

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

LEDUP MANUFACTURING GROUP LTD.,
Petitioner,

v.

SEASONAL SPECIALTIES, LLC,
Patent Owner.

Case IPR2024-01259
U.S. Patent No. 11,533,794

**PETITIONER'S REPLY TO PATENT OWNER'S PRELIMINARY
RESPONSE**

Mail Stop "PATENT BOARD"
Patent Trial and Appeal Board
U.S. Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

Patent Owner's Assertion

In the Patent Owner's Preliminary Response, Patent Owner states that "Petitioner does not address the objective indicia of non-obviousness, even though Petitioner was fully aware of the commercial success and long-felt need associated with the claimed invention before filing the Petition." [POPR, at 1.]

Petitioner's Reply

Secondary considerations were not raised as a triable issue in the District Court case. Petitioner propounded a specific interrogatory asking for any evidence of secondary considerations that would be argued as support for non-obviousness. There were no documents or evidence provided in support of the interrogatory responses prior to the IPR filing. The interrogatory responses by Patent Owner were conclusory statements of counsel that did not support a valid assertion of secondary considerations, much less any objective indicia of non-obviousness.

The answers to the interrogatories merely referenced that Patent Owner and Petitioner had sold multiple products with the resistor bypass design, without any evidence of sales or nexus of the possible sales with the design in question.

After Petitioner's Petition was filed on the August 2, 2024, Seasonal Specialties produced some limited documents. These documents are irrelevant since they were produced after the filing of the Petition on August 2, 2024 and such documents, again, did not provide any evidence showing objective indicia of non-

obviousness. To the extent Patent Owner argues otherwise, such an argument creates—at most—a factual issue that is best resolved during trial.

Contrary to Patent Owner's assertion, in Patent Owner's Preliminary Response, that Petitioner ignored the issue of secondary considerations, there was no evidence provided to support the conclusory assertions in the interrogatory responses and was therefore not raised as a triable issue, but merely attorney argument. Any claims made by attorney argument were unsubstantiated assertions without evidentiary basis. The Board has rejected similar conclusory arguments from patent owners. *See e.g., 2985 LLC v. The Ridge Wallet, LLC*, IPR2024-00692, Paper 18, at 36-38 (PTAB Oct. 1, 2024) (agreeing with petitioner that "Patent Owner's interrogatory statements are insufficient evidence of secondary considerations at least due to their conclusory nature, and that Patent Owner has not demonstrated nexus." (internal quotations omitted)). The Board should do the same here.

Respectfully submitted,

Cochran Freund & Young LLC



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Date: January 13, 2025

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CERTIFICATE OF SERVICE (37 C.F.R. § 42.6(e))

I certify that the above-captioned **PETITIONER'S REPLY TO PATENT OWNER'S PRELIMINARY RESPONSE** was served on January 13, 2025, electronically via e-mail in its entirety upon the following parties:

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