibits. Although the Board does not have an obligation to look at evidence not cited to it, the Board *does* have an obligation to review what *is* cited to it. *Centripetal Networks*,

156 F.4th at 1380-81 (Fed. Cir. 2025) (“The Board did not have to go searching throughout the entire litigation record to find the evidence of copying, but it had an obligation to consider the specific evidence that was put before it.”).

Thus, the Board acted contrary to law and abused its discretion in concluding that there is no presumption of nexus. When the cited exhibits are considered, as they must be, they demonstrate that there is a presumption. The Board’s nexus analysis was incorrect because the Board erroneously analyzed and dismissed the real-world evidence without the benefit of that presumption. (Paper 41, pp. 43-45.)

To rebut the nexus presumption, Solaris must prove that *each instance* of praise, copying, and commercial success is *due solely* to prior art *features* and not due to a *combination* that *includes those features*. *Ecolochem, Inc. v. S. Cal. Edison Co.*, 227 F.3d 1361, 1378 (Fed. Cir. 2000); *WBIP, LLC v. Kohler Co.*, 829 F.3d 1317, 1330-31 (Fed. Cir. 2016). The Board’s decision is irreconcilable with the law. In finding obviousness, the Board asserts that *Waldner* would not work as well without *Dynatek*’s articulated belt conveyor and therefore it would have been obvious to improve performance by *combining* *Waldner* with *Dynatek*’s articulated conveyor. (Paper 41, pp. 29-39.) But in finding no nexus, the Board asserts the Top Fill’s success/performance had “nothing to do” with the articulated belt conveyor. (*Id.* at p. 43.) In view of the presumption, the Board cannot have it both ways.

Second, the Board illogically concluded that Solaris’s skepticism about bucket elevators was not relevant merely because *Waldner* discloses a bucket elevator. (Paper 41, p. 44.) But such skepticism shows that a POSITA would have resisted using *Waldner* as a starting point—because it uses a bucket elevator. (Paper 13, p. 30; Paper 33, p. 6.) Indeed, that is what happened in the real world. Solaris knew that bucket elevators existed and expressed skepticism when Masaba proposed using one, preferring instead to use an inclined belt conveyor with a slower fill rate. (Ex. 2006, ¶6 & Appx. B; Ex. 2005, ¶10.) The Board’s dismissal of Solaris’s skepticism was therefore based on illogical reasoning and was contrary to law.

Third, the Board made and relied on the erroneous finding of material fact that Masaba did not invent and design the machine claimed in Masaba’s patent, finding instead that Solaris designed the machine and Masaba merely assembled it. (Paper 41, pp. 44-45.) That finding is completely unsupported by the evidence, which demonstrates that exactly *the opposite* is true. Weinstein expressly admitted that it was Masaba, not Weinstein or Solaris, that first proposed using a bucket elevator. (Ex. 2042, 92:14-16.) Weinstein also admitted deriving Solaris’s fleet from Masaba’s design. (Ex. 2042, 57:25-58:16, 83:2-84:25.) The Board ignored this evidence and focused instead on Weinstein’s testimony that Solaris thought that it “owned” Masaba’s design. (Paper 41, p. 45.) Weinstein believed (incorrectly) Solaris “owned” the design because Solaris had commissioned Masaba to solve its

top-fill problem. (See Ex. 2042, 57:25-58:10; 72:1-14.) But ownership and inventorship are two different things. Because of its erroneous findings on this point, the Board completely ignored the real-world evidence of Solaris's copying and ignored the real-world fact that Weinstein was aware of all the prior art components in the claimed combination but had *failed* to come up with the claimed solution over the course of seven years. (Paper 33, pp. 13-14.)

