



Insufficient Showing of Secondary Considerations Fails to Rebut Obviousness Case

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Second, Owner argued that Owner's success in the marketplace was due to the patented features of its product. PTAB was not persuaded by Owner's mere showing that Owner was able to grow quickly in its marketplace. In holding that Owner failed to establish "a nexus between its commercial product and any novel features" of its patented product, PTAB found that the features purported to promote the Owner's commercial success "were present in the prior art." Further, PTAB held that even if Owner had established a nexus, Owner had "not provided evidence of the market share held by its product to back up its claim of commercial success."

Third and finally, Owner presented evidence of industry praise wherein its patented product won an award and was mentioned in two trade journals. PTAB held that Owner's evidence of industry success was insufficient, finding that there was no indication that the award was given on the merits of the patented features of Owner's product. Further, PTAB found that "two brief mentions in" trade journals do not "constitute industry praise."

Chums, Inc., and Croakies, Inc., v. Cablz, Inc., IPR2014-01240.

[Kalan (opinion), Cocks, Plenzler]

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