

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

COLLEGE PRODUCTS, INC.,

Petitioner,

v.

INTIRION CORPORATION,

Patent Owner.

Case No. PGR2024-00004

Patent No. 11,674,746

**PATENT OWNER'S AUTHORIZED RESPONSE TO PETITIONER'S
DIRECTOR REVIEW REQUEST**

I. The Board Properly Weighed Emma, Butt, and Smith.

Director Review should be denied. The Board's analysis of Emma, Butt, and Smith was measured, not arbitrary. While PO disagrees the combination "weighs slightly in favor of" obviousness of the '746 Patent, the Board's decision cannot be described as "summarily conclud[ing] the claims were only 'slightly' obvious." *See* Paper 52 at 1. Rather, in the Board's analysis spanning *24 pages*, the Board stated that Butt "does not teach or disclose a smoke detector in 'operative connection with a cooking area inside the microwave oven.'" Paper 49, at 35-36. As for Smith, the Board acknowledged "[PO's] argument that Smith's gas sensor 52 is not specifically described as a 'smoke sensor,'" *id.* at 42, and that Smith does not reference VOCs. *Id.*, at 44 ("Technically, this is true."). After 24 pages of analysis, the Board found the combination of three references "weighs slightly in favor of a conclusion of obviousness of claims." *Id.* at 46. PO disagrees this even slightly weighed in favor of obviousness, but the decision was not "Arbitrary . . . and Without Explanation."

Petitioner argues the Boards analysis "completely favored Petitioner's arguments and rejected all of Patent Owner's arguments wholesale." That is demonstrably untrue—the Board, agreeing with PO, found Butt disclosed a smoke sensor but taught away from its inclusion inside/near a microwave, and acknowledged Smith's lack of explicit disclosure of VOCs or a "smoke" sensor.

Petitioner’s combination was not “strong” and the Board correctly assigned it “slight” weight in the *Graham* analysis.¹

II. The Board Correctly Weighed Secondary Considerations Evidence.

The Board also properly analyzed PO’s evidence of nonobviousness—first, evaluating the nexus between PO’s evidence and the claimed invention, *then* assigning weight to PO’s evidence. Paper 49 at 47-54 (nexus), 54-60 (“strong weight” to commercial success); 60-63 (no weight to long-felt-need); 63-65 (little/no weight to teaching away/unexpected results); 65-71 (strong weight to copying). Notably, “Petitioner [did] not substantively dispute [PO’s] assertions and evidence as to a presumption of nexus...Petitioner neither identifie[d] a claim limitation that is not met [...], nor persuasively point[ed] to any unclaimed features. Pet. Reply 25–29.” Paper 49 at 52. Still, the Board evaluated PO’s evidence, found PO’s products included a fridge, and declined to find nexus for the ’746 Patent’s claims without a

¹ Petitioner’s cited cases do not support its arguments. *See Volvo Penta of the Ams., LLC v. Brunswick Corp.*, 81 F.4th 1202, 1213-16 (Fed. Cir. 2023) (improperly giving “some weight” to secondary indicia despite *no nexus* between the claims and secondary indicia evidence); *Nearmap US, Inc. v. Eagle View Techs., Inc.*, IPR2022-00734, 2024 WL 922247, *4 (P.T.A.B. Feb. 20, 2024) (failing to weigh objective indicia).

fridge or “overdraw protection.” For claims with those limitations, and coextensive with the product, the Board found—and Petitioner never seriously disputed—PO is entitled to the nexus presumption.²

Weight of Secondary Considerations: Petitioner next falsely states the Board “concluded that a POSITA would have found it obvious to combine Emma’s microwave with Butt’s smoke sensor reset function and Smith’s smoke sensor” for the “Micro+SS Claims,...[b]ut for the Micro+Fridge+SS claims, the Board found them not obvious over the exact same references because of secondary considerations of non-obviousness.” Paper 52 at 8-9. The Board did not pick and choose when the references weighed towards obviousness based on whether the claims included a fridge. The Board found Emma, Butt, and Smith together weighed slightly towards obviousness. Paper 49 at 46. The Board then made the nexus finding and, for the claims with the requisite nexus, properly applied and weighed the secondary indicia evidence.

² Petitioner again argued there was a “strong showing of obviousness.” *See* Paper 52 at 8-9. There was no “strong showing of obviousness.” *See* Paper 49 at 46. *Asyst Techs., Inc. v. Emtrak, Inc.*, 544 F.3d 1310, 1316 (Fed. Cir. 2008) and *Leapfrog Enters., Inc. v. Fisher-Price, Inc.*, 485 F.3d 1157, 1162 (Fed. Cir. 2007) are inapplicable—both involved a *strong* showing of obviousness.

Copying: Petitioner misquotes the Board to argue the Board gave too much weight to the copying evidence: “[T]he Board states that the purported ‘novel aspect of [the alleged] invention is the internal smoke sensor in “operative connection with a cooking area” that includes a reset function.’ *Id.* at 64 (citations omitted).” Paper 52 at 10; *but see* Paper 49 at 66 (“We agree with [PO] that *at least part* of the novel aspect [...]”) (emphasis added). Regardless, the Board found Petitioner copied the novel aspects. *See* Paper 49 at 70-71; *see also OpenSky Indus., LLC v. VLSI Tech. LLC*, IPR2021-01064, Paper 138 (“caution[ing PO] against selectively quoting the record . . . particularly when representing the Board’s position”). Petitioner never seriously disputed its MicroChill product includes all elements of the patent claims, including the reset function³, until its request for Director Review. Instead, Petitioner’s argued “Patent Owner’s copying allegation is irrelevant.” Paper 30 at 29. Regardless, the Board provided extensive analysis of, and gave the appropriate

³ The ’745 and ’746 Patents claim a “reset function” wherein “the at least one power control circuit is operative thereafter to enable the magnetron to receive cooking power in a next subsequent cooking session.” Petitioner’s products have this claimed reset function and they have never asserted otherwise. Petitioner’s new argument and new reading of this reset limitation are untimely and, regardless, finds no basis in law or fact. *See* Director Review Process § 3.E; *See* Ex. 1001, Claim 1.

weight to, the evidence of copying. *See* Paper 49 at 65-71 (spanning 7 pages).

Petitioner now argues there is no copying because PO never showed source code access. This is a new argument and should be disregarded. *See* Director Review Process § 3.E. Regardless, the Board specified Petitioner had access to PO's own product, smoke sensor, and other under-seal items, and found copying through citations to Petitioner's own emails and lack of independent design. Paper 49 at 66. The Board properly found copying weighs strongly against obviousness.

Commercial Success Petitioner also argues PO's commercial success should not be considered because there was no nexus between the MicroFridge products, RFPs, and the claims. Not so. The Board looked at the MicroFridge and found there was nexus—and that the RFPs specifically requested the trade names of PO's patented features. Paper 49 at 57 (noting the “marketed and claimed features” must be “desirable,” because the universities made them requirements in the RFPs). Petitioner cited no caselaw supporting its argument that non-claimed RFP requirements drove demand, and did not address *Demaco Corp. v. F. Von Langsdorff Licensing Ltd.*, 851 F.2d 1387, 1394 (Fed. Cir. 1988), cited by the Board, which wholly disposes of Petitioner's argument. In light of the clear nexus, the Board's consideration of PO's substantial commercial success is appropriate.

III. Conclusion.

For these reasons, Petitioner's request for Director Review should be denied.

Dated: May 19, 2025

/R. Scott Johnson/

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CERTIFICATE OF SERVICE

Per agreement of the parties and pursuant to 37 C.F.R. ¶ 42.6(e), the undersigned certifies that a copy of this Patent Owner's Authorized Response to Petitioner's Review Request was served on May 19, 2025, by email on the following:

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