Fourth, the Board dismissed the evidence of Solaris's patent on grounds that Masaba "fail[ed] to compare the claims of Solaris's patent to those of the '689 patent." (Paper 41, p. 44.) That conclusion is flatly wrong. Both Masaba's response brief and its sur-reply pointed to claim 6 of Solaris's patent as claiming the very combination of vertical conveyor plus articulated belt conveyor for which Solaris is arguing obviousness here. (Paper 13, p. 22; Paper 33, pp. 25-26.) Thus, the Board's dismissal of the evidence about Solaris's patent was based on an erroneous finding about what Masaba argued and an erroneous refusal to consider the cited evidence.

In summary, the Board committed multiple errors in dismissing the real-world evidence. The proper consideration of real-world evidence in assessing obviousness is an important issue that warrants Director review. When the evidence is properly considered here, as it must be, the Board's decision cannot stand. Solaris should not be permitted to argue that the invention that it commissioned Masaba to invent—and that it praised, copied, profited from, and patented—was obvious all along.

B. In Crediting the Petitioners' Expert Testimony, The Board Relied on An Erroneous Finding of Material Fact

The Board also erred in assessing Solaris's expert testimony. "[T]o be qualified to offer expert testimony on issues from the vantage point of an ordinarily skilled artisan in a patent case, an expert must at a minimum possess ordinary skill in the art." *Kyocera Senco Ind. Tools, Inc. v. Int'l Trade Comm'n*, 22 F.4th 1369, 1376-77 (Fed. Cir. 2022). To shoehorn its electrical engineering expert into this case, Solaris claimed that a POSITA "would have a degree in mechanical, *electrical*, petroleum, or civil engineering with at least two years' of experience working in *an industry or field that involves* hand[l]ing of particulate materials...." (Ex. 1003, ¶41; Paper 1, p. 14.) But figuring out how to convey aggregate materials is not an *electrical* engineering problem. (Ex. 2004, ¶28.) And merely "working *in an industry or field that involves* hand[l]ing of particulate materials" is very different from *doing work that involves* the handling of aggregate materials.

To its credit, the Board did not accept Solaris's definition of a POSITA. Nonetheless, it erroneously concluded that Solaris's expert fell within Masaba's definition, which required an electrical engineer to have "approximately 4–6 years of hands-on experience" in "engineering aggregate handling equipment." (Paper 41, p. 11.) However, the evidence the Board cites only demonstrates that Solaris's expert worked for 4-5 months on a *control system* for an aggregate transferring system and had 20 years of experience in which he "*saw*" and "*witnessed*" aggregate transferring

systems. (*Id.* at 10.) Even assuming that designing the control system for 4-5 months was relevant experience, that cited experience does not amount to 4-6 years of experience in “*engineering*” aggregate handling equipment.

The Board cited Solaris’s expert for propositions that require expertise that only comes from “engineering” aggregate handling equipment, not expertise acquired by merely “seeing” and “witnessing” it. For example, the Board relied on Solaris’s expert testimony about “building the *Waldner* system,” about alleged limitations of *Waldner* and other prior art, about motivations to “substitute” one part for another, and about how to “mount[]” and “connect[]” various parts. (Paper 41, pp. 29, 28, 30, 38, 49, 51, 52, 56, 57, 58, 60, 61 (citing Ex. 1003).) The Board’s evidence about *seeing* aggregate handling systems fails to show that Solaris’s expert had sufficient expertise to opine on these propositions. Indeed, Masaba showed that Solaris’s expert *admitted* to *multiple factual errors* that demonstrated his lack of expertise in the mechanical issues in this case. (Paper 13, pp. 31 (admitting he misread *Waldner* as using an open chute), pp. 51-52 (admitting he misread *Sleeman*’s actuator as moving vertically when it moves horizontally), pp. 68-69 (mistaking a unitary rocker arm as having articulating parts).) The Board erred in finding Solaris’s expert was qualified to testify in this case.

IV. Conclusion

The Director should review and reverse the final written decision.

DATED this 25th day of February, 2026.

Respectfully submitted,

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. §§ 42.6, I hereby certify that on this 25th day of February, 2026, I caused the foregoing **Request for Director Review of Final Written Decision** to be served via email, on the following counsel of record for Petitioner at the email addresses below:

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