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

PATENT OWNER SEASONAL SPECIALTIES, LLC'S SUR-REPLY TO PRELIMINARY RESPONSE

PATENT OWNER'S SUR-REPLY

Patent Owner submits this Sur-Reply in response to Petitioner's Reply (Paper 12) addressing secondary considerations of non-obviousness, which Petitioner did not address in the Petition.

Petitioner argues in the Reply that "[s]econdary considerations were not raised as a triable issue in the District Court case." Reply at 2. Petitioner argues Patent Owner's interrogatory answer was too "conclusory" to give notice of any objective indicia of non-obviousness. Id. However, Patent Owner's district court complaint had already given Petitioner notice of secondary considerations based on commercial success. EX2010 ¶¶ 35-37.

Petitioner ignores that it would have already known about Patent Owner's products from competing in the same market. The complaint alleges that Petitioner's accused products are sold at Home Depot and Fleet Farm[1], a regional U.S. retail chain headquartered in Wisconsin. EX2010 ¶ 49.

Patent Owner's product packaging shows that products practicing the claims were sold at Menards, a home improvement chain also headquartered in Wisconsin.[2] EX2012-EX2017. The complaint alleges that Patent Owner promotes the advantages

[1] See https://www.fleetfarm.com/.

[2] See https://www.menards.com/main/footer/company-information/about-us/c-3582.htm.

of the invention in packaging and descriptive materials for products practicing the claims. Id. ¶ 37. Patent Owner's packaging includes the patent number and displays the "Remains Lit" mark, signifying use of the Resistive Bypass invention. EX2012-EX2017.

Accordingly, Petitioner would have already known about Patent Owner's evidence of secondary considerations — from information in the district court complaint and from Patent Owner's competing products — before Petitioner received the interrogatory answer identifying secondary considerations of non-obviousness based on products embodying the invention. Patent Owner's product packaging itself, with the patent number and "Remains Lit" mark identifying claimed features of the invention, shows a nexus between the merits of the invention and the products' commercial success.

Respectfully Submitted,

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

The undersigned hereby certifies that Patent Owner Seasonal Specialties, LLC's Sur-Reply was served electronically via e-mail on January 21, 2025 in its entirety on the following counsel of record for the Petitioner:

